

**DECLARATION  
OF  
CONDOMINIUM**

**FOR**

**WIGGINS LAKES  
CONDOMINIUM**

**NAPLES, FLORIDA**

## **PROSPECTUS**

### **WIGGINS LAKES CONDOMINIUM**

**Naples, Florida**

- (1) THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.**
- (2) THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.**
- (3) ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.**

## **WIGGINS LAKES CONDOMINIUM**

### **SUMMARY**

**THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.**

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**THIS IS A PHASE CONDOMINIUM. ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS CONDOMINIUM.**

**THE CONDOMINIUM UNIT OFFERED IS A FEE SIMPLE.**

**THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.**

**THERE IS TO BE A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY.**

**THE DEVELOPER HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.**

**THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.**

**UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES FOR THE FACILITIES MADE AVAILABLE TO THE UNIT OWNERS OF THIS CONDOMINIUM AND OTHER PROPERTY OWNERS IN WIGGINS LAKES, A PLANNED UNIT DEVELOPMENT COMMUNITY.**

**THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.**

# WIGGINS LAKES CONDOMINIUM

## PROSPECTUS

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## **DESCRIPTION OF THE CONDOMINIUM**

1. **Name.** The name of the condominium is **Wiggins Lakes Condominium** (hereinafter called the "**Condominium**"), and it is located on 1520 Gulf Harbour Drive, Naples, Florida 33963.

2. **Phases.** The **Condominium** is a residential phase condominium. Phase 1 consists of one (1) two (2) story building of twelve (12) units. Each of Phases 2 through 19, inclusive, will consist of one (1) building of twelve (12) units; Phase 20 will consist of one (1) building of two (2) units. If all phases are completed, there will be two hundred thirty (230) dwelling units in twenty (20) buildings. Nineteen (19) building will contain two (2) type "A" units, two (2) type "B" units, four (4) type "C" units and four (4) type "D" units. One (1) building will contain two (2) type "B" units. See the Declaration of Condominium (§3) annexed as Exhibit "A" to this Prospectus, and the Site Plan annexed as Exhibit "C" to this Prospectus. The Developer has the right but not the obligation to add additional phases to the Condominium. If and when each additional phase is added to the Condominium the Developer will also convey to the Master Association the lands surrounding the building, including the parking area, as shown on the Site Plan (Exhibit "C").

3. **Units.** Type "A" and "B" units will have 2 bedrooms and either a third bedroom or a den. Type "C" and "D" units will have 2 bedrooms. All units will include 2 bathrooms, a kitchen, living and dining areas, and a screen enclosed lanai. Each type "A" and each type "B" unit contains approximately 1,374, gross square feet of air-conditioned spaces and each type "C" and each type "D" unit contains approximately 1,179 gross square feet of air-conditioned living space. The lanai adjacent to each unit will provide an additional 102 square feet of usable space. See the Floor Plans annexed as Exhibit "D" to this Prospectus.

4. **Completion.** The estimated latest date to complete constructing, finishing and equipping Phase I is December 31, 1990. All other phases, if submitted, will be completed by December 31, 1996. See the Declaration of Condominium (§3) annexed as Exhibit "A" to this Prospectus.

### **THE CONDOMINIUM UNIT OFFERED IS A FEE SIMPLE.**

5. **Estates.** The units in the Condominium are being sold in fee simple and may be owned in any other estate in real property recognized by law and subject to the Declaration of Condominium. Time-share estates are not included in this condominium. See the Declaration of Condominium (§1.4) annexed as Exhibit "A" to this Prospectus.

6. **Parking.** The parking facilities for the Condominium are a part of the common area of Wiggins Lakes and are operated by Wiggins Lakes Master Association, Inc. One covered parking space will be assigned to each unit for the exclusive use of the unit owner. Spaces which have not been so assigned will be available for all Members of Wiggins Lakes

Association, Inc. and their guests. See the Declaration of Condominium (§11) annexed as Exhibit "A" to this Prospectus, and the Site Plan annexed as Exhibit "C" to this Prospectus.

**THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.**

7. **Leasing.** The Developer does not intend to institute a program for leasing rather than selling units. However, the Developer reserves the right to lease units (subject to approvals as required by law) and to sell the units subject to the leases. Such leases would probably be for periods of from 6 to 12 months.

**THERE IS A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH WIGGINS LAKES MANAGEMENT, INC.**

8. **Management.** The Developer has entered into a contract for the management of the Association and the maintenance and operation of the condominium property with **Wiggins Lakes Management, Inc.**, a Florida corporation, (the "Management Corporation"). The contract is for an indefinite term commencing on the day of the closing of the first sale of a unit in the Condominium and continuing until control of the Association is transferred to the unit owners, subject to termination by either party thirty (30) days after written notice. The services to be performed include administering the financial affairs of the Association, preparing the proposed annual budget, hiring and supervising maintenance personnel and otherwise implementing the instructions of the Board of Directors of the Association. The fee for the services is \$8.50 per month (\$102.00 per year) per unit, plus applicable taxes. The fee is fixed for the first year and thereafter subject to increase. All of the capital stock of the Management Corporation is owned by Spanish Lakes, Inc., a Florida corporation controlled by Edward J. McArdle. A copy of the Management Contract is annexed as Exhibit "J" to this Prospectus.

**THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.**

9. **Association.** The selling of units in the Condominium by unit owners, other than the Developer, and the leasing of Units in the Condominium requires that notice of the proposed sale or lease be given to the Association. See the Declaration of Condominium (§8.10) and the Rules and Regulations (§19) annexed as Exhibits "A" and "K" to this Prospectus.

**THE DEVELOPER HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.**

10. **Control.** The operation of the Condominium will be governed by Wiggins Lakes Condominium Association, Inc. (the "Association"). All unit owners will be members of the Association. There shall be one (1) vote per unit. The Developer has elected the initial Board of Directors to serve until the first annual meeting of the members. The Directors will be elected annually until control of the Association is transferred to the unit owners. See the Declaration of Condominium (§11), the Association Articles of Incorporation (Art.



VI), and Bylaws (§3.21) annexed as Exhibits "A", "F" & "G" to this Prospectus.

**11. Restrictions.** For the benefit of all unit owners certain restrictions have been placed upon the use of the condominium property, including restrictions on children and pets. These restrictions are set forth in the Declaration (§5.6) and in the Rules and Regulations annexed as Exhibits "A" and "K" to this Prospectus.

**12. Utilities.** Utility services will be provided to the condominium by the following companies:

Sewage and waste disposal	Collier County
Water	Collier County
Telephone	United Telephone Company of Florida
Electricity	Florida Power & Light Company
Drainage	Wiggins Lakes Master Association, Inc.
Rubbish Removal	Waste Management of Collier County
Cable Television	Palmer Cable Vision, Inc.

**13. Interests.** The obligation for payment of the common expenses and the ownership of the common elements has been apportioned equally among the units owners. See the Declaration of Condominium (§5.4) annexed as Exhibit "A" to this Prospectus.

**14. Budget.** An Estimated Operating Budgets for the Association and the Master Association are annexed as Exhibits "H" and "I" to this Prospectus. Notwithstanding anything to the contrary contained within this Declaration, the liability of the Developer for the payment of the Common Expenses with respect to each Unit owned by the Developer shall be limited as follows:

(a) The Developer shall be excused from the payment of the share of the Common Expenses for a period commencing upon the recording of the Declaration of Condominium and ending on the first (1st) day of the fourth (4th) calendar month following the month in which the closing of the purchase and sale of the first Unit occurs. However, the Developer must pay the portion of Common Expenses incurred during that period which exceeds the amount assessed against the other Unit Owners.

(b) During the period commencing on the date of the recording of this Declaration in the Public Records of Collier County, Florida, and ending on the earlier of the date the Developer turns over control of the Association to the Unit Owners other than the Developer, or one (1) year after the first (1st) day of the fourth (4th) calendar month following the month in which the closing of the purchase and sale of the first Unit occurs (the "Guaranty Expiration Date"), the Developer guarantees that the Common Expenses and assessments levied upon each Unit will not exceed Ninety-one & 21/100ths Dollars (\$91.21) each month (the "Guaranty"), and the Developer shall pay any amount of Common Expenses incurred during the period and not produced by the assessment at the guaranteed level receivable from other Unit Owners. Further, the Developer shall be obligated to pay that portion of the Common Expenses and assessments actually incurred during the



aforesaid period which exceeds the amount produced by the assessments at the guaranteed level receivable from other Unit Owners. Commencing on the Guaranty Expiration Date, the Developer shall contribute to the Common Expenses on the same basis as all other Unit Owners. Notwithstanding the foregoing, in the event the Developer is the Unit Owner of any Unit during the guaranteed period as aforescribed, and if any such Unit is leased and occupied by a third party, then the maintenance of said Unit shall be contributed and borne by the Developer on the same basis as all other Unit Owners.

