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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS**

**FOR**

**WYNGATE FOREST**

*WILL CALL - CENTEX HOMES/KIM  
(838-9630)*

*116*

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**WYNGATE FOREST**

**DUVAL COUNTY, FLORIDA**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WYNGATE FOREST is made on this 13<sup>th</sup> day of May 2002, by CENTEX HOMES, a Nevada general partnership, hereinafter referred to as the "**Declarant**."

**WITNESSETH**

WHEREAS, the Declarant is the owner of certain real property in Duval County, Florida, described in **Exhibit "A"** attached hereto and incorporated herein (the "**Property**"); and

WHEREAS, Declarant desires to create an exclusive planned residential community known as Wyngate Forest on the land described in Exhibit "A" and such other land as may be added thereto pursuant to the terms and provisions of this Declaration, and Declarant desires to provide for the preservation and enhancement of the value, desirability and attractiveness of the Property by imposing mutually beneficial covenants, conditions, restrictions and easements on the Property; and to provide for a reasonable and flexible procedure for the overall development of the Property and to establish a method of administration, maintenance, preservation, use and enjoyment of the Property; and

WHEREAS, Declarant intends to develop the Property, or portions thereof, by the construction of roads, utilities and drainage facilities for the construction and occupancy of single family dwellings, and other land uses as may be permitted by applicable zoning ordinances; and,

WHEREAS, Declarant desires to establish a community association which will maintain the property owned by or dedicated to such association or any governmental entity lying within the rights-of-way or easements owned by or dedicated to such Association or governmental entity and serving the residents of the Property and not being maintained by the governmental entity, and perform such services and maintenance on behalf of the Members as hereinafter described;

WHEREAS, Declarant has formed a Florida not-for-profit corporation known as the Wyngate Forest Owners' Association, Inc., to own, operate and maintain the Common Property herein described for the benefit of the owners of Lots and Units within the Property and for the other purposes herein described;

NOW THEREFORE, the Declarant declares that the real property described in the attached Exhibit "A" shall be held, sold and conveyed subject to the covenants, conditions and restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and

burden each Lot and other portions of the Property in order to maintain within the Property a planned community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

### **STATEMENT OF DECLARATION**

Declarant, declares that the Property and any additional property hereinafter subjected to this Declaration by Supplemental Declaration (as defined in Article 1 below) shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens, liens and all other provisions of this Declaration as hereinafter set forth, which shall run with the title to the Property, and be binding on everyone having any right, title, or interest in the Property or any portion thereof, their heirs, successors, successors-in-title, licensees, invitees, and assigns.

By acceptance of a deed or other instrument evidencing an ownership interest, each Owner and Declarant accepts membership in the Wyngate Forest Owners' Association, Inc., acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles of Incorporation and the By-Laws of the Association.

### **GENERAL PLAN OF DEVELOPMENT**

#### **WYNGATE FOREST COMMUNITY**

The Wyngate Forest Community plan for development contemplates the construction of a residential community and the establishment of Common Area intended to be available for the benefit of the residential community planned for development thereon all in the manner as, and subject to the reservations of rights, set forth in this Declaration. Among other things, the Declaration (a) requires the Association to maintain and care for the Common Area; (b) compels membership in the Association by the Owners; (c) provides for the promulgation of assessments and enforcement by lien of collection of payment therefor; (d) affords Owners of Lots nonexclusive rights to the use and enjoyment of the Common Property; (e) provides for various use restrictions, covenants and conditions.

Declarant's general plan of development for Wyngate Forest as more particularly described in the Site Plan approved by Duval County, Florida, as it may be amended from time to time, currently permits the construction of ninety-nine (99) single family residential dwelling units, Common Area including Open Space Tracts, Lake, a Recreational Area, which may include, without limitation, tennis court and tot lot, and landscape and buffer areas.

The Association, and each Owner, by acceptance of a deed or other instrument evidencing an ownership interest in a Lot or Unit in Wyngate Forest agree to abide by and be bound by the provisions and covenants stated herein.

The Declarant intends to develop the Property in accordance with the approved Plat, Site Plans, and

plan of development, but hereby reserves the right to modify the Plat, the Site Plans, and plan of development in such manner as it, in its sole discretion, chooses but always in accordance with applicable regulatory requirements. Nothing contained herein shall be construed as obligating Declarant to develop or construct any future development tracts, or to develop the Property according to the present plan of development.

## ARTICLE 1

### DEFINITIONS

**Definitions:** The following words and terms when used in this Declaration or any Supplemental Declaration hereto (unless the context shall clearly indicate otherwise) shall have the following meanings:

Section 1.1. **“Architectural Review Committee” or “ARC”** shall mean and refer to the committee established by the Board of the Association, and further described in Article 8 of this Declaration.

Section 1.2. **“Area(s) of Common Responsibility”** shall mean and refer to the Common Area together with any other area, for which the Association has or assumes maintenance or other responsibilities pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, permits or agreements.

Section 1.3. **“Articles of Incorporation” or “Articles”** shall mean and refer to the Articles of Incorporation for Wyngate Forest Owners’ Association, Inc., a Florida not-for-profit corporation in the form attached hereto as **Exhibit “C”** and incorporated herein by reference.

Section 1.4. **“Assessment” or “Assessments”** shall mean and refer to any and all assessments and charges rendered by the Association in accordance with this Declaration and as further described in Article 6 hereof.

Section 1.5. **“Association” or “Community Association”** shall mean and refer to the Wyngate Forest Owners’ Association, Inc., a Florida not-for-profit corporation established for the purposes set forth herein.

Section 1.6. **“Board of Directors” or “Board”** shall mean and refer to the Board of Directors of the Association, appointed or elected in accordance with the Bylaws of the Association.

Section 1.7. **“Builder”** shall mean and refer to Centex Homes, a Nevada general partnership and any other residential building company acquiring Lots from the Declarant for the purpose of construction and sale of homes.

Section 1.8. **“Bylaws”** shall mean and refer to the Bylaws of the Wyngate Forest Owners’ Association, Inc. A copy of the Bylaws is attached hereto as **Exhibit “D.”**

Section 1.9. **“Centex”** shall mean and refer to Centex Homes, a Nevada general partnership.

Section 1.10. **“Common Area” or “Common Property”** shall mean and refer to those parcels of land, together with any improvements thereon, which are actually and specifically dedicated by plat, deeded or leased to the Association for the use and enjoyment of all Owners of Lots or Units, as herein defined, and designated in said plat dedication, deed or lease as **“Common Property”** or **“Common Area.”** The term **“Common Property”** shall also include any personal property acquired by the Association for the use and benefit of the Members. The Common Area may include, without limitation, Surface Water and Storm Water Management System, open space areas, Recreational Areas and improvements thereon, if any, internal buffers, community entrance features, perimeter buffers, improvements, easement areas owned by others, additions, lakes, fountains, irrigation pumps, irrigation lines, parks, sidewalks, streets, street lights, service roads, walls, commonly used utility facilities, project signage, parking areas, other lighting, entranceways, features, entrance gates, and any community Monitoring System. The initial Common Property to be owned, operated and maintained by the Association pursuant to this Declaration for the use and benefit of the Owners includes without limitation, all those Parcels and land described in **Exhibit “B”** attached hereto and incorporated herein by reference, together with the Surface Water and Storm Water Management System retention ponds, as shown on the recorded Plat. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DEFINITION OF “COMMON AREA” AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND OR OBLIGATE DECLARANT TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET FORTH IN SUCH DESCRIPTION, THE CONSTRUCTION OR SUPPLYING OF ANY SUCH ITEM BEING IN DECLARANT'S SOLE DISCRETION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY AS TO THE EXTENT OF THE COMMON AREA TO BE OWNED, LEASED BY OR DEDICATED TO ASSOCIATION, EXCEPT AFTER CONSTRUCTION AND DEDICATION OR CONVEYANCE OF ANY SUCH ITEM. The Common Area does not include any portion of a Unit.

Section 1.11. **“Common Expenses”** shall mean and refer to the actual and estimated expenses incurred, or anticipated to be incurred, by the Association, for administering, operating, maintaining, financing, repairing, replacing or improving the Common Area, or any portion thereof and improvements thereon, and other services required or authorized to be performed by the Association which is attributable to the Areas of Common Responsibility, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles.

Section 1.12. **“Common Maintenance Area”** shall mean and refer to the Common Area, if any, and drainage facilities and detention ponds and any areas within public rights-of-way or easements that the Board of the Association deems it necessary or appropriate to maintain for the common benefit of the Members.

Section 1.13. **“Community” or “Wyngate Forest” or “Wyngate Forest Community”** shall mean and refer to the name given to the planned residential community development on the Property inclusive of the real property described in **Exhibit “A,”** together with such additional property as is subjected to this Declaration in accordance with Article 2.