**15. Closing.** The Developer will collect a closing fee equal to one and five tenths hundredths percent (1.5%) of the Purchase Price at Closing and pay for the preparation and recording of a deed conveying the unit to a purchaser, and for the Florida revenue stamps on the deed, and furnish a commitment for the issuance of a title insurance policy in the amount of the purchase price. If the Purchaser elects to accept such commitment the Developer will pay the title insurance premium. The purchaser will be responsible for the costs associated with financing the purchase. These costs can include: lender's fees, attorney's fees, recording costs, credit investigation charges, revenue stamps on promissory notes, intangible taxes on mortgages, and mortgagee title insurance premiums. See the Schedule of Typical Closing Expenses annexed as Exhibit "O" to this Prospectus.

**16. Developer.** The Developer of the Condominium is McCoy Development, Inc., a Delaware corporation. Executive direction of the development activities is under the supervision of Edward J. McArdle. Mr. McArdle has more than ten (10) years of extensive experience in the development of residential projects in Southwest Florida, including Spanish Wells Subdivision and three (3) residential condominium projects in Lee County, Florida.

#### **DESCRIPTION OF RECREATIONAL FACILITIES**

**UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES FOR THE RECREATIONAL FACILITIES MADE AVAILABLE TO THE UNIT OWNERS OF THIS CONDOMINIUM DEVELOPMENT COMMUNITY.**

The recreational facilities to be constructed for the exclusive use and enjoyment of all residents of Wiggins Lakes are an 1,800 square foot club house and a swimming pool of approximately 800 square feet located as shown on the Site Plan. This pool will be surrounded by a 1,600 square foot deck adequate for 40 persons. The deck will be furnished with 8 lounge chairs, 16 straight back chairs and 4 tables with umbrellas. The estimated date for completion of the club house, swimming pool and deck is December 31, 1990. This estimate is based upon anticipated sales of enough dwelling units at Wiggins Lakes to support the cost of constructing and operating the facilities.

**THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED FACILITIES. THE UNITS OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.**

The Common Areas within Wiggins Lakes, including the roads, lakes, drainage system, parking areas, natural preserves and recreational facilities are under the control of Wiggins Lakes Master Association, Inc., a Florida not-for-profit corporation. The membership in the Master Association is limited to the Developer and the other owners of real estate in Wiggins Lakes.

The club house will be used as a sales office by the Developer for so long as the Developer controls the Master Association. The Developer may have control of the Master Association for so long as the Developer controls the right to develop 58 of the 230 dwelling units which can be constructed at Wiggins Lakes. The Developer is entitled to appoint one (1) director to the Board of Directors of the Master Association for so long as the Developer has the right to sell or develop at least twelve (12) dwelling units in Wiggins Lakes.



**DECLARATION OF CONDOMINIUM**  
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## DECLARATION OF CONDOMINIUM

FOR

### WIGGINS LAKES CONDOMINIUM

J. Stephen Crawford, Trustee (not individually but as trustee under the provisions of a certain Declaration of Trust and Trust Agreement known as the *Wiggins Lakes Trust*), as holder of the legal and equitable title to the real property hereinafter described (hereinafter called the "Declarant"), makes the following declaration:

#### SECTION I

##### PURPOSE

1.1. Submission. The purpose of this Declaration is to submit the lands described in this instrument and improvements on such lands to the condominium form of ownership and use, in the manner provided by Chapter 718, Florida Statutes (hereinafter referred to as the "Condominium Act"), and the Declarant does hereby submit the lands described as Phases 1, 2, 3 and 15 in the Legal Descriptions and Sketches in Exhibit "A" hereto annexed and made a part hereof and the improvements on such lands to the condominium form of ownership and use upon the terms and conditions herein set forth. The improvements from each phase are not substantially completed; when the improvements are substantially completed the Developer shall amend this Declaration by filing a survey and certificate as required by §718.104(4)(e), Florida Statutes.

1.2. Covenants. All the provisions of this Declaration shall be construed to be perpetual covenants running with the land and with every part thereof and interest therein, and every Unit Owner and every person claiming any title or interest in the land or any part thereof or any improvement incorporated thereon, and their heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of this Declaration, unless this Declaration shall be terminated pursuant to the Condominium Act or as herein provided. Both the burdens imposed and the benefits conferred by this Declaration shall run with each condominium parcel as herein defined.

1.3. Name. The name of the condominium created by this Declaration is *Wiggins Lakes Condominium*.

1.4. Estates. The condominium estates hereby created and the condominium estates to be created in all future phases shall be fee simple estates; no time-share estates are created by this Declaration.

**SECTION II**  
**DEFINITIONS**

**2.1. General.** Except as expressly hereinafter defined the terms used in this Declaration and in the Articles of Incorporation, the Bylaws and the Rules and Regulations of the Association, shall have the meaning stated in the Condominium Act and as follows, unless the context otherwise requires. Further, whenever the context so requires, the use of any gender shall be deemed to include all genders, the use of the plural shall include the singular and the singular shall include the plural.

**2.2. Specific.** The following terms shall have the specific meanings herein defined, to-wit:

- (A) *Assessment* means a share of the funds required for the payment of Common Expense from time to time assessed against a Unit Owner.
- (B) *Association* means Wiggins Lakes Condominium Association, Inc., a Florida not-for-profit corporation, the corporate entity responsible for the operation of the Condominium.
- (C) *Board of Directors* means the board of directors responsible for administration of the Association.
- (D) *Building* means that part of the Condominium Property constituting a structure containing at least one residential Unit.
- (E) *Bylaws* means the bylaws of the Association existing from time to time.
- (F) *Common Element* includes within its meaning the Condominium Property which is not included within the Units; easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to a Unit and to any Common Element; easements of support in every portion of a Unit which contributes to the support of a building; and easements and property required for the furnishing of utilities and other services to more than one (1) Unit or to a Common Element.
- (G) *Common Expense* means any expense or obligation for the payment of money properly incurred by the Association for the Condominium.
- (H) *Common Surplus* means the excess of all receipts of the Association, including, but not limited to, assessments; rents, profits and revenues on account of the Common Elements, over the Common Expenses.

- (I) *Condominium Property* means the lands, leaseholds and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Units and the Common Elements.
- (J) *Declaration* means the instrument or instruments by which the Condominium Property is created, as from time to time amended.
- (K) *Developer* means McCoy Development, Inc., a Delaware corporation, **the entity which is offering this condominium parcels** for sale in the ordinary course of business its successors and assigns, but does not include an owner or lessee or a Unit Owner who has acquired the Unit for residential occupancy.
- (L) *Institutional Mortgagee* means the owner or holder of a mortgage encumbering a Unit which owner or holder of said mortgage is either a bank, a life insurance company, a federal or state savings and loan association, a real estate or mortgage investment trust, a credit corporation having assets in excess of Fifty Million Dollars, a federal or state agency, the Federal National Mortgage Association, its successors and assigns, the Developer, any other generally recognized lender and investor, and such other mortgagee as shall be acceptable to and approved by the Board of Directors of the Association.
- (M) *Limited Common Element* means a Common Element reserved by the Declaration for the use of a certain Unit to the exclusion of other Units.
- (N) *Operation* means the operation, administration and management of the Condominium Property and the Association.
- (O) *Unit* means a part of the Condominium Property which is subject to exclusive ownership as specified in the Declaration and includes an undivided share in the Common Elements and the Common Surplus.
- (P) *Unit Owner* means the owner of a Unit.
- (Q) *Utility Service* shall include, but shall not be limited to, electric power, gas, hot and cold water, heating and refrigeration, air conditioning, **garbage and sewage disposal, cable television and communication** equipment and other services required by governmental authorities.

### SECTION III DEVELOPMENT PLANS

3.1. Improvements. The Condominium Property, if all phrases are completed, will include two hundred thirty (230) residential Units located in twenty (20) buildings. Phases 1 to 19 will each consist of one (1) building two (2) stories in height, enclosing twelve (12) Units. Phase 20 will consist of one (1) single story building enclosing two (2) Units. Annexed hereto and made a part hereof as Exhibit "B" is a Site Plan showing the approximate locations, designated by phase numbers, of all existing and proposed building and improvements to be contained within the Condominium Property (designated by Phase Number) and graphic descriptions of all units including their identification numbers, locations and dimensions. The legend and notes contained therein are incorporated herein and made a part hereof by reference. Nonmaterial changes in the relative locations of the improvements may be made by the Developer without notice to an approval of the Unit Owners. Legal Descriptions and Sketches of the Descriptions of each of the proposed phases of the condominium are set forth in Exhibit "A" to this Declaration. Each phase will include twelve (12) Units located in a single building and Phase 20 will consist of two (2) Units in a single building. The minimum number of Units in the condominium will be forty-eight (48) and the maximum will be two hundred thirty (230). Each of the buildings will be situated on a site surrounded by lands owned by the Wiggins Lakes Master Association, Inc., a Florida not-for-profit corporation (the "Master Association"). As each phase is added to the condominium the surrounding lands will be conveyed to the Master Association.

3.2. Adjoining Units. Where adjoining Units have been acquired by the same Unit Owner and combined into a single dwelling place, the Floor Plans hereto annexed as in Exhibit "C" may not reflect the interior plans of the combined Units, but the exterior boundaries of the combined Units remain the same. Should any Units be combined such Units shall continue to exist as separate Units as described in this Declaration for the purpose of applying the provisions of this Declaration and all exhibits attached hereto.

3.3. Description. There will be four (4) types of Units: Type "A" Units located on the second floor and type "B" Units located on the first floor; type "A" and "B" Units have three (3) Bedrooms or two (2) bedrooms and a den. Type "C" Units located on the second floor and type "D" Units located on the first floor; type "C" and "D" Units have two (2) bedrooms. The general size of each type "A" and type "B" Unit shall be approximately 1,374 square feet and the general size of each type "C" and type "D" Unit shall be approximately 1,179 square feet of air-conditioned space. Each Unit will have an attached lanai of approximately 102 square feet as a Limited Common Element. The Developer reserves the right to alter the size, number and location of windows, to provide screen enclosures, balconies, patios, fencing and privacy screens, parking and storage facilities, and to make such exterior and structural changes as may be appropriate to such alterations. Any such changes will not substantially change the general architectural character of the buildings or substantially reduce or increase approximate area of any Unit.



**3.4. Recreational Facilities.** Presently, there are no recreational areas or facilities now planned for construction or installation within the Condominium Property. However, the Condominium Property lies within certain lands subject to the Protective Covenants for Wiggins Lakes, dated January 3, 1990, recorded in the Public Records of Collier County, Florida. Said Protective Covenants and the lands subject to said Protective Covenants are to be administered by the Master Association. Said lands have been improved with the following amenities which are available for all residents, to-wit: one clubhouse of approximately 1,800 square feet and one swimming pool of approximately 800 square feet, surrounded by a deck of no less than 1,600 square feet and appurtenant bathroom facilities. The deck area will be furnished with 8 lounge chairs, 16 straight back chairs and 4 tables with umbrellas. The Developer reserves the right to add and expand recreational facilities without the consent of the Unit Owners as long as the Developer controls the Master Association; provided the monthly maintenance assessment by the Association will not be increased by more than Fifteen Dollars (\$15.00) per unit during the first year after the installation of such facilities. Facilities installed on the Condominium Property shall be for the exclusive use of the Unit Owners as a Common Element. Membership in the Master Association is mandatory.

#### **SECTION IV UNIT BOUNDARIES**

**4.1. Boundaries.** Each Unit shall have as its boundary the interior undecorated, finished surfaces of the ceiling, floor and perimeter walls bounding the Unit, extended to intersections with each other.

**4.2. Boundaries - Further Defined.** The boundaries of the Unit shall not include all of those spaces and improvements lying outside of the undecorated or unfinished inner surfaces of the perimeter walls and those surfaces above the undecorated finished ceilings of each Unit, and those surfaces below the undecorated finished floor of each Unit, and further, shall not include those spaces and improvements lying between the undecorated or unfinished inner surfaces of all interior bearing walls and bearing partitions, and further, shall exclude all pipes, ducts, wires, conduits and other utilities running through any interior wall or partition for the furnishing of utility services to other Units or for the Common Elements. Each Unit shall include the cabinets in the walls, and the electric receptacles and switches exclusively serving such Unit. In those Units where attic storage access is provided, a Unit Owner may use the crawl space for storage at the Unit Owner's risk. Any damage caused to the Unit or the Common Elements or any property stored therein by using this storage area shall be at the sole expense of the Unit Owner.

**4.3. Lanai.** Each Unit shall include as an appurtenant Limited Common Element, as indicated on the Floor Plans hereto annexed as Exhibit "C", a lanai. The boundaries of the lanai shall be as follows: All lower and perimetrical boundaries shall be the same as set forth above; however, should a perimetrical boundary be a railing, then the Unit shall include the railing and the boundary shall be the exterior surface of the railing. Subject to

the right of the Association to control the finishes, types and colors of floor coverings, maintenance of the finished floor of the lanai shall be borne by the Unit owner to which the lanai is appurtenant. Each lanai is a Limited Common Element appurtenant to the Unit which it abuts and is for the exclusive use of the owners of the abutting Unit, provided, however, no Unit Owner shall paint or otherwise decorate or change the appearance of any exterior portion of the Condominium Property.

**4.4. Windows and Doors.** A Unit shall include, as indicated on the Floor Plans hereto annexed as Exhibit "C", windows, doors, railings and screens in the perimetrical walls of the Unit. The Unit Owner shall be responsible for the maintenance and repair of all such windows, doors, railings and screens.

**4.5. Stairways.** Stairways, including landings, balconies and walkways, serving second floor Units are Limited Common Elements appurtenant to the Units which they abut and serve.

**4.6. Parking Facilities.** All parking facilities for the Units are located in the parking areas adjacent or proximate to the Buildings and shall be assigned in accordance with the provisions contained in the Declaration of Protective Covenants for Wiggins Lakes.

## **SECTION V**

### **OWNERSHIP**

**5.1. Type of Ownership.** Ownership of each Unit may be in fee simple or in any other estate in real property recognized by law and subject to this Declaration; provided, however, time share estates may not be created in the Condominium Property.

**5.2. Association Membership.** The Unit Owners as shown on the Public Records of Collier County, Florida, shall be members of the Association. There shall be one (1) membership for each Unit and if there is more than one (1) record owner per Unit, then such membership shall be divided among such owners in the same manner as is their ownership in the Unit.

**5.3. Unit Owner's Rights.** A Unit Owner is entitled to the exclusive possession of such Unit Owner's Unit. Each Unit Owner shall be entitled to use the Common Elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of other Unit Owners. There shall be a joint use of the Common Elements and a joint mutual easement for that purpose is hereby created.

**5.4. Common Elements.** The Unit Owners of each Unit shall own an undivided fractional interest in the Common Elements equal to a fraction the numerator of which is one and the denominator of which is the number of Units in the Condominium. As each



Phase is added to the condominium, the denominator will increase by the number of Units in the Phase added.

**5.5. Separation.** The fee title of each Unit shall include both the Unit and an undivided interest in the Common Elements; said undivided interest in the Common Elements is deemed to be conveyed or encumbered with its Unit, even though the description in the instrument of conveyance may refer only to the fee title to the Unit. The share in the Common Elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit. Any attempt to separate and any action to partition the fee title to a Unit from the undivided interest in the Common elements appurtenant to such Unit shall be null and void.

**5.6. Conveyances.** In order to assure a community of congenial residents and occupants and to protect the value of the Units and to further the continuous harmonious enjoyment of the Condominium Property, the sale, lease and mortgage of a Unit shall be subject to the following provisions which shall be covenants running with the land so long as the Condominium Property shall be subject to the condominium form of ownership under the laws of the State of Florida:

- (A) In the event of an attempted conveyance in contravention of the restrictions herein contained, the Association shall have the right to enforce these provisions by injunctive proceedings or by any other legal means calculated to produce compliance.
- (B) A Unit Owner, other than an Institutional Mortgagee who has received title to the Unit through foreclosure or a deed in lieu of foreclosure, intending to make a *bona fide* sale or lease of such Unit or any interest therein shall give to the Association a written notice of such intent to sell or to lease, together with the name and address of the proposed purchaser or lessee, and such other information as the Association may reasonably require, and the terms of the proposed transaction. The giving of such notice shall constitute a warranty and representation by the Unit Owner that the proposal is bona fide in all respects.
- (C) No sale, transfer, lease or conveyance of a Unit, exclusive of an original sale by the Developer, shall be valid without the approval of the Association, except in the cases elsewhere provided in this Declaration, which approval shall not be unreasonably withheld. Approval shall be in recordable form, signed by an authorized officer of the Association and shall be delivered to the purchaser or lessee and made a part of the documents of conveyance.
- (D) Failure of the Association to act on or before the thirtieth (30th) day next after the giving of notice of intent to sell or lease shall be deemed

to constitute approval, in which event the Association must on demand prepare and deliver approval in recordable form.