Section 1.14. **“Community Completion Date”** shall mean and refer to the date upon which all Units in Wyngate Forest, as ultimately planned and as fully developed, have been conveyed by Declarant

to Owners.

Section 1.15. **“Community-Wide-Standard”** shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standards may be more specifically determined by the Board and by the Declarant so long as the Declarant owns one or more Lots within the Wyngate Forest Community.

Section 1.16. **“Conservation Area(s)/Preservation Area(s)”** shall mean and refer to Tracts “A,” “D” and “E” (Wetlands, and/or Wetland Mitigation areas) on the Plat of Wyngate Forest, and such other areas that may be annexed into this Declaration, and identified as Conservation Areas, Wetlands, and/or Wetland Mitigation areas, and as more fully described in Sections 7.6; 9.16; and 11.34. The Preservation Area(s) may be encumbered by easements granted to a governmental authority for conservation or preservation of natural habitat.

Section 1.17. **“Declarant”** shall mean Centex Homes, a Nevada general partnership, and its successors and assigns who take title to any portion of the Property for the purpose of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 1.18. **“Declaration”** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Wyngate Forest, as it may be amended or supplemented from time to time.

Section 1.19. **“Governing Documents” or “Association Documents”** shall mean and refer to the Declaration, any Supplemental Declaration, the Bylaws, and Articles, or any of the above, as each may be amended from time to time.

Section 1.20. **“Institutional Lender”** shall mean and refer to the owner and holder of a Mortgage encumbering a Unit or Lot, which owner and holder of said Mortgage may be a bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, an agency of the United States government, private or public pension fund, Department of Veterans Affairs, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a credit union, real estate or mortgage investment trust or a lender generally recognized in the community as an institutional lender.

Section 1.21. **“Lake”** shall mean and refer to the natural or manmade body of water sometimes referenced as unobstructed SWMF/drainage easement identified on the Plat of Wyngate Forest, as amended from time to time. All Lakes shall be subject to the Surface Water and Storm Water Management System, and identified as the **“Water Management Tracts”** or **“Unobstructed SWMF/Drainage Easement.”**

Section 1.22. **“Lot”** shall mean and refer to any of the plots of land indicated upon the recorded subdivision map of the Property or any part thereof creating single-family homesites, with the exception of the Common Area and areas deeded to a governmental authority or utility, together with all improvements thereon.

Section 1.23. **“Member”** shall mean and refer to all those persons or entities who are members

of the Association as provided in Article 3 hereof.

Section 1.24. **“Mortgage”** shall mean and refer to a permanent or construction mortgage, a deed of trust, a deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.

Section 1.25. **“Mortgagee”** shall mean and refer to a beneficiary or holder of a Mortgage.

Section 1.26. **“Notice”** shall mean and refer to delivery of any document by mail with postage prepaid to the last known address according to the records of the Association of the person or entity who appears as Owner in the records of the Association. If available from the records of the Association, notices to an Owner will be sent to a tenant of Owner occupying the Unit. Notice to one of two or more co-owners shall constitute notice to all Owners.

Section 1.27. **“Open Space”** shall mean and refer to an exterior open area from the ground upward devoid of residential and commercial buildings, accessory structures, fences, walks and impervious areas. Notwithstanding anything to the contrary herein contained, fencing, walks, landscaping, and irrigation system within the Buffer Easement are permitted improvements.

Section 1.28. **“Owner”** shall mean and refer to the owner as shown by the records of the Association (whether it be the Declarant, one or more persons, firms or legal entities) of fee simple title to any Lot or Unit located within the Property. Owner shall not mean or refer to the holder of a Mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term Owner mean or refer to any lessee or tenant of an Owner.

Section 1.29. **“Person(s)”** shall mean and refer to a human being, a corporation, a partnership, a trustee, or any other legal entity.

Section 1.30. **“Plat”** shall mean and refer to the recorded map or plat of the Lots and Tracts identified as the Plat of Wyngate Forest recorded in Plat Book 55 at Pages 17 through 17E, inclusive, of the Public Records of Duval County, Florida.

Section 1.31. **“Private Street” and/or “Public Street”** Public street shall mean and refer to portions of the Property identified on the Plat as roads, parkways, lanes, courts, and walkways providing nonexclusive vehicular and pedestrian access to the Units and Common Area, and dedicated to the City of Jacksonville. **“Private Street”** shall mean and refer to portions of the Property identified on the Plat as all of Winnsboro Drive, a 78' private road right-of-way, Warlin Drive East, a 50' private road right-of-way, Warlin Drive North, a 50' private road right-of-way, Warlin Drive South, a 50' private road right-of-way, Whitmire Court, a 50' private road right-of-way and Warnell Drive, a 50' private road right-of-way, being streets providing nonexclusive vehicular and pedestrian access to the Units and Common Area.

Section 1.32. **“Property” or “Properties”** shall mean and refer to the real property described on the attached Exhibit “A” (including, but not limited to the Lots, the Common Property and the Surface

Water and Storm Water Management System), and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

Section 1.33. **“Recreational Areas” and/or “Passive Recreation Area(s)”** shall mean and refer to Tract “B” shown as a recreational area on the Plat, and shall be used for the common benefit and enjoyment of the Members of the Association, and their invitees and guests. The Recreation Area may be a Passive Recreation Area.

Section 1.34. **“Supplemental Declaration” or “Supplement”** shall mean and refer to any supplement, amendment or modification of this Declaration.

Section 1.35. **“Surface Water and Storm Water Management System”** shall mean and refer to a system of swales, inlets, culverts, retention ponds, detention ponds, lakes, outfalls, storm drains and the like, and all connecting pipes and easements, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect a quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, Florida Administrative Code. The Surface Water and Storm Water Management System facilities include, but are not limited to: all inlets, ditches, swales, culverts, water control structures, retention and detention ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas and wetland mitigation areas, to the extent that any such facilities, areas or conditions apply to Wyngate.

Section 1.36. **“Turnover” or “Turnover Date”** shall mean and refer to the date upon which the Declarant’s Control of the Board of the Association terminates and control of the Board is turned over to a Board elected by the Members.

Section 1.37. **“Unit”** shall mean a portion of the Property, whether developed or undeveloped, intended for development, use and occupancy as a detached residence for a single family, or as an attached townhome or villa home, or as an attached or detached condominium residential unit, and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) single-family detached houses on separately platted Lots, attached townhomes or villa homes, and condominium residential units as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or part of the Property. The term shall include all portions of the Lot together with all improvements thereon. In the case of a parcel of vacant land or land in which improvements are under construction, the parcels shall be deemed to contain the numbers of Units designated for such parcel on the Plat or site plan approved by Declarant, whichever is more recent, until such time as a certificate of occupancy is issued on all or a portion thereof by a local government entity having jurisdiction, after which the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above, and the number of Units in the remaining land, if any, shall continue to be determined in accordance with this paragraph.

## **ARTICLE 2**

**PROPERTY SUBJECT TO DECLARATION**

**Section 2.1. Property Subject to this Declaration.** From and after the time that this Declaration is recorded in the Public Records of Duval County, Florida, the Property shall be subject to the terms and conditions of this Declaration. The Property (including each Lot) shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions contained in this Declaration, which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors or assigns and shall inure to the benefit of each owner thereof.

**Section 2.2. Annexation.** Prior to the Turnover Date, the Declarant may, without the consent or joinder of the Owners or any other person or entity, annex additional real property (including Common Property) to the Property. Annexations under this Section 2.2 shall be accomplished by filing a Supplemental Declaration describing the real property to be annexed (or withdrawn pursuant to Section 2.3. of this Article 2, as the case may be), and shall become effective when such Supplemental Declaration is filed among the Public Records of Duval County, Florida, unless otherwise provided therein. Such Supplement may contain such additions or modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added land and as are not inconsistent with the scheme of this Declaration. Declarant shall have the unilateral right to transfer to any other person or entity the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee shall be the developer of at least a portion of the Property and that such transfer is memorialized in a written instrument executed by the Declarant.

**2.2.1. Annexation by Declarant.** Within the period beginning with the date this Declaration is recorded in the Public Records of Duval County, Florida and ending either (a) seven (7) years thereafter, or (b) five (5) years from the date of recording of the last recorded Supplemental Declaration annexing additional land to this Declaration, whichever event, (a) or (b), occurs later, the Declarant may, without the consent or joinder of the Owners or any other person or entity, annex additional real property (including Common Property) to the Property. Annexations under this Section 2.2.1 shall be accomplished by filing a Supplemental Declaration describing the real property to be annexed (or withdrawn pursuant to Section 2.3 of this Article 2, as the case may be), and shall become effective when such Supplemental Declaration is filed among the Public Records of Duval County, Florida, unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other person or entity the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the Property and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

**2.2.2. Annexation by Association.** After the Turnover Date, subject to the consent of the owner thereof, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of two-thirds (2/3) of the votes of each class of Members of the Association. The annexation of land under this Section 2.2.2 shall be accomplished by the recordation in the Public Records of Duval County, Florida, of a Supplemental Declaration describing the property being annexed and signed by the President and Secretary of the Association and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein. No provision of this Declaration shall be construed to require



Declarant or any other person or entity to annex any real property to this Declaration. Covenants and restrictions applicable to annexations to the Property shall be compatible with, but need not be identical to, the covenants and restrictions set forth in this Declaration.

2.2.3. **FHA/VA.** In the event that either the Federal Housing Administration (the "FHA") or the Department of Veterans Affairs (the "VA") insures or guarantees any mortgage encumbering a Lot, and the regulations or procedures of such agency require under such circumstances approval of annexations by such agency or determination by such agency that such annexation is consistent with the general plan of development for Wyngate Forest, then such approval or determination as described in Article 15, Section 15.3.5 shall be a prerequisite to such annexation.

**Section 2.3. Withdrawal.** Within the period beginning with the date this Declaration is recorded in the Public Records of Duval County, Florida and ending either (a) seven (7) years thereafter, or (b) five (5) years from the date of recording of the last recorded Supplemental Declaration annexing additional land to this Declaration, whichever event (a) or (b) occurs later, the Declarant may, without the consent or joinder of the Owners or any other person or entity, when necessary or desirable to accommodate changes in the plan of development of Wyngate Forest, withdraw from the provisions of this Declaration any of the Property that continues to be owned by the Declarant, and/or its successors or assigns, and which has not been conveyed as Common Property. Withdrawals under this Section 2.3 shall be accomplished by filing a Supplemental Declaration describing the real property to be withdrawn and shall become effective when such Supplemental Declaration has been recorded in the Public Records of Duval County, Florida, unless otherwise provided therein.

**Section 2.4. Conveyance of Common Area to the Association.** In accordance with Article 7 of this Declaration, Declarant shall convey fee simple title to all Common Property to the Association upon completion of any improvements to be constructed or installed thereon.

### **ARTICLE 3**

#### **CREATION OF ASSOCIATION; MEMBERSHIP; VOTING RIGHTS**

**Section 3.1. Creation of Association.** In order to provide for the administration of Wyngate Forest and this Declaration, the Association has been organized under the laws of the State of Florida by recording the Articles thereof with the State of Florida.

**Section 3.2. Membership.** Every Owner of a Unit or Lot, by virtue of the ownership of such Unit or Lot, and the Declarant and its successors and assigns, shall be Members of the Association, and by acceptance of a deed or other instrument evidencing an ownership interest, each Owner, and Declarant accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles, the Bylaws and other rules and regulations of the Association. The term "**Member**" shall include each person or entity owning any right, title or interest in any Unit or Lot, except persons or entities holding mortgages or other security or trust interests unless such persons or entities also have the right of possession. Tenants or others occupying any Unit who do not have an ownership interest therein shall not be Members for the purposes

of this Declaration. Membership in the Association is appurtenant to, and may not be severed from, the Unit or Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Declaration, the Articles or Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot or Unit. Members shall be responsible for compliance with the terms and conditions of this Declaration, the Articles and Bylaws, and rules and regulations of the Association by all occupants, tenants, guests, invitees and family members while residing in or visiting any Unit, Common Area or other portion of the Property.

**Section 3.3. Voting Rights of Members of the Association.** Members of the Association shall be allocated votes as follows:

3.3.1. **Classes.**

**Class A.** Class A Members shall be all Owners with the exception of the Declarant. Each Class "A" Member shall be entitled to one vote for each Lot or Unit owned.

**Class B.** The Class B Member shall be the Declarant, or its specifically designated (in writing) successor. The Class B Member shall be allocated three (3) votes for each Lot or Unit owned by it within the Property; provided, that the Class B membership shall cease and become converted to Class A membership as set forth in Section 3.5 of this Article 3. Upon conversion to Class A membership, the Declarant shall have one vote for each Unit or Lot owned by it within the Property so long as said Unit or Lot is subject to assessment by this Association.

3.3.2. **Common Ownership.** When any Unit or Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs, and it or a copy thereof is filed with the secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote allocated to any Unit or Lot (including Units or Lots owned by the Declarant) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot or Unit. If the Owners fail to designate their official representative, then the Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

**Section 3.4. Change of Membership.**

3.4.1. **Ownership.** Change of membership in the Association shall be established by recording in the Public Records of Duval County, Florida, a deed or other instrument conveying record fee title to any Lot or Unit, and by the delivery to the Association, of a copy of such recorded instrument. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior Owner shall be terminated. In the event that a copy of said

instrument is not delivered to the Association, said Owner shall become a Member, but shall not be entitled to voting privileges until delivery of a copy of the conveyance instrument to the Association. The foregoing shall not, however, limit the Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot or Unit acquired. Notwithstanding the foregoing, Declarant shall have the right to notify the Association in writing of conveyance of a Unit to an Owner without the requirement of providing a copy of the deed, and the Association shall recognize the Owner identified in such written notice as a Member of the Association and Owner of the Unit.

3.4.2. **Interest in Association.** The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

**Section 3.5. Class B Membership Status.**

3.5.1. **Duration.** The Declarant's Class B membership status shall continue, and shall be in effect, during the period from the inception of the Declaration until either (1) seven (7) years from the date the Declaration is recorded; or (2) five (5) years after the date of recording of the last Supplemental Declaration annexing additional property into this Association, whichever event, (1) or (2) occurs later; or (3) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; or (4) in any event, within one hundred-twenty (120) days after the conveyance of seventy-five (75%) percent of the Lots or Units in the Property that will ultimately be operated by the Association have been converted to Class A status, whichever event, (1), (2), (3) or (4), occurs first ("Turnover"); provided however, that if Class B status is converted to Class A pursuant to clause (4) and, subsequent to such event, the Declarant annexes additional Lots to the Property which annexation causes the number of Lots or Units owned by the Declarant in the Property to exceed ten (10%) percent of the total number of Lots and Units within the Property, Declarant's Class B status shall be restored as to all Lots and Units within the Property then owned by Declarant, and shall continue until the next occurrence of an event of Turnover described above.

3.5.2. **Assignment.** The Declarant shall have the right to partially assign its status as Declarant and Class B Member, by recorded instrument executed by the original Declarant and acknowledged and accepted by the assignee Declarant, to any person or entity acquiring any portion of the Property, or the land eligible for annexation into the Property, for the purpose of development of a residential subdivision consistent with the Plat, and any such assignee shall thereafter be deemed to be the Declarant as to the Lots or Units owned by such person or entity, and shall have the right to exercise all of the rights and powers of the Declarant as to such Lots and Units, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots and Units owned by such original Declarant. If any action of the Association requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the

consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

#### **ARTICLE 4**

#### **FUNCTIONS OF ASSOCIATION**

**Section 4.1. Common Maintenance Area.** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Maintenance Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep the Common Maintenance Area in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and any agreement with another association or governmental agency.

**Section 4.2. Personal Property and Real Property for Common Use.** The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Property conveyed to it by the Declarant.

**Section 4.3. Services.** The Association shall have the following powers:

4.3.1. Maintenance of Common Area, Lakes, Open Space, Surface Water and Storm Water Management Systems Common Maintenance Area, Private Streets, Recreational Areas, landscaping, common area irrigation systems, land covered by the Plat and all city, county, district or municipal properties and rights-of-way (to the extent permitted or required by any governmental authority) which are located within or in a reasonable proximity to the Property where deterioration of any of the described items would adversely affect the appearance of the Property or the operation of systems appurtenant thereto to Wyngate Forest.

4.3.2. Maintenance of any real property located within the Property upon which the Association has accepted an easement for said maintenance.

4.3.3. Maintenance of any Lakes and bulkheads owned by or dedicated for the use of the Association within the Property, as well as maintenance of water bodies if and to the extent permitted or required by any contract or by any governmental authority having jurisdiction thereof.

4.3.4. Insect, pest and aquatic control where necessary or desirable in the judgment of the Board to supplement the service provided by the state and local governments. The provisions of this paragraph shall not be construed as an obligation on the part of Association to provide such services.

4.3.5. Taking any and all actions necessary to enforce all covenants, conditions and restrictions affecting the Property and to perform any of the functions or services delegated to the Association in any covenants, conditions or restrictions applicable to the Property or in the Articles or Bylaws.

4.3.6. Conducting business of the Association, including but not limited to administrative services such as legal, accounting and financial, and communication services informing Members of activities, Notice of Meetings, and other important events. The Association shall have the right to enter into management agreements, including without limitation, agreements with companies affiliated with the Declarant in order to provide its services, and perform its functions.