- (E) The provisions of this §5.6 shall apply to original and all successive sales, leases, transfers and assignments, except for original sales by the Developer.
- (F) No Unit shall be sold or leased, nor shall approval be given for the same, until and unless all assessments past and due are paid or their payment provided for to the satisfaction of the Association and unless the proposed purchaser or lessee can qualify as to the use restrictions.
- (G) If a Unit Owner shall lease a Unit such Unit Owner shall remain liable for the performance of all agreements and covenants in this Declaration and shall be liable for the violations by the lessee of any and all use restrictions.
- (H) Every purchaser or lessee who acquires any interest in a Unit shall acquire the same subject to this Declaration, the provisions of the Articles of Incorporation and Bylaws of the Association and the provisions of the Condominium Act.
- (I) Should any Unit at any time become subject to a mortgage or similar lien given to an Institutional Mortgagee as security, in good faith and for value, the Institutional Mortgagee, upon becoming the owner of such Unit through foreclosure of that mortgage or by virtue of a deed in lieu of foreclosure, shall have the unqualified right to sell, or otherwise dispose of said Unit, including the fee ownership thereof, without complying with the provisions of §5.6(B) through §5.6(F) above, provided however, that in all other respects the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and the provisions of the Condominium Act shall be applicable thereto; and provided further that nothing herein contained shall be deemed to allow or cause a severance from the Unit of the share of the Common Elements and other appurtenances of said Unit. Furthermore, a deed in lieu of foreclosure may be given to the Institutional Mortgagee or any designated affiliate or subsidiary of the Institutional Mortgagee without the grantor or grantee in the deed being required to comply with the requirements of §5.6(B) through §5.6(F) above. Once the Institutional Mortgagee has sold, transferred or conveyed the interest of the Institutional Mortgagee to any person whomsoever, the provisions of §5.6(B) through §5.6(F) above shall again be fully effective with regard to subsequent sales or conveyances of said Unit. Should any designated affiliate or subsidiary of an Institutional Mortgagee acquire title to any Unit through foreclosure,

or by conveyance from the Institutional Mortgagee, then such designated affiliate or subsidiary shall not be required to comply with the provisions of §5.6(B) through §5.6(F) above with respect to the sale of the Unit in the ordinary course of business. The Institutional Mortgagee in conveying the property to such designated affiliate or subsidiary need not comply with the provisions of §5.6(B) through §5.6(F) above.

- (J) No amendment of this §5.6 shall be effective to impair the validity or priority of any existing mortgage, or impair or reduce the rights and privileges of the mortgagee holding any existing mortgage, without the consent of such mortgagee. For the purposes of this §5.6(J), an "existing mortgage" is one which has been recorded among the Public Records prior to the recording of an amendment, whether or not advances to be secured by the said mortgage have been made at the time of the recording of the amendment. Furthermore, an "existing mortgage" shall remain an existing mortgage for the purpose of this §5.6(J) even though amended and modified in any manner permitted by law.

**5.7. Rights of Heirs and Devisees of Deceased Unit Owners.**

- (A) If the Unit Owner should die and the title to the Unit shall pass to such Unit Owner's surviving spouse or to any member of such Unit Owner's family regularly in residence with such Unit Owner in the Unit prior to such Unit Owner's death, then such successor in title shall fully succeed to the ownership, rights, duties and title shall fully succeed to the ownership, rights, duties and obligations of the Unit Owner, the provisions of §5.6 of this Declaration notwithstanding.
- (B) If the title to the Unit of such deceased Unit Owner shall pass to any person other than a person or persons designated in §5.7(A), then within ninety (90) days of such person or persons taking title to the Unit of the deceased Unit Owner, such person shall advise the Association in writing of such person's intention of residing in the Unit and of such person's current address. The Association shall have thirty (30) days thereafter to advise said person or persons in writing, delivered or mailed to the said current address, whether their ownership of the Unit is approved. The failure of the Association to give such advice within the said thirty (30) days shall be deemed automatic approval, in which event the Association must on demand prepare and deliver approval in recordable form. If the Association does not approve the ownership of the Unit by said person or persons and so notifies them, said person or persons shall remain in occupancy only until the Association or such other person or persons shall have

procured a purchaser acceptable to the Association for said Unit at a fair market value therefor, established by the Association, which value shall be conclusive upon all persons for all purposes unless grossly inadequate or fraudulent. Thereupon, the person or person having title of the said Unit shall execute such papers and documents as the Association may require to affect the transfer of title of the Unit to such purchaser, which purchaser may be the Association.

- (C) Nothing in this §5.7 shall be deemed to reduce, forgive or abate any amounts due the Association from the Unit Owner at the time of such Unit Owner's death, nor the assessments attributable to the Unit becoming due after the Unit Owner's death, all of which shall be fully due and payable as if the Unit Owner had not died.
- (D) Nothing herein shall prevent the sale and transfer of a Unit by the Unit Owner thereof in the manner otherwise provided in this Declaration.

## SECTION VI

### **COMMON EXPENSES AND COMMON SURPLUS**

**6.1. Expenses.** The share of the Common Expenses to be borne by each of the Unit Owners shall be a proportionate share of the total expenses and costs of the Association equal to the Unit Owner's percentage interest in the Common Elements.

**6.2. Surplus.** Any Common Surplus of the Association shall be owned by each of the Unit Owners in the same proportion as their percentage interest in the Common Elements.

## SECTION VII

### **MAINTENANCE, ALTERATIONS AND IMPROVEMENTS**

**7.1. Association.** The Association shall maintain, repair and replace at the Association's expense all portions of a Unit contributing to the support of the Condominium Property, which portions shall include, but not be limited to, outside walls of the building and all fixtures on its exterior, those portions of boundary walls not a part of Unit; floor and ceiling slabs; load-bearing columns and load-bearing walls; all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services contained in the portion of a Unit maintained by the Association; and all such facilities contained within a Unit that service part or parts of the Condominium Property other than the Unit within which contained. All incidental damage caused to a Unit by such work immediately above-described shall be repaired promptly at the expense of the Association.



7.2. Unit Owner. The Unit Owner shall keep and maintain the Unit Owner's Unit, its equipment and appurtenances, in good order, condition and repair, and to perform promptly all maintenance and repair work within the Unit which, if omitted, would affect the Condominium Property in its entirety or in a part belonging to others; being expressly responsible for the damages and liability which any failure to do so may engender. Notwithstanding anything contained in this Declaration, each Unit Owner shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all windows and all exterior doors, including sliding glass doors and all air conditioning and heating equipment, including pipes, wiring, ducts, fixtures and their connection required to provide water, access, light, power, air conditioning and heating, telephone, sewage and sanitary service to the Unit which may now or hereafter be situated in the Unit (all of which if not a part of the Unit shall be deemed to be Limited Common Elements); and the interior surfaces of all walls, ceilings and floors, screening and railings of lanais, patios or balconies, and other facilities appurtenant to the Unit; the plumbing, electrical fixtures and equipment located within a Unit and those exclusively servicing a Unit.

7.3. Notice. The Unit Owners shall promptly notify the Association of any defect or need for repairs for which the Association is responsible.

7.4. Access. Any officer of the Association or any agent of the Board shall have the irrevocable right to have access to each Unit from time to time during reasonable hours and after reasonable notice as may be necessary for inspection, maintenance, repair or replacement of any Common Element therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit.

7.5. Alteration and Improvement. Except as elsewhere reserved to the Developer, neither a Unit Owner nor the Association shall make any alteration in the portions of a Unit that are to be maintained by the Association, remove any portion of such, make any additions to them, do anything that would jeopardize the safety or soundness of the building or impair any easement, or paint or otherwise decorate or change the appearance of any portion of the exterior of the building and the Condominium Property, without first obtaining approval in writing of Unit Owners of all Units in the building and approval of the Board of Directors of the Association, which approvals shall not be unreasonably withheld. A copy of plans for all such work prepared by an architect licensed to practice in the State of Florida shall be filed with the Association prior to the start of the work. After the completion of the improvements included in the Common Elements contemplated by this Declaration, there shall be no alteration or further improvement of the real property constituting the Common Elements (other than the construction of covered parking facilities and associated storage) without prior approval in writing by the Unit Owners of not less than seventy-five percent (75%) of the Units, if the cost of same shall be a Common Expense which would exceed in cumulative expenditure for the calendar year, fifteen percent (15%) of the average of the Common Expenses for the prior three (3) years. Any such alteration or improvement shall not interfere with the rights of any Unit Owner without their consent.

7.6. Expenses. The maintenance and operation of the Limited Common Elements and Common Elements, including the repair, maintenance and replacement of landscaping and other improvements and facilities, shall be the responsibility of the Association as a Common Expense.