4.3.7. Establishing and operating the Architectural Review Committee, pursuant to Article 8 hereof.

4.3.8. Adopting, publishing and enforcing such Rules and Regulations as the Board deems necessary.

4.3.9. Lighting of roads, sidewalks, walking and bike paths throughout the Property as deemed necessary by the Board. The provisions of this paragraph shall not be construed as an obligation on the part of Association to provide such services.

4.3.10. At the sole option and discretion of the Board, conducting recreation, sport, craft, and cultural programs of interest to Members, their families, tenants and guests and charging admission fees for the operation thereof.

4.3.11. Constructing improvements on the Common Property and easements as may be required to provide the services as authorized in this Article.

4.3.12. Employment of guards, maintenance of control centers for the protection of persons and property within the Property, installation, operation and maintenance of communication systems by the Association or a contractual designee of the Association, and assistance in the apprehension and prosecution of persons who violate the local, state or federal laws within the Property. However, neither the Association, nor the Declarant shall be obligated to provide any monitoring measures to the Property nor shall they be held liable for any loss or damage by reason of failure to provide adequate monitoring or ineffectiveness of monitoring measures undertaken. All Owners, tenants, guests, and invitees of any Owner, as applicable, acknowledge that the Association and the Declarant are not insurers and that each Owner, tenant, guest, and invitee assumes all risk of loss or damage to persons, to Units and to the contents of Units and further acknowledge that Declarant has made no representations or warranties, nor has any Owner, tenant, guest, or invitee relied upon any representations or warranties, express or implied, including any warranty of merchantability or fitness for any particular purpose relative to any monitoring measures recommended or undertaken.

4.3.13. The Association may also provide exterior maintenance upon any Unit or upon any structure containing Units which, in the reasonable opinion of the Board of the Association, requires such maintenance because said Unit or structure is being maintained in a manner inconsistent with the overall appearance and standards prevailing within the Association. The Association shall notify the Owner of said Unit or structure in writing, specifying the nature of the condition to be corrected, and if the Owner has not corrected the condition within thirty (30) days after date of said notice, the Association (after approval of a majority of the Board) may correct such condition. Said maintenance shall include but not be

limited to painting, repairs, replacement and maintenance of roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. For the purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Unit or exterior of any Unit or other structures or improvements located in Wyngate Forest at reasonable hours on any day, except Saturday and Sunday; provided, however, the Association shall have the right of entry without notice if necessary to correct an emergency situation. The cost of such maintenance shall be assessed against the Unit upon which such maintenance is performed as a Special Assessment as provided in Section 6.6.

4.3.14. Establish use fees and promulgate rules and regulations respecting the use of Common Property and Association facilities by Members and persons other than Members.

4.3.15. Engage in any activities reasonably necessary and legally required to remove from the Common Area, Lakes, Open Space, Surface Water and Storm Water Management System, Preservation Areas, Private Streets and Common Maintenance Area any pollutants, hazardous waste or toxic materials, and by Special Assessment, recover costs incurred from the Owner(s) or upon whose property such materials were located or generated.

4.3.16. Accept conveyance of Common Area from the Declarant, including all improvements, structures, equipment, apparatus or personal property thereon, and cooperate with and assist Declarant, its agents, employees and contractors in periodic inspection and maintenance thereof, and accept assignment or transfer of all necessary permits or other forms of governmental authorization concerning the Common Area pursuant to Article 7.

4.3.17. The Association shall be responsible for the maintenance, operation and repair of the Surface Water and Storm Water Management System. Maintenance of the Surface Water and Storm Water Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water and storm water management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the Surface Water and Storm Water Management System shall be as permitted or, if modified, as approved by the St. Johns River Water Management District.

The functions and services allowed in this Section to be carried out or offered by the Association at any particular time shall be determined by the Board taking into consideration proceeds of assessments and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or to provide, may be added to or reduced at any time upon the affirmative vote of a majority of the Board; provided, however, the Board may not vote to reduce or abrogate the Association's responsibility to maintain the Common Maintenance Area. The Association may provide the permitted services by contract with third parties, including agreements with applicable governmental agencies.

**Section 4.4. Conveyance to Association.** The Association shall be obligated to accept any and all conveyances to it by Declarant of fee simple title, easements or leases to Open Space, Lakes, Surface Water and Storm Water Management Systems, Common Area, or Common Property, including Recreational Area, subject to any and all obligations and restrictions imposed on such lands, or incumbent on the owner

of such lands for the continued maintenance and operation of such lands, including, but not limited to, all environmental and drainage permits issued by any governmental authority as set forth in Article 7.

**Section 4.5. Conveyance by Association.** The Association may convey or dedicate lands or easements to Duval County, the State of Florida, or other governmental authority or agency. The Association may also convey lands or easements owned by the Association to the Declarant in connection with any replatting of any portion of the Property.

**Section 4.6. Contracts with Other Associations.** The Association is authorized to enter into any contracts or easement arrangements with any other association provided that such contracts or easements are necessary or beneficial for the operation of the Association or the maintenance of the Property; provided that the costs or expenses of operating, performing, or maintaining such contracts or easements shall be allocated between this Association and such other association in accordance with the cost incurred or benefit received by each association. Any such contracts or easements shall be approved by the vote or written consent of a majority of the Board of the Association.

**Section 4.7. Monitoring Services.** The Association shall have the right, but not the obligation to provide a monitoring guard to patrol the Property and/or other monitoring measures. The Board of the Association shall determine the extent of monitoring services, if any, to be provided by the Association as part of its annual budgeted expenses. No Owner shall have any claim or cause of action whatsoever against the Association or the Declarant for the absence of monitor guards or other monitoring measures.

**Section 4.8. Access.** Neither Association nor Declarant shall have any liability for any injury, damage, or loss, of any kind or nature whatsoever, to person or to property by reason of failure to provide adequate access control or ineffectiveness of access control measures undertaken, or due to the failure of any electrical, electronic, or mechanical access control or monitoring system to prevent or detect a theft, burglary or any other crime, or unauthorized entry onto the Property. The Association Board shall establish all rules and regulations concerning operation and access, provided that the Association shall not restrict access to the Property by Declarant, its agents, employees, contractors, customers or invitees at all reasonable hours. ASSOCIATION AND DECLARANT SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE ACCESS CONTROL OR INEFFECTIVENESS OF ACCESS CONTROL MEASURES UNDERTAKEN.

**Section 4.9. Cable Television System.** The Association shall have the right, but not the obligation, to enter into an agreement with a cable television company to provide cable television services to all of the Units. Any and all costs and expenses incurred by the Association under or pursuant to any agreement(s) ("**Cable Agreement**") entered into by the Association pursuant to which cable television service ("**Cable Service**") will be provided to all of the Units on the Property shall be apportioned equally but only among those Units with respect to which the Association is being charged under or pursuant to the Cable Agreement except to the extent, if any, that any Owner elects to receive an "**Optional Service**" (being a service not automatically received by all Owners entitled to receive Cable Service pursuant to the Cable Agreement). Each Owner who receives an Optional Service, if any, shall be responsible for paying the costs thereof. The foregoing shall in no way obligate Declarant or the Association to enter into a Cable Agreement. Declarant shall not be charged for Cable Television Service or required to make any payment for such Cable

Television Service until such service is activated for such Unit by Declarant. Neither Association nor Declarant shall be responsible for failure or interruption of cable television transmissions and/or service to any Unit and/or for any maintenance or repairs that may be required from time to time of electronic or optic or any other component of the cable television service and infrastructure.

**Section 4.10. Monitored Alarm System.**

4.10.1. **Right to Install.** Association shall have the right, but not the obligation, to contract for the installation of a Monitored Alarm System for each Unit within Wyngate Forest. Prior to the Community Completion Date, all contracts for a Monitored Alarm System shall be subject to the prior written approval of Declarant. Declarant or its nominees, successors, assigns, affiliates, and licensees may install such a Monitored Alarm System. Declarant reserves the right, at any time and in its sole discretion, to discontinue or terminate any Monitored Alarm System prior to the Community Completion Date. In addition, all Owners specifically acknowledge that Wyngate Forest may have a perimeter access control system, such as fences, walls, hedges, or the like on certain perimeter areas.

4.10.2. **Components.** The Monitored Alarm System, if installed, may include one or more manned gatehouses, one or more electronic gates, and roving attendants using vehicles. Association and Declarant do not warrant or guaranty in any manner that the system will include these items, but reserve the right to install or provide the foregoing items, or any other items they deem appropriate in their sole and absolute discretion. After the Community Completion Date, Association may expand the Monitored Alarm System by a vote of the majority of the Board, without the joinder or consent of the Owners or any third parties. Without limiting the foregoing, Declarant and Association reserve the right to, at any time, increase, decrease, eliminate, or add manned or unmanned gate houses, information booths, sensors, gates and other access monitoring measures as they deem appropriate in their sole and absolute discretion; provided, however, no changes shall be made prior to the Community Completion Date without the prior written consent of Declarant.

4.10.3. **Part of Operating Costs.** If furnished and installed within any Unit, the cost of operating and monitoring any Monitored Alarm System may be included in Operating Costs of Association and may be payable as a portion of the Assessments against Owners. The purpose of the Monitored Alarm System will be to control access to Wyngate Forest.

4.10.4. **Owners' Responsibility.** All Owners and occupants of any Unit, and the tenants, guests and invitees of any Owner, as applicable, acknowledge that Association, its Board and officers, Declarant, their nominees or assigns, or any successor Declarant, and the ARC and its members, do not represent or warrant that (a) any Monitored Alarm System, designated by or installed according to guidelines established, will not be compromised or circumvented, (b) any Monitored Alarm System will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise, and/or (c) the Monitored Alarm System will in all cases provide the detection for which the system is designed or intended. In the event that Declarant elects to provide a Monitored Alarm System, Declarant shall not be liable to the Owners or Association with respect to such Monitored Alarm System, and the Owners and Association shall not make any claim against Declarant for any loss that an Owner or Association may incur by reason of break-ins, burglaries, acts of vandalism, personal injury or death, which are not detected or prevented by the Monitored



Alarm System. Each Owner and Association are responsible for protecting and insuring themselves in connection with such acts or incidents. The provision of a Monitored Alarm System (including any type of gatehouse) shall in no manner constitute a warranty or representation as to the provision of or level of security within Wyngate Forest or any residential subdivision contained therein. Declarant and Association do not guaranty or warrant, expressly or by implication, the merchantability of fitness for use of any Monitored Alarm System, or that any such system (or any of its components or related services) will prevent intrusions, fires, or other occurrences, regardless of whether or not the Monitoring Service is designed to monitor the same. Each and every Owner and the occupant of each Unit acknowledges that Declarant and Association, their employees, agents, managers, directors, and officers, are not insurers of Owners or Units, or the personal property located within Units. Declarant and Association will not be responsible or liable for losses, injuries, or deaths resulting from any such events.

4.10.5. Any and all costs and expenses incurred by the Association under or pursuant to any agreement(s) ("**Monitored Alarm Agreement**") entered into by the Association pursuant to which monitored alarm service ("**Monitored Alarm Service**") will be provided to all Units on the Property shall be apportioned equally but only among those Units with respect to which the Association is being charged under or pursuant to the Monitored Alarm Agreement except to the extent, if any, that any Owner elects to receive an "**Optional Service**" (being a service not automatically received by all Owners entitled to receive Monitored Alarm Service pursuant to the Monitored Alarm Agreement). Each Owner who receives an Optional Service, if any, shall be responsible for paying the costs thereof. Declarant shall not be charged for Monitored Alarm Service or required to make any payment for such Monitored Alarm Service until such service is activated for such Unit by Declarant. The foregoing shall in no way obligate Declarant or the Association to enter into a Monitored Alarm Agreement. Neither Association nor Declarant shall be responsible for failure or interruption of the Monitored Alarm system or any component thereof and or for any maintenance or repairs that may be required from time to time of electronic or optic or any other component of the Monitored Alarm Service or Equipment or any component thereof. THE PROVISION OF A MONITORED ALARM SYSTEM SHALL IN NO MANNER CONSTITUTE A WARRANTY OR REPRESENTATION AS TO THE PROVISION OF OR LEVEL OF SECURITY WITHIN WYNGATE FOREST. DECLARANT AND THE ASSOCIATION DO NOT GUARANTEE OR WARRANTY, EXPRESSLY OR BY IMPLICATION, THE MERCHANTABILITY OF FITNESS FOR USE OF ANY MONITORED ALARM SYSTEM OR THAT ANY SUCH SYSTEM (OR OF ANY OF ITS COMPONENTS OR RELATED SERVICES) WILL PREVENT INTRUSIONS OR OTHER OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE MONITORING SERVICE IS DESIGNED TO MONITOR THE SAME. EACH AND EVERY OWNER AND THE OCCUPANT OF EACH UNIT ACKNOWLEDGES THAT DECLARANT, AND THE ASSOCIATION ARE NOT INSURERS OF OWNERS OR UNITS, OR THE PERSONAL PROPERTY LOCATED WITHIN UNITS OR PROPERTY. DECLARANT AND THE ASSOCIATION WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY SUCH EVENT.

## ARTICLE 5

### GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

Section 5.1. **Purpose of Maintenance Fund.** The Board, for the benefit of the Owners, shall provide and shall pay for out of the assessments provided for in Article 6 the following expenses:

a. The Association shall pay all taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Area rather than against the individual Owners, if any.

b. The Association shall pay for the care and preservation of the Common Maintenance Area, including without limitation, the drainage facilities.

c. The Association may retain the services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board, (provided that any contract for management of the Association shall be terminable by the Association, with no penalty upon no more than ninety (90) days prior written notice to the managing party) and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

d. The Association may engage legal and accounting services.

e. The Association may pay the premiums and other costs of a policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board, including a policy or policies of insurance as provided herein in Article 14.

f. The Association may pay the premiums and other costs of workers compensation insurance to the extent necessary to comply with any applicable laws.

g. The Association may pay the premiums or other costs of such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.

h. The Association may pay for any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

Section 5.2. **Powers and Duties of Board.** The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association.

a. The Board shall have the power to execute all declarations of ownership for tax assessment purposes with regard to the Common Area, if any, on behalf of all Owners.

b. The Board shall have the power to borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

c. The Board shall have the power to enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

d. The Board shall have the power to protect or defend the Common Area from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

e. The Board shall have the power to make reasonable rules and regulations for the operation of the Common Maintenance Area and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Owners, or with respect to a rule applicable to less than all of the Common Area, by the Owners in the portions affected.

f. The Board shall make available for inspection by Owners after the end of each fiscal year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

g. The Board shall have the power to adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

h. The Board shall have the power to enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

i. The Board shall have the power to collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

j. The Board may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines, not to exceed \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate.

**Section 5.3. Board Powers Exclusive.** The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

**Section 5.4. Maintenance Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the

Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

## ARTICLE 6

### ASSESSMENTS

**Section 6.1. Creation of the Lien and Personal Obligations of Assessments.** Declarant covenants, and each Owner of any Lot or Unit shall by acceptance of a deed therefor, regardless of whether it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay the Association: (1) Annual Assessments; (2) Special Assessments; and (3) an Initial Working Capital Assessment, all fixed, established and collected from time to time as hereinafter provided. The Annual Assessments, Special Assessments and Initial Working Capital Assessment, together with such interest thereon and costs of collection provided herein shall be a charge and continuing lien as provided herein on the real property and improvements of the Owner against whom each such assessment is made. Each such assessment, together with such interest thereon and cost of collection, shall also be the personal obligation of the person who was the Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Unit or Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Property or by the abandonment of the property against which the assessment was made. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

**Section 6.2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association may be used for the improvement, maintenance, enhancement and operation of the Surface Water and Storm Water Management Systems, Common Property, and Common Maintenance Area located in, on or about the Property, and further to provide services which the Association is authorized or required to provide by contract or otherwise, including, but not limited to, the payment of taxes and insurance thereon, construction, repair or replacement of improvements, payment of the costs to acquire labor, equipment, materials, management and supervision necessary to carry out its authorized functions, and for the payment of principal, interest and any other charges connected with loans made to or assumed by the Association for the purpose of enabling the Association to perform its authorized or required functions. Assessments shall also be used for the maintenance and repair of the Surface Water and Storm Water Management System including, but not limited to, work within retention areas, drainage structures and drainage easements.

**Section 6.3. Duty of the Board.** At least thirty (30) days in advance of each fiscal year of the Association it shall be the duty of the Board to establish the annual budget and to fix the amount of the

Annual Assessment against each Lot or Unit for the coming fiscal year. The Board shall prepare a roster of the Lots and Units and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owners. Failure to fix the amount of the Annual Assessment within the time period set forth above will not preclude the Board from fixing the Annual Assessment at a later date. In the event the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year, and the Annual Assessment for the immediately preceding year shall continue for the current year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement thereof.

**Section 6.4. Rate of Assessment.** Annual Assessments shall be established by dividing the total Common Expenses of the Association by the total number of Lots or Units subject to assessment to derive a uniform base assessment amount applicable to all Lots. Special Assessments for capital improvements or expenses applicable to all Lots within the Property shall be established in the same manner; however, Special Assessments applicable to a particular Lot for expenses attributable exclusively to such Lot, or the Owner thereof, shall be determined by dividing the applicable expense by the number of Lots to which it applies. After such amounts have been determined, the amounts due from the Class "B" Members shall be adjusted according to the following provisions. Declarant will have the following option for each assessment year.