7.7. Land Acquisition. Land acquired by the Association may be added to the land hereby submitted to condominium ownership hereby. This may be done by amendment to this Declaration that includes the description of the acquired land and submits the said land to condominium ownership under the terms of this Declaration. The amendment shall be executed by the Association and adopted by the Unit Owners in the manner elsewhere required. Such amendment, when recorded in the public records of Collier County, Florida, shall divest the Association of title to the land and shall state that it conveys all interest of the Association to and vests the title in the Unit Owners, without naming them and without further conveyance, in the same undivided shares as the undivided shares in the Common Elements appurtenant to the Units. Any land acquired by the Association that is not incorporated into the land submitted to condominium ownership by amendment of this Declaration, may be sold or mortgaged or otherwise disposed of by the Association after approval in writing by the record Unit Owners of not less than seventy-five percent (75%) of the Units. This approval shall be evidenced by a certificate stating that the approval was duly given, which certificate shall be executed by the officers of the Association with the formalities of a deed and delivered to a purchaser or mortgagee of such land.

7.8. Personal Property. Any personal property acquired by the Association may be sold or mortgaged or otherwise disposed of by the Association.

7.9. Enforcement of Maintenance. In the event a Unit Owner fails to maintain a Unit as required above, the Association, the Developer or any other Unit Owner shall have the right to proceed in any appropriate court to seek compliance with the foregoing provisions and to seek to recover from the Unit Owner and the Unit for the necessary sums to put the improvements within the Unit in good condition and for damages arising from the failure of the Unit Owner to comply with the provisions hereof. The Association has an irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair or replacement of any Common Elements or for making emergency repairs which are necessary to prevent damage to the Common Elements or to another Unit.

## SECTION VIII USE RESTRICTIONS

8.1. Units. The use of the Units shall be in accordance with the following provisions:

- (A) Each Unit shall be occupied only as a residence and for no other purpose. No Unit shall be permanently occupied by more than two persons per bedroom, and the maximum number of overnight guests shall be not more than one hundred fifty percent (150%) of the allowable number of permanent occupants.
- (B) Except as reserved to the Developer, no Unit may be divided or subdivided into a smaller Unit nor any portion thereof sold or otherwise transferred without first amending this Declaration to show the changes in the Units to be affected thereby.
- (C) Nothing shall be hung, displayed or placed on the exterior walls, doors, windows, balconies or patios of the Unit or the building without the prior written consent of the Board of Directors.
- (D) No clothes line or similar devices shall be allowed on any patios or balconies of any Unit, or any other part of the Condominium Property, without the written consent of the Board of Directors.
- (E) No Unit Owner shall make, allow or cause to be made, any structural addition or alteration of any Unit or the Common Elements without the prior written consent of the Association.

8.2. Common Elements and Limited Common Elements. The Common Elements and Limited Common Elements shall be used only for the purpose for which they are intended.

8.3. Nuisances. No nuisances shall be allowed on the Condominium Property nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper residential use of the Condominium by its residents. All parts of the property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist. No Unit Owner shall permit any use of any Unit or of the Common Elements which will increase the rate of insurance upon the Condominium Property.

8.4. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned. No Unit shall be used in a manner or for a purpose which would require any alteration of the Common Elements in order for such use to be in compliance with any applicable laws or regulations.



**8.5. Signs.** No signs shall be displayed from a Unit or on Common Elements, except such signs as shall have advance written approval by the Association. The Association shall have the right to remove from and either place in storage at the owner's expense, or dispose of, any signs placed on the Common Elements without the expense prior written approval of the Association.

**8.6. Rules and Regulations.** Reasonable rules and regulations concerning the use of the Condominium Property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and By-Laws. Copies of such regulations and amendments thereto shall be furnished by the Association to all Unit Owners and residents of the Condominium Property.

**8.7. Proviso.** Provided, however, that until the Developer has completed all of the contemplated improvements and closed the sales of all of the Units, neither the Unit Owners nor the Association nor the use of the Condominium Property shall interfere with the completion of all contemplated improvements and the sale of all Units, and the Developer may make such use of the unsold Units and Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, showing of the Condominium Property, and the display of signs.

**8.8. Security Deposits.** The Association may require that a security deposit of an amount not greater than the rent for one month be made with the Association for each Unit occupied by tenants occupying the Unit under a rental agreement, provided such deposit is uniformly required and enforced with respect to all such tenants. The Unit Owner shall be responsible for delivery of the security deposit to the Association and for promptly advising the Association of any matters affecting the deposit; and the deposit shall be held and administered by the Association in accordance with §83.49, Florida Statutes.

**8.9. Parking Spaces.** Parking spaces for the condominium will be located in an area adjacent to the condominium on property owned by Wiggins Lakes Master Association, Inc. (the "Master Association"). The use, maintenance, replacement and regulation of the parking spaces will be controlled by the Master Association. The Master Association will designate one (1) covered parking space for the use of each unit. Unassigned spaces will be available for the use and enjoyment of the members of the Master Association, and their guests.

**8.10. Leases.** No Unit may be leased without delivery of prior written notice to the Association at least three (3) days prior to the commencement of the term specifying the name of the tenant and the commencement and expiration dates of the lease term.

**SECTION IX**  
**DEVELOPER'S UNITS AND PRIVILEGES**

**9.1. Developer.** Until all of the Units have been sold and closed, the Developer is irrevocably empowered, notwithstanding anything herein to the contrary, to sell Units to any person approved by the Developer. The Developer shall have the right to transact upon the Condominium Property any business necessary to consummate the sale of Units, including, but not limited to, the right to maintain models, have signs, and maintain offices, signs. Fixtures or furnishings or other tangible personal property belonging to the Developer shall not be considered Common Elements and shall remain the exclusive property of the Developer.

**9.2. Expenses.** Notwithstanding anything to the contrary contained within this Declaration, the liability of the Developer for the payment of the Common Expenses with respect to each Unit owned by the Developer shall be limited as follows:

- (A) The Developer shall be excused from the payment of the share of the Common Expenses, including reserves for capital expenditures and deferred maintenance, relating to the Units the Developer is offering for sale, for a period commencing upon the later of the date of the recording of the Declaration of Condominium and ending on the first (1st) day of the fourth (4th) calendar month following the month in which the closing of the purchase and sale of the first Unit occurs (the "Exemption Period"). However, the Developer must pay the portion of Common Expenses incurred during the Exemption Period which exceeds the amount assessed against the other Unit Owners.
- (B) During the period commencing on the date of the expiration of the Exemption Period, and ending on the earlier of the date the Developer turns over control of the Association to the Unit Owners other than the Developer, or one (1) year after the first (1st) day of the fourth (4th) calendar month following the month in which the closing of the purchase and sale of the first Unit occurs (the "Guaranty Expiration Date"), the Developer guarantees that the Common Expenses and assessments levied upon each Unit will not exceed Ninety-one & 21/100ths Dollars (\$91.21) each month (the "Guaranty"), and the Developer shall pay any amount of Common Expenses incurred during the period and not produced by the assessment at the guaranteed level receivable from other Unit Owners. Further, the Developer shall be obligated to pay that portion of the Common Expenses and assessments actually incurred during the aforesaid period which exceeds the amount produced by the assessments at the guaranteed level receivable from other Unit Owners. Commencing on the Guaranty Expiration

Date, the Developer shall contribute to the Common Expenses on the same basis as all other Unit Owners. Notwithstanding the foregoing, in the event the Developer is the Unit Owner of any Unit during the guaranteed period as aforescribed, and if any such Unit is leased and occupied by a third party, then the maintenance of said Unit shall be contributed and borne by the Developer on the same basis as all other Unit Owners.

9.3. Amendment. Notwithstanding anything herein to the contrary, the provisions of this Section IX shall not be subject to any amendment without the consent of the Developer until the Developer has sold eighty percent (80%) of all of the Units.

## SECTION X EASEMENTS

10.1. Utilities, Traffic and Support. Each of the following easements is a covenant running with the land and notwithstanding any of the other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with their proper and intended use and purpose, and shall survive the termination of the condominium and the exclusion of any lands from the Condominium Property, to-wit:

- (A) Utilities. Easements as may be required for Utility Service in order to adequately serve the Condominium Property; provided, however, easements through a Unit shall be only according to the plans and specifications for the building or as the building is actually constructed, unless approved, in writing, by the Unit Owner.
- (B) Pedestrian and Vehicular Traffic. Easements for pedestrian traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist, upon the Common Elements; and for the vehicular traffic over, through and across such portions of the Common Elements as may be from time to time paved and intended for such purposes.
- (C) Support. Every portion of a Unit contributing to the support of the building or an adjacent Unit shall be burdened with an easement of support for the benefit of all other Units and Common Elements in the building.

10.2. Easement in Common Elements. The Common Elements shall be, and the same is hereby declared to be subject a perpetual nonexclusive easement in favor of all of the Unit Owners for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of the Unit Owners.

**10.3. Right of Entry to Units.** In case of an emergency originating in or threatening any Unit, regardless of whether or not the Unit Owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the building manager or managing agent, shall have the right to enter such Unit to remedy or abate the cause of such emergency, and such right of entry shall be immediate and to facilitate entry in the event of any such emergency, the Unit Owner, if required by the Association, shall deposit under the control of the Association, a key or keys and such information as will enable the Association to enter such Unit.

**10.4. Right of Entry to Common Property.** Whenever it is necessary to enter any Unit for the purpose of performing any maintenance, alteration or repair to any portion of the Condominium Property, the Unit Owner shall permit other Unit Owners by their representatives, or the duly constituted and authorized agent of the Association, to enter such Unit for such purpose, provided that such entry shall be made only at reasonable times and with reasonable advance notice.

**10.5. Easements for Encroachments.** In the event that any Unit shall encroach upon any of the Common Elements for any reason not caused by the purposeful or negligent act of the Unit Owner or agents of such Unit Owner, then an easement appurtenant to such Unit shall exist for the continuance of such encroachment into the Common Elements for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Unit, then an easement shall exist for the continuance of such encroachment of the Common Elements into any Unit for so long as such encroachment shall naturally exist.

**10.6. Air Space.** An exclusive easement for the use of the air space occupied by a Unit as it exists at any particular time and as the Unit may lawfully be altered.

**10.7. Easements or Encroachments for Units.** Easements or encroachments by the perimeter walls, ceilings and floor surrounding each Unit.

**10.8. Easement for Overhangs.** Easement for overhanging troughs or gutters, downspouts and the discharge therefrom of rainwater and the subsequent flow thereof over Units.

**10.9. Easement for Air Space of Common Elements.** An exclusive easement for the use of the area and air space occupied by the air conditioning compressor and the equipment and fixtures appurtenant thereof, situated in or on Common Elements but exclusively serving and individually owned by the Unit Owner, as the same exist in and on the land, which exclusive easement shall be terminated automatically in any air space which is permanently vacated by such air conditioning compressor, and the equipment and fixtures appurtenant thereto; provided, however, that the removal of same for repair or replacement shall not be construed to be a permanent vacation of the air space which it occupies.



## SECTION XI ASSOCIATION

11.1. Association. In order to provide for the efficient and effective administration of this condominium by the Unit Owners a non-profit corporation known and designated as Wiggins Lakes Condominium Association, Inc., has been organized under the laws of the State of Florida and said corporation shall administer the operation and management of this condominium, and undertake and perform acts and duties incident thereto in accordance with the terms, provisions and conditions of this Declaration of Condominium, its By-Laws and the Rules and Regulations promulgated by the Association from time to time.

11.2. Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached hereto as Exhibit "F" and by this reference incorporated herein as a part of this Declaration.

11.3. Bylaws. A copy of the Bylaws of the Association is attached hereto as Exhibit "G" and by this reference incorporated herein as a part of the Declaration.

11.4. Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other persons.

11.5. Restraint Upon Assignment of Shares in Assets. The shares of members in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to a Unit.

11.6. Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed in accordance with the Bylaws. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any mortgage holder, insurer or guarantor will be entitled to timely written notice of any proposed action that requires the consent of a specified percentage of the mortgage holders.

11.7. Membership. The record Unit Owners of all Units shall be members of the Association, and no other persons or entities shall be entitled to membership except for subscribers to the Articles of Incorporation. Membership shall be established by acquisition of ownership of fee title to, or fee interest in a Unit, whether by conveyance, devise, judicial decree or otherwise, subject to the provisions of this Declaration and by recording in the Official Public Records of Collier County, Florida, of the deed or other instrument establishing the acquisition and designating the Unit affected thereby and by the delivery

to the Association of a true copy of such deed or other instrument shall thereupon become a member of the Association, and the membership of the prior Unit Owner as to the Unit designated shall be terminated.

**11.8. Voting.** On all matters as to which the membership shall be entitled to vote, there shall be only one (1) vote for each Unit.

**11.9. Records.** The Association shall maintain and make available to Unit Owners and to holders, insurers and guarantors of any first mortgage, for inspection, upon written request, during normal business hours or under other reasonable circumstances, current copies of this Declaration, the Bylaws of the Association, rules of the Association, and the books, records and financial statements of the Association.

## SECTION XII INSURANCE

**12.1. Authority to Purchase.** All insurance policies upon the Condominium Property shall be purchased by the Association for the benefit of the Association and the Unit Owners and their mortgagees, as their interests may appear, and provisions shall be made for the issuance of certificates or mortgagee endorsements to the mortgagees of Unit Owners. Such policies and endorsements shall be deposited with the Insurance Trustee. Unit Owners may obtain insurance coverage at their own expense upon their personal property and for their personal liability and living expense. All policies purchased by the Association must be written by insurance companies authorized to do business in the State of Florida.

**12.2. Coverage.** The Association shall secure insurance to provide the following coverages, to-wit:

- (A) **Casualty.** All buildings and improvements upon the land, including Units and all personal property of the Association included in the Condominium Property, excluding floor, wall and ceiling coverings within the Units, are to be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, and subject to such reasonable deductible amounts, as are determined annually by the Board of Directors of the Association, and all such insurance must be obtained, if possible, from the same company. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and flood disaster insurance, and such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief.

- (B) Public Liability. In such amounts and with such coverage as shall be required by the Board of Directors of the Association with cross liability endorsements to cover liability of the Unit Owners as a group to a Unit Owner, but in no event shall the amount of such insurance coverage be less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage on a per occurrence basis.
- (C) Workmen's Compensation. As shall be required to meet the requirements of law.
- (D) Title Insurance. The Association shall secure title insurance for any real property owned by the Association.
- (E) Association Insurance. Such other insurance as may be required by the Federal National Mortgage Association Lending Guide, Chapter Three, Part 5, Insurance Requirements, and as the Board of Directors of the Association, in its discretion, may determine from time to time to be in the best interest of the Association and the unit owners.

12.3. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association.

12.4. Assured. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interest may appear and shall provide that all proceeds covering casualty losses shall be paid to any national bank in Collier County, Florida, with trust powers, as may be approved and designated insurance trustee by the Board of Directors of the Association, which trustee is herein referred to as the "Insurance Trustee." All insurance policies shall require written notification to each institutional mortgagee of any lapse and not less than ten (10) days in advance of any cancellation or material modification of any insurance policy insuring the Condominium Property. The Insurance Trustee shall not be liable for payments of premiums, nor for the renewal or sufficiency of the policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid, and hold same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares, but which shares need not be set forth in the records of the Insurance Trustee.

12.5. Common Elements. Proceeds on account of Common Elements shall be held in as many undivided shares as there are units in each building, the shares of each Unit Owner being the same as the Unit Owner's share in the Common Elements.

12.6. Units. Proceeds on account of Units shall be held in the following undivided shares:



- (A) Partial Destruction. When the building is to be restored, for the Unit Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner.
- (B) Total Destruction. When the building is to be restored, for the Unit Owners of all Units in the building in proportion to their share of the common elements appurtenant to their Unit.
- (C) Mortgagee. In the event a mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests appear. In no event shall any mortgagee have the right to demand the application of insurance proceeds to any mortgage or mortgages which it may hold against Units, except to such extent as said insurance proceeds may exceed the actual cost of repair or restoration of the damaged building or buildings, and no mortgagee shall have any right to participate in the determination as to whether or not improvements will be restored after casualty. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any mortgage holder, insurer or guarantor will be entitled to timely written notice of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

12.7. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

- (A) Expense of the Trust. All expenses of the Insurance Trustee shall be first paid or provisions made therefor.
- (B) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.
- (C) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant

for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

- (D) Certificate. In making distribution to Unit Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by the President, or a Vice President, and the Secretary, or an Assistant Secretary, as to the names of the Unit Owners and their respective shares of the distribution.
- (E) Association as Agent. The Association is hereby irrevocably appointed agent for each Unit Owner to adjust all claims arising under insurance policies purchased by the Association.

### SECTION XIII

#### RECONSTRUCTION OR REPAIR AFTER CASUALTY

13.1. Determination to Reconstruct or Repair. If any part of the Condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

- (A) Common Elements. If the damaged improvement is a Common Element, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium form of ownership shall be terminated.
- (B) Building. If the damaged improvement is a part of a Building in which more than fifty percent (50%) of the Units are found by the Board of Directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired, unless within sixty (60) days after the casualty it is determined in the manner elsewhere provided that the condominium form of ownership shall be terminated. If the damaged improvement is a part of a building in which more than fifty percent (50%) of the Units are found by the Board of Directors of the Association to be not tenantable, then the damaged property will not be reconstructed or repaired and the condominium form of ownership will be terminated as elsewhere provided, unless within sixty (60) days after the casualty the Unit Owners of seventy-five percent (75%) of the Units in the Building agree in writing to such reconstruction or repair.

13.2. Certificate. The Insurance Trustee may rely upon a certificate of the Association made by the President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

13.3. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, portions of which are attached hereto as exhibits, or if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is the condominium Building, by the Unit Owners of not less than seventy-five percent (75%) of the Units in the Building, which approval shall not be unreasonably withheld.