6.4.1. During the period in which Declarant has the status of the Class B Member, all Lots and Units owned by Declarant, unless otherwise elected in writing by Declarant owning the Lot or Unit, shall be assessed at twenty-five percent (25%) of the rate of assessment applicable to units owned by Class A Members, provided however, that in the event that the actual operating expenses of the Association during the year for which the Declarant's assessment is 25% of the Class A Membership assessment exceed the actual income of the Association derived from all assessments imposed on all Members and Declarant electing to pay assessments at 25% of the Class "A" assessment rate Declarant shall reimburse the Association the difference between its actual operating expenses and its actual assessment income for such year, save and except any portion of such deficit attributable to delinquent assessments owed by Class A Members. The amount to be paid by Declarant shall be prorated on the basis of the number of Lots owned by Declarant divided by the total number of Lots owned by all Owners. Payment of such reimbursement shall be made by Declarant within 30 days after receipt of the Association's annual statement of accounts. Notwithstanding the foregoing, the Declarant shall have the right, but not the obligation, to reimburse the Association for deficits attributable to delinquent assessments owed by Class A Members, and, in that event, the Association shall promptly institute collection proceedings, including legal action if necessary, to recover such unpaid amount(s) from such Owner(s), and, upon receipt of such recovery, the Association shall reimburse Declarant the amount(s) so recovered up to the amount of any operating deficit funded by Declarant which arose from such nonpayment.

Owners shall pay assessments in the manner and on the dates the Board establishes. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners who have failed to pay, on a timely basis, two or more payments, in any 12 month period, of any nature, due under the Governing Documents, or with a history of delinquent payment. If the Board so elects, assessments may be paid in quarterly or monthly installments. Unless the Board otherwise provides, the Regular Assessment shall be due and payable in advance on the first day of each fiscal year.

If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

6.4.2. In the alternative, Declarant may elect by written notice to the Board to pay the full Class A rate of assessment for each Lot or Unit owned by the Declarant within the Association and subject to assessment for without thereby waiving its Class B status and, in such event, shall not be liable for the operating deficit of the Association as provided in Section 6.4.1.

6.4.3. At such time as Class B status shall cease, all Lots and Units owned by Declarant shall be assessed at the full Class A rate and Declarant shall have no obligation to fund any operating deficit of the Association thereafter. Notwithstanding anything contained herein to the contrary, in the event the Association incurs any Common Expense, which by its nature is applicable only to a completed Unit, such expense shall only be assessed to and payable by the Owners of completed Units, and shall not be included within any Assessments payable by Declarant. Such expenses include, for example, expenses for bulk cable television or home monitoring service, which may be incurred pursuant to this Declaration.

**Section 6.5. Initial Maximum Annual Assessment; Increases in Maximum Assessment; and Annual Assessment Rates.**

6.5.1. **Initial Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Unit by the Declarant to a Class A Member, the Maximum Annual Assessment per Unit imposed by the Association shall be \$500.00.

6.5.2. **Increases in Maximum Annual Assessment - Without Consent of the Members.** From and after such date, the maximum Annual Assessment shall be increased each year by the Board without a vote of the Membership of the Association by an amount not more than either (a) ten percent (10%) above the sum of (1) the maximum allowable assessment for the previous year (regardless of whether the Board elected to increase the actual Annual Assessments to such amount), plus (2) increases mandated by governmental agencies and/or increased fixed costs incurred for insurance, taxes, recycling, waste disposal, or to obtain services from utility companies, or (b) the percentage increase, if any, in the current U.S. Government's Consumer Price Index (Urban Price Index - All Urban Consumers), herein referred to as the "CPI," over the CPI published for the preceding period, or other statistical index providing similar information if the CPI ceases to be published, whichever amount, (a) or (b), is greater.

6.5.3. **Increases in Maximum Annual Assessment - Requiring Consent of the Members.** The maximum Annual Assessment may not be increased above the amount described in Section 6.5.2 above without the approval of a simple majority of each class of Members who are voting either in person or by proxy, at a meeting of the Association duly called for this purpose, or whose approval is evidenced by the written consent of the majority of such Members.

6.5.4. **Establishing the Annual Assessment.** The Board of the Association shall set the Annual Assessment for each fiscal year at an amount not in excess of the maximum allowable Annual Assessment then in effect as established pursuant to this Section 6.5. If the Board sets the Annual

Assessment at an amount which is less than the allowable maximum Annual Assessment, the Board shall have the right to increase the Annual Assessment to any amount not greater than the allowable maximum then in effect without the consent of the Members upon thirty (30) days written notice. The election of the Board to set the Annual Assessment at an amount less than the maximum shall not affect the calculation of the maximum Annual Assessment for ensuing years pursuant to this Section 6.5.

**Section 6.6. Special Assessments.**

6.6.1. **Special Assessments.** In addition to the Annual Assessments authorized herein, the Association may levy in any fiscal year a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto; provided, such assessment shall have the affirmative vote of the Board as evidenced by the result of a vote taken by the Board. The obligation to pay Special Assessments shall be computed on the same basis as for Annual Assessments. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

6.6.2. **Individual Special Assessments.** The Association (by simple majority vote of the Board) may also levy a Special Assessment against any Member to reimburse the Association for costs incurred pursuant to Section 4.3, in bringing a Member and his Unit or Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Association rules and regulations, or for the recovery of expenses incurred pursuant to Section 6.13 of this Article 6, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

**Section 6.7. Initial Capital Assessment.** In addition to all other assessments described herein, each Lot shall be subject to an Initial Capital Assessment of \$300.00, which shall be paid to the Association upon conveyance of the Lot from Declarant to a Class A Member. The obligation to pay the Initial Capital Assessment shall be borne by the purchaser of the Lot, and the Initial Capital Assessment shall be collected and paid to the Association at the closing at which title to the Lot is conveyed to the purchaser, however failure of the title company or settlement agent to collect such Initial Capital Assessment on behalf of the Association shall not relieve the purchaser of the obligation to pay such amount, nor shall any such title company, settlement agent or Declarant be responsible for such payment.

**Section 6.8. Notice Requirements.** Written notice of any proposed action to be taken pursuant to Section 6.5 or Section 6.6 shall be delivered to each Member at least 30 days in advance of (1) any meeting at which such matter is to be discussed or (2) any action which is to be taken by written approval of the Members in lieu of a meeting. The notice shall state the purpose of the meeting or proposed written approval and shall contain a written description of the proposed assessment. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in this Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the

Association shall be bound by such more restrictive requirements as if fully reproduced herein.

**Section 6.9. Date of Commencement of Annual Assessments; Due Dates.** The Annual Assessments provided for herein shall commence as to each Lot or Unit on the day of which the Lot or Unit is subjected to the terms and conditions of this Declaration by recordation of this Declaration or any Supplemental Declaration annexing Lots or Units into the Association, or on the date the Association Articles are filed with the Secretary of State of Florida, whichever occurs later. The dates when such Annual Assessments shall become due shall be established by duly adopted resolution of the Board. The Annual Assessments shall be adjusted (pro-rated) according to the number of days remaining in the fiscal year at the time assessments commence on the Unit. The Association may delegate to a mortgage company, financial institution or management company responsibility for collection of assessments. The Annual Assessments shall be payable in advance in monthly installments, or in annual, semiannual or quarter-annual installments if so determined by the Board of Directors of the Association (absent which determination they shall be payable monthly).

**Section 6.10. Records of Payment.** The Board shall prepare a roster of Owners and Annual Assessments and Special Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner at reasonable times with reasonable notice. Any Owner shall have the right to request the Association to issue a written statement signed by an officer of the Association, setting forth whether all Annual Assessments and/or Special Assessments owed by such Owner have been paid. The Association shall have the right to impose a fee for the issuance of such statements not to exceed \$50.00 per statement. Requests for such statements shall be in writing addressed to the address to which Annual Assessment payments are made. Each request shall contain the street address and legal description (by platted lot and block) of the property and the full name of the Owner. The Association shall issue the requested statement within 30 days after receipt of the written request, subject to the payment of any fee for such service imposed by the Association. Such written statement issued by the Association shall be prima facie evidence of payment of any assessment therein stated to have been paid.

**Section 6.11. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien: Remedies of Association.**

6.11.1. If any assessment (e.g. any Annual Assessment, Special Assessment or Initial Capital Assessment) is not paid on the date due, then such assessment shall become delinquent and the entire assessment shall, together with interest thereon and cost of collection thereof as hereinafter provided, become due and payable and be a continuing lien on the property which shall bind such property in the hands of the then Owner, the Owner's heirs, devisees, personal representatives and assigns. The obligation of the Owner to pay such assessment is a personal obligation and any assessments that are due but remain unpaid at the time the Owner disposes of his or her ownership interest shall be enforceable by the Association against such person or against such person's successor in interest to the property subject to the assessment unless such successor in interest acquires title to the property by foreclosure of a lien securing a purchase money mortgage or home equity mortgage, or by deed or conveyance in lieu of foreclosure of such lien.