13.4. Responsibility. If the damage is only to those parts of one (1) Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of construction or repair after casualty shall be that of the Association.

13.5. Estimates of Costs. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to repair or rebuild.

13.6. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during the reconstruction and repair the funds for the payment of the costs thereof are insufficient, assessments shall be made against the Unit Owners who own the damaged Units and against all Unit Owners in the case of damage to Common Elements, in sufficient amounts to provide funds to pay the estimated costs. Such assessments against the Unit Owners for damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such assessments on account of damage to Common Elements shall be in proportion to the Unit Owner's share in the Common Elements.

13.7. Deductible Provision. The funds necessary to cover any deductible amount under an insurance policy against which a claim is made shall be a Common Expense.

13.8. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against unit owners, shall be disbursed in payment of such costs in the following manner:

(A) Association. If costs of reconstruction and repair which are the responsibility of the Association are more than Five Thousand Dollars (\$5,000.00), then the sums paid upon assessments to meet such costs shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

(B) Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the

Association from the collections of assessments against unit owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

- (1) Unit Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the Unit Owner, shall be paid by the Insurance Trustee to the Unit Owner, or if there is a mortgagee endorsement, then to the Unit Owner and the mortgagee jointly.
- (2) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon the order of the Association; however, that upon request to the Insurance Trustee by a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.
- (3) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in the State of Florida and employed by the Association to supervise the work.
- (4) Surplus. It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner which is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.



**13.9. Certificate.** Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid, nor to determine whether surplus funds to be distributed are less than the assessments paid by Unit Owners. Instead, the Insurance Trustee may rely upon a certificate or the Association made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable; provided, that when a mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to a Unit Owner, and further provided, that when the Association or a mortgagee which is the beneficiary of an insurance policy the proceeds of which are included in the construction funds, so requires, the approval of an architect named by the Association shall first be obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

**13.10. Mortgagee.** Upon written request to the Association, identifying the name and address of the holder, and the unit number or address, any holder, insurer, or guarantor shall be entitled to timely written notice of any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit covered by the mortgage.

#### SECTION XIV **ASSESSMENTS**

**14.1. Levy.** The making and collecting of assessments against Unit Owners for Common Expenses shall be the obligation of the Board of Directors pursuant to the By-Laws and subject to the following provisions:

- (A) **Share of Common Expenses.** Each Unit Owner shall be liable personally for a proportionate share of the Common Expenses and shall be entitled to an undivided share of the common surplus, such shares being equal to the Unit Owner's undivided share of the Common Elements. A Unit Owner, regardless of how title is acquired, including, without limitation, a purchaser at a judicial sale, shall be liable for all assessments coming due while such person is the Unit Owner. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of such voluntary conveyance, without prejudice to the rights of the

grantee to recover from the grantor the amounts paid by the grantee therefore.

- (B) Non-Waiver. The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by abandonment of the Unit for which the assessment is made.
- (C) Interest, Application of Payments. Assessments and installments on such assessments paid on or before ten (10) days after the date when due shall not bear interest, but all sums not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per year from the date when due, until paid. All payments upon account shall be first applied to interest and then to the assessment payment first due.

**14.2. Lien for Assessments.** The Association shall have a lien on each Unit for any unpaid assessments with interest thereon and reasonable attorney's fees incurred by the Association incident to the collection of such assessment or the enforcement of such lien, together with all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, including all unpaid assessments, interest, costs, and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgment of foreclosure. Said lien shall be effective from and after the time of recording in the public records of Collier County, Florida, of a claim of lien stating the description of the Unit, the name of the Unit Owner, the amount due and the due dates. At the time of filing a lien for assessments the Association may accelerate the time for payment of assessments for a period not greater than one year from the date the lien is recorded. The lien shall continue in effect until all sums secured by the lien shall have been fully paid, but not longer than one (1) year after the claim of lien has been recorded, unless within that an action to enforce the lien is commenced in a court of competent jurisdiction. Such claims of lien shall be signed and acknowledged by an officer or agent of the Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of the lien. All such liens shall be subordinate to the lien of an institutional mortgage recorded prior to the time of recording of the claim of lien.

**14.3. Collection and Foreclosure.** The Board of Directors may take such action as they deem necessary to collect assessments of the Association by personal action or by enforcing and foreclosing said lien, and may settle and compromise same, if in the best interests of the Association. Said lien shall be effective as in the manner provided for by the Condominium Act, and shall have the priorities established by said Act. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien, and to apply as a cash credit against its bid, all sums due the Association covered by the lien enforced.

**14.4. Liability for Assessments.** Notwithstanding anything to the contrary contained in this Declaration of Condominium, where the holder of a first mortgage of record or other purchaser of a Unit, obtains title to a condominium parcel as a result of foreclosure of the first mortgage, or when the holder of a first mortgage of record accepts a deed to said condominium parcel in lieu of foreclosure, such acquirer of title, and such acquirer's successors and assigns, shall not be liable for the share of Common Expenses or assessments by the Association pertaining to such Common Expenses, or chargeable to the former Unit Owner of such Unit which become due prior to the acquisition of title as a result of the foreclosure, or the acceptance of such deed in lieu of foreclosure, unless such share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners, including such acquirer of title, whether as a result of foreclosure or by acceptance of a deed to the condominium parcel in lieu of foreclosure. The new owner by virtue of the acquiring of such title shall forthwith become liable for payment of the Common Expenses and such other expenses as may be chargeable to the Unit Owner.

**14.5. Unpaid Assessments - Certificate.** Any Unit Owner shall have the right to require from the Association a certificate showing the amount of unpaid assessments with respect to the Unit. The holder of a mortgage or other lien shall have the same right as to the Unit subject to such mortgage or liens. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. Upon written request to the Association, identifying the name and address of the holder, and the Unit number or address, any holder, insurer, or guarantor shall be entitled to timely written notice of any delinquency of more than sixty (60) days in the payment of assessments or charges owed by the Unit Owner of any Unit covered by the mortgage.

**14.6. Working Capital.** Each initial Unit Owner shall upon acquisition of the Unit from the Developer contribute to the Association an amount equal to twice the current monthly assessment. Such amount shall be held by the Association as special reserve account for the purpose of defraying unforeseen expenditures and capital outlays. This contribution shall not constitute a prepayment of the regular monthly assessment or be used to fund routine budgeted expenses for normal operations. This working capital contribution shall not be used for payment of Common Expenses prior to the expiration of the period of the guaranteed assessment levels as provided by §9.2.

**14.7. Use Fees.** The Association shall have the power and authority to charge Unit Owners a use fee for the use of Common Elements or Association property, provided such fees are equitably apportioned and reasonably related to use.

**14.8. Wiggins Lakes PUD District.** The Condominium Property lies within the boundaries of Wiggins Lakes, a planned unit development district. The costs of maintenance and operation, repair of the streets, rights of way, surface water management system, and other common areas within District are apportioned and assessed equally against all property owners. The aggregate assessment for all units in Wiggins Lakes will



be assessed equally to the Unit Owners as a part of the Common Expenses. Until such time as the Developer has sold all its interests in Wiggins Lakes such costs will be apportioned on the basis of two hundred thirty (230) units; thereafter, the costs will be apportioned on the actual units developed.

## SECTION XV COMPLIANCE AND DEFAULT

**15.1. Compliance.** Each Unit Owner shall be governed by and shall comply with the terms of the Declaration of Condominium, Bylaws and Rules and Regulations adopted pursuant thereto, and said documents and rules and regulations as they may be amended from time to time. Failure of Unit Owners to comply therewith shall entitle the Association or other Unit Owners to the following relief in addition to the remedies provided by the Condominium Act.

**15.2. Negligence.** A Unit Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by the act, neglect or carelessness or by that of any member of the family or guests, invitees, employees or lessees, of such Unit Owner but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the Common Elements.

**15.3. Costs and Attorneys' Fees.** In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of the Declaration, the Bylaws and the Rules and Regulations adopted pursuant thereto, and said documents and rules and regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

**15.4. No Waiver of Rights.** The failure of the Association or any Unit Owner to enforce a covenant, restriction or other provision of the Condominium Act, this Declaration or any of the exhibits attached hereto, shall not constitute a waiver of the right to do so thereafter.

**15.5. Fines.** The Association may levy reasonable fines against a Owner for failure of the Unit Owner, or any occupant, licensee or invitee, to comply with any provision of the Declaration, the Bylaws, or reasonable rules of the Association. No fine shall become a lien against a Unit. No fine may exceed Fifty Dollars (\$50.00), nor may any fine be levied except after giving reasonable notice and opportunity for a hearing to the Unit Owner, occupant, licensee or invitee.