6.11.2. The Association may record a notice of lien for delinquent assessments in



the public records and foreclose the lien in the same manner as a mortgage. The lien shall not be valid against subsequent bona fide purchasers or mortgagees for value unless so recorded. Upon recording, the lien shall secure the amount of delinquency stated therein and all unpaid assessments thereafter until satisfied of record, together with interest thereon, as provided herein, and the reasonable cost of (a) notices of delinquency, (b) demands for payment, (c) notices of liens, (d) assignment of liens, (e) releases of liens, (f) recording costs, (g) attorney's fees, and (h) management company fees.

6.11.3. If the assessment is not paid within thirty (30) days after the due date it shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, or the highest rate permitted by law at the time such amount is applied, whichever is less, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

6.11.4. The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be assessed or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure.

6.11.5. Suit to recover a money judgment for delinquent amounts owed to the Association and reasonable attorney's fees and costs shall be maintainable without foreclosing or waiving the lien securing same.

**Section 6.12. Subordination of the Lien to Mortgages: Mortgagees' Rights.** The lien of the assessments provided for herein is subordinate to the lien of any purchase money or home equity Mortgage given to an Institutional Lender now or hereafter placed upon a Unit or Lot recorded prior to the recording of a notice of lien pursuant to Section 6.11 of this Article 6; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

An Institutional Lender upon request, shall be entitled to written notification from the Association of any default of an Owner of any obligation hereunder which is not cured within sixty (60) days. The Association may provide such notice without receiving a request from the Institutional Lender.

An Institutional Lender may pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Property and Institutional Lenders making such payments shall be owed immediate reimbursement therefor from the

Association.

**Section 6.13. Damage to Common Property by Owners.** Any maintenance, repairs or replacements within the Common Property arising out of or caused by the willful or negligent act of the Owner, his family, tenants, guests or invitees shall be performed at said Owner's expense or a Special Assessment therefore shall be made against Owner's Lot or Unit.

**Section 6.14. Exempt Property.** The following property subject to this Declaration shall be exempted from all assessments, charges and liens created herein: (a) all easements, rights-of-way or other interest dedicated and accepted by the local public authority and devoted to public use; and (b) all Common Property. All Lots, Property or additional property annexed pursuant hereto and owned by Declarant shall be exempt from payment of Assessments for so long as Declarant funds any deficit in the annual budget. Declarant shall fund such expenses only as they are actually incurred by the Association during the period that Declarant is funding the deficit. Declarant's obligation to funding deficits shall terminate at such time as Declarant, in its sole discretion, elects to pay the Assessment for each Lot owned by it, or after the Turnover Date, whichever shall first occur. Declarant may, but is not obligated to, assign this exemption right to any entity it may determine. Any such assignment of Declarant's exemption shall have no effect on Declarant's exemption hereunder.

**Section 6.15. Rights to Pay Assessments and Receive Reimbursement.** Association, Declarant, and any Lender of a Unit shall have the right, but not the obligation, jointly and severally, and at their sole option, to pay any Assessments or other charges which are in default and which may or have become a lien or charge against any Unit. If so paid, the party paying the same shall be subrogated to the enforcement rights of Association with regard to the amounts due.

## **ARTICLE 7**

### **TITLE TO COMMON AREA; ACCEPTANCE AND MAINTENANCE OF COMMON PROPERTY**

**Section 7.1. Construction and Ownership of Common Property Improvements.** It is anticipated that Declarant will designate certain portions of the Property to be Common Property or Common Area (collectively referred to in this Article 7 as the "**Common Property**") that will be improved or developed in phases in association with the development and annexation of any additional property. Declarant may elect to construct or install certain improvements or facilities upon portions of the Common Property, but is not obligated to do so. Declarant shall have the absolute right and power to determine what improvements or facilities, if any, it will install or construct on the Common Property at all times prior to conveying such Common Property to the Association, and within two (2) years thereafter. All lands designated by the Declarant as Common Property shall be conveyed to, and title shall be held by, the Association, together with all improvements or facilities constructed or installed thereon.

**Section 7.2. Acceptance of Common Property.** Declarant shall convey all of its right, title and interest in and to the Common Property, including the improvements or facilities, to the Association free and clear of all liens, and claims arising from the construction or installation of improvements on the Common

Property by Declarant, and the Association shall accept and acknowledge the deed of conveyance, and/or the certificate of completion, and shall thereafter own all right, title and interest in the Common Property and improvements or facilities then conveyed.

**Section 7.3. Maintenance of the Common Property.** The Association shall own, operate and maintain all Common Property and the improvements or facilities constructed or installed thereon in first class condition, subject to normal wear and tear, depreciation, and the elements. Maintenance of the Common Property shall include periodic inspection and preventive maintenance for the improvements and facilities thereon.

**Section 7.4. Inspections of the Common Property by Declarant.** Declarant hereby reserves the right, at all times after conveyance of the Common Property to the Association, to enter the Common Property, without prior notice, and to inspect the condition of the improvements and facilities thereon. If Declarant determines, in its sole judgement, that the improvements or facilities are in need of repair or maintenance, it may so notify the Association in writing, and it shall be the sole obligation of the Association owning such Common Property to promptly complete such repairs or maintenance. Failure of the Association to properly maintain and repair the Common Property shall relieve the Declarant of any liability to the Association or to any Member for any condition of the Common Property. Declarant shall have the right to make a record of its inspections by photographing and/or videotaping the Common Property, and shall have the right to perform tests or examinations to determine the condition of the Common Property, provided that Declarant shall indemnify the Association from any claims for personal injury, death, property damage or non-payment asserted by persons claiming by, through or under the Declarant for injury, death or damage occurring as a result of such examinations or tests. Notwithstanding the foregoing, Declarant shall have no obligation to perform inspections of the Common Property owned by the Association. The deeds conveying the Common Property to the Association may contain a recitation of this reservation, however failure to recite such reservation in such deeds shall not affect the rights of Declarant herein reserved.

**Section 7.5. Maintenance and Repair Records.** The Association shall keep records of maintenance and repairs performed on the Common Property, and such records shall be made available to the Declarant and to any Member upon written request. Failure of the Association to maintain appropriate records of maintenance and repairs shall be conclusive evidence that such maintenance and repairs were not performed.

**Section 7.6. Operation, Maintenance and Monitoring of Drainage Facilities.** The Association shall maintain, as part of the common elements, drainage structures for the properties and comply with conditions of the permits from the St. Johns River Water Management District ("SJRWMD") Permit No. 4-031-67437-1 for the drainage system including, without limitation, perpetual maintenance of all signage and notices required by such permits (herein referred to as the "Environmental and Drainage Permits"). The Association, shall, when requested by Declarant, apply for the issuance of, or accept assignment of, all SJRWMD permits for the Wyngate Forest property (as such property may be expanded by annexation of additional phases as herein contemplated) and shall be designated as the "permittee" thereof accepting transfer of the Environmental and Drainage Permits applicable to the Property. The conditions of the permits include monitoring and record keeping schedules, and maintenance. The drainage facilities and improvements, the Drainage Easements identified on the Plat of Wyngate Forest, including without

limitation, the retention/detention ponds, underground pipes, inlets and outfall structures, if any, and the Drainage Easements identified on the plat of any additional property annexed into this Declaration, shall be collectively referred to herein as the “**Surface Water and Storm Water Management System.**” The following additional conditions shall apply:

a. The Association shall hold and save the SJRWMD harmless from any and all damages, claims, or liabilities which may arise by reason of the operation, maintenance or use of any improvement or facility authorized by the permits.

b. The Association shall at all times properly operate and maintain the systems of treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the permits, as required by the SJRWMD. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permits and when required by SJRWMD rules.

c. The Association, specifically agrees to allow authorized SJRWMD personnel, upon presentation of credentials or other documents as may be required by law, access to the Common Maintenance Area premises where the permitted activity is located or conducted at all reasonable times for the purposes of inspection and testing to determine compliance with the permits and SJRWMD regulations, such as:

1. Having access to and copying any records that must be kept under the conditions of the permits; and
2. Inspecting the facilities, equipment, practices, or operations regulated or required under the permits; and
3. Sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with the permits or SJRWMD rules; and
4. Gathering of data and information.

Reasonable time may depend on the nature of the concern being investigated.

d. Establishment and survival of littoral areas provided for storm water quality treatment in wet detention systems shall be assured by proper and continuing maintenance procedures designed to promote viable wetlands plant growth of natural diversity and character. Following as-built approval, perpetual maintenance shall be provided for the permitted system.

e. The Association shall submit inspection reports in the form required by SJRWMD, in accordance with the following schedule unless specified otherwise here or in permit applications:

1. For systems utilizing effluent filtration or exfiltration, the

inspection shall be performed eighteen (18) months after operation is authorized and every eighteen (18) months thereafter.

2. For systems utilizing retention and wet detention, the inspections shall be performed two (2) years after operation is authorized and every two (2) years thereafter.

f. It shall be the responsibility of each Lot Owner within the subdivision at the time of construction of a building, residence, or structure, to comply with the construction plans for the surface water management system pursuant to Chapter 40C, F.A.C., approved and on file with the SJRWMD.

g. It is the Lot Owner's responsibility not to remove native vegetation (including cattails) that become established within the wet detention ponds abutting their property. Removal includes dredging, the application of herbicide, the introduction of grass carp and cutting. If the project includes a wetland mitigation area, or wet detention pond, no vegetation in such area shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the SJRWMD. Lot Owners should address any question regarding authorized activities within any wet detention pond to SJRWMD, Surface Water Permitting Department.

h. No Owner of a Lot within the subdivision may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, buffer areas, and upland conservation areas described in the approved permits and recorded Plat of the subdivision, unless prior approval is received from both the SJRWMD pursuant to Chapter 40C, F.A.C., and from Duval County as well.

i. Neither the Association nor any Owner shall engage in any construction related activities within any part of the Surface Water and Storm Water Management System unless such activities have been approved in writing by the SJRWMD, or are specifically authorized by the conditions of the applicable permits. Without limitation, the following activities are deemed construction related and are prohibited unless authorized in accordance with this Section: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the Surface Water and Storm Water Management System facilities.

j. The Association, through its Board, shall be responsible for enforcing the provisions of this Declaration, however, in addition to enforcement by the Association, Declarant hereby reserves unto itself, and grants to SJRWMD, the non-exclusive right, but not the obligation, to enforce the provisions of this Declaration concerning compliance with the Surface Water and Storm Water Management System permits, all applicable federal, state and local laws, ordinances and regulations, and all applicable rules and regulations of the Association against any person or entity in violation including the Owners, the Association and the Declarant, by the exercise of any remedies available at law or in equity, or otherwise provided in this Declaration for the protection and benefit of the Association, the Members and the Property governed by this Declaration. Notwithstanding anything in this Declaration to the contrary, in the event that SJRWMD elects to take enforcement action against any Owner, the Declarant, the Association or any other person for violation of the terms of any permit, law, ordinance, rule or regulation, such

enforcement shall not be subject to the mandatory arbitration provisions of Article 16 of this Declaration.

k. An important element of the Surface Water and Storm Water Management System permitted by the SJRWMD is the vegetative buffer (herein referred to as the "Buffer"), identified on the recorded Plat of Wyngate Forest as "The 25' Vegetative Natural Buffer." The purpose of the Buffer is to detain and treat storm water prior to drainage offsite; therefore, the area must be maintained with the existing native vegetative cover without alterations. Filling and placement of impervious surface (other than fenceposts) are prohibited within the Buffer

**Section 7.7. Effect of Dissolution.** In the event of the termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water and Storm Water Management System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, Florida Administrative Code, and be approved by the SJRWMD prior to such termination, dissolution or liquidation. In the event that no other entity exists to receive such transfer, the obligations of the Association shall be deemed assumed by the Owners, and all such Owners shall be jointly and severally responsible for operation and maintenance of the Surface Water and Storm Water Management System in accordance with the requirements of the permits.

**Section 7.8. Special Amendments Relating to Surface Water and Storm Water Management System.** Any amendment to this Declaration which alters the Surface Water and Storm Water Management System, beyond maintenance in its original condition, including the water management portions of the Common Property, must have the prior written approval of the SJRWMD. This Section may not be amended without the consent of such District.

**Section 7.9. Shared Facilities.** It is expected that certain portions of the Surface Water and Storm Water Management System will serve the drainage needs of adjacent lands not owned by Declarant and not within the Property subject to this Declaration. Declarant reserves the right to grant such drainage and/or use easements and rights as Declarant may deem necessary or appropriate for accomplishing the drainage needs of the Property and/or lands owned by others provided that such agreements shall not unreasonably interfere with the use of the system by the Owners or unreasonably increase the cost of maintenance of the system by the Association.

**Section 7.10. Water Levels in Retention Ponds; Flooding.** The Surface Water and Storm Water Management System is designed to provide drainage for the Property. Neither the Association nor the Declarant shall have any liability whatsoever to any Owner for claims or damages alleged by an Owner due to water levels in the lakes and/or retention ponds, if any, being below normal or otherwise unacceptable to the Owner. Provided that the Surface Water and Storm Water Management System is constructed in substantial compliance with the plans and specifications therefor approved by the appropriate governmental authorities, neither the Declarant, nor the Association nor any governmental authority shall be liable to the Association or any Owner for damage caused by flooding, and each Owner acknowledges and agrees that as long as the Declarant and the Association have acted in good faith in reliance on reasonable engineering criteria approved by the governmental authorities in the design and construction of the Surface Water and Storm Water Management System, they shall not be liable for damages sustained by any Owner caused by weather events not taken into consideration in the design or construction of such system and facilities.

The Surface Water and Storm Water Management System is designed to provide drainage for the Properties. NEITHER THE ASSOCIATION, THE DECLARANT, DUVAL COUNTY NOR THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT SHALL HAVE ANY LIABILITY WHATSOEVER TO ANY OWNER FOR CLAIMS OR DAMAGES ALLEGED BY AN OWNER DUE TO WATER LEVELS IN THE LAKES AND/OR RETENTION PONDS, IF ANY, BEING BELOW NORMAL OR OTHERWISE UNACCEPTABLE TO THE OWNER. Recreational use, if any is permitted, and aesthetic appearance of the retention ponds is secondary to their intended drainage function, and during periods of prolonged drought or other unusual weather events water levels in the retention ponds may recede, and neither the Association, the Declarant, Duval County nor SJRWMD shall have any liability for such conditions. Provided that the Surface Water and Storm Water Management System is constructed in substantial compliance with the plans and specifications therefor approved by the appropriate governmental authorities, neither the Declarant, nor the Association nor any governmental authority shall be liable to the Association or any Owner for damage caused by flooding, and each Owner acknowledges and agrees that as long as the Declarant and the Association have acted in good faith in reliance on reasonable engineering criteria approved by the governmental authorities in the design and construction of the Surface Water and Storm Water Management System, they shall not be liable for damages sustained by any Owner caused by weather events not taken into consideration in the design or construction of such system and facilities. All Persons are hereby notified that from time to time alligators and other wildlife may habitate or enter into water bodies within or nearby the Property and may pose a threat to Persons, pets and property, but that the Association and Declarant are under no duty to protect against, or to monitor, or to notify Owners or other persons of the presence of such wildlife, and do not in any manner warrant or insure against, any death, injury, damage or loss caused by such wildlife to Persons, pets, or property, and do not in any manner warrant or insure against, any death, injury, damage or caused by such wildlife.

**Section 7.11. Condemnation.** In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Area, the funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Area to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. In the event that the Board of the Association determines that the funds cannot be used in such a manner due to the lack of available land for additional Common Area or for any other reason, any remaining funds may be distributed to the Owners on a pro rata basis.

**Section 7.12. Bulkhead Maintenance and Replacement.** All bulkheads or retaining walls installed in or around any Lake within the Property by the Declarant or the Association, but not private bulkheads or retaining walls installed by Lot Owners, shall be part of the Common Area, and shall be maintained, repaired and replaced by the Association as an Association expense, provided however, that if such maintenance, repair or replacement is caused by the failure of the Lot Owner whose Lot abuts the bulkhead or retaining wall to use reasonable diligence and care in the maintenance of the Lot, the Association shall have the right to impose a special assessment against the Owner of such Lot for the reasonable and necessary expense incurred by the Association in so doing. Nothing herein shall limit the right of the Association to enter into agreements with the Association or other governmental or quasi-governmental authority for the maintenance, repair or replacement of such bulkheads and retaining walls.

## **ARTICLE 8**

**ARCHITECTURAL CONTROL**

**Section 8.1. Enforcement of Architectural Standards.** The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Section 8.2 of this Article 8.

No construction, which term shall include within its definition, staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article until the requirements of the ARC have been fully met, and until the approval of the appropriate entities has been obtained.

**Section 8.2. Architectural Review Committee.** The Board may establish an Architectural Control Committee (the "ARC") which shall have jurisdiction over all construction on any portion of the Property except Units or improvements constructed or installed by the Declarant and whose duties, powers and responsibilities shall be as follows:

8.2.1. The ARC shall consist of three (3) or more persons designated by the Board.

8.2.2. The ARC shall have the right of approval of all architecture and landscaping of any Units. All construction and development within the Property is subject to local governmental control; however, the ARC may, in its sole discretion, impose standards of architectural and