**SECTION XVI**  
**AMENDMENT OF DECLARATION**

**16.1. Generally.** Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

- (A) **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.
- (B) **Resolution of Adoption.** A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either by:
  - (1) Not less than seventy-five percent (75%) of the votes of the entire membership of the Board of Directors and by not less than seventy-five percent (75%) of the votes of the entire membership of the Association; or
  - (2) Not less than eighty percent (80%) of the votes of the entire membership of the Association.

**16.2. Resolution of Adoption for Errors.** A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by Members of the Association whenever it appears that there is an omission or error in this Declaration of Condominium, or any exhibit attached hereto, or amendment hereto, as follows:

- (A) Not less than fifty percent (50%) of the votes of the Members of the Board of Directors and by not less than fifty percent (50%) of the votes of the entire membership of the Association.
- (B) Any amendment adopted pursuant to the provisions of this §16.2 shall not materially adversely affect the property rights of Unit Owners.
- (C) Until the Developer has sold and conveyed all of the units in the condominium, any amendment adopted pursuant to this §16.2 must be approved and consented to by the Developer.

**16.3. Proviso.** No amendment shall discriminate against any Unit Owner or against any Unit, or class or group of Units, or impair an Institutional Mortgagee's security position or alter an Institutional Mortgagee's rights without the prior express written consent of the

Unit Owners so affected and their Institutional Mortgagees and no amendment shall change any Unit or the share in the Common Elements, and other of its appurtenances or increase the Unit Owner's share of the Common Elements, and other of its appurtenances or increase the Unit Owner's share of the Common Expenses, except as herein provided, unless the Unit Owner concerned and all such mortgagees as first above recited, shall join in the execution of the amendment. Neither shall an amendment make any change in §12 (entitled "Insurance"), nor in §13 (entitled "Reconstruction or Repair After Casualty"), unless the record owners of all mortgages upon the Condominium Property shall join in the execution of the amendment; nor shall any amendment of this Declaration make any change which would in any way affect any of the rights, privileges, powers and options of the Developer unless the Developer shall join in the execution of such amendment.

**16.4. Execution and Recording.** A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate and a copy of the amendment are recorded in the public records of Collier County, Florida.

**16.5. Amendments.** The section concerning termination cannot be amended without consent of all unit owners and all record owners of mortgages upon condominium parcels. Upon written request to the Association, identifying the name and address of the holder, and the unit number or address, any holder, insurer, or guarantor shall be entitled to timely written notice of any proposed amendment.

**16.6. Developer Amendments.** Anything in this Section XVI to the contrary notwithstanding, for so long as the Developer shall be selling units in the ordinary course of business, the Developer shall have the right to amend this Declaration in order to conform to the provisions of the Condominium Act and the Rules of the Department of Business Regulation, Division of Florida Land Sales and Condominiums, without prior notice to or action by the Unit Owners in such manner as shall not materially adversely affect the property rights of the Unit Owners.

## SECTION XVII **TERMINATION**

**17.1. Destruction.** If it is determined in the manner elsewhere provided that a condominium Building shall not be reconstructed because of major damage, the condominium plan of ownership with respect to such Building will be thereby terminated without agreement.

**17.2. Agreement.** The condominium form of ownership of this Condominium Property as any part thereof may be terminated by the approval in writing of all of the Unit Owners and by all record owners of mortgages thereon. If the proposed termination is submitted to a meeting of the members of the Association, the notice of which meeting

gives notice of the proposed termination, and if the approval of the Unit Owners of not less than seventy-five percent (75%) of the Units, and of the record owners of all mortgages upon the Units, are obtained in writing not later than thirty (30) days from the date of such meeting, then the approving Unit Owners shall have an option to buy all of the Units of the other Unit Owners for the period ending on the sixtieth (60th) day from the day of such meeting. Such approvals shall be irrevocable until the expiration of the option, and if the option is exercised, the approval shall be irrevocable. Such option shall be upon the following terms:

- (A) Exercise of Option. The option shall be exercised by delivery or mailing by certified mail, to each of the record Unit Owners of the Units to be purchased, of an agreement to purchase, signed by the Unit Owners of Units who will participate in the purchase. Such agreement shall indicate which Units will be purchased by each participating Unit Owner and shall provide for the purchase of all of the Units owned by Unit Owners not approving the termination, and the effect of said agreement shall be to create a separate contract between each seller and the purchaser.
- (B) Price. The sale price for each Unit shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement and in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.
- (C) Payment. The purchase price shall be paid in cash.
- (D) Closing. The sale shall be closed within thirty (30) days following the determination of the sale price.

17.3. Certificate. The termination of the condominium form of ownership of the Condominium Property in either of the foregoing manners shall be evidenced by a certificate of the Association, executed by the President and Secretary, certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the public records of Collier County, Florida.

17.4. Shares of Owners After Termination. After termination of the condominium form of ownership of the Condominium Property, unit owners shall own the condominium



property and all assets of the Association as tenants in common in undivided shares, and their respective mortgagees and lienors shall have mortgages and liens upon the respective undivided shares of the Unit Owners. Such undivided shares of the Unit Owners shall be the same as the undivided shares in the Common Elements appurtenant to the Units prior to the termination.

**17.5. Amendments.** This section concerning termination cannot be amended without consent of all Unit Owners and all record owners of mortgages upon Units. Upon written request to the Association, identifying the name and address of the holder, and the unit number or address, any holder, insurer, or guarantor shall be entitled to timely written notice of any proposed amendment.

## SECTION XVIII SEVERABILITY AND INVALIDITY

**18.1. Invalidity.** The invalidity in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration of Condominium and the Articles of Incorporation, the By-laws and the Rules and Regulations of the Association, shall not affect the validity of the remaining portions which shall remain in full force and effect.

**18.2. Perpetuities.** In the event any court shall hereafter determine that any provisions of this Declaration of Condominium, as originally drafted, or as amended, violates the rule against perpetuities or any other rules of law because of the duration of the period involved, the period specified in the Declaration of Condominium shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rules of law, and for such purpose measuring lives shall be those of the youngest lineal descendants of incorporators of the Association living on the effect date of this Declaration.

## SECTION XIX INTERPRETATION

**19.1. Construction.** The provisions of this Declaration of Condominium shall be liberally construed to effectuate its purposes of creating a uniform plan for the operation of a residential phase condominium in accordance with the Florida Condominium Act.

## SECTION XX DECLARATION OF COVENANTS

**20.1. Wiggins Lakes Protective Covenants.** All of the lands hereby submitted to Condominium ownership shall be subject to the provisions of a Declaration of Protective Covenants for Wiggins Lakes recorded in the Public Records of Collier County, Florida,



and all amendments thereto. All unit owners will be members of Wiggins Lakes Master Association, Inc., a Florida not-for-profit corporation created pursuant to the terms of said Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Condominium this \_\_\_\_ day of \_\_\_\_\_, 1990.

Witnesses:

\_\_\_\_\_

\_\_\_\_\_  
J. Stephen Crawford, Trustee

\_\_\_\_\_  
*STATE OF FLORIDA:*  
*COUNTY OF COLLIER:*

The foregoing Declaration of Condominium was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1990, by J. Stephen Crawford, Trustee, personally known to me, who executed the same for the purposes therein set forth.

\_\_\_\_\_  
Notary Public (SEAL)  
My Commission expires:

**JOINDER AND CONSENT OF MORTGAGEE  
TO DECLARATION OF CONDOMINIUM  
FOR WIGGINS LAKES CONDOMINIUM ONE**

McArdle, Ltd., a Delaware corporation (the "Mortgagee"), the owner and holder of a Mortgage, dated November 7, 1989, and recorded November 14, 1989, in Official Records Book 1484, page 281, of the Public Records of Collier County, Florida, encumbering the land described in Exhibit "A" to the Declaration of Condominium for Wiggins Lakes Condominium, hereby joins in and consents to said Declaration of Condominium and agrees that the lien of said mortgage, to the extent of the encumbrance upon the land described in Exhibit "A" to said Declaration, shall be upon all of the Units of the Condominium Property, according to the Declaration thereof, together with all of the appurtenances to the Units, including, but not limited to, any Common Elements.

Nothing contained herein shall be deemed to or in any way limit or affect the mortgage held by the Mortgagee or the priority of the lien created thereby and the sole purpose of this Joinder and Consent is to acknowledge the consent of the Mortgagee to the aforesaid Declaration of Condominium.

This instrument is executed and delivered by the undersigned pursuant to and for the purpose of complying with §718.104(4)(m), Florida Statutes.

Witnesses:

**McARDLE, LTD.**

By: \_\_\_\_\_  
David A. McArdle, Vice President

*STATE OF FLORIDA:*  
*COUNTY OF COLLIER:*

The foregoing instrument was executed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1990, by David A. McArdle, personally known to me to be a Vice President of McArdle, Ltd., on behalf of the corporation.

\_\_\_\_\_  
Notary Public (SEAL)  
My Commission expires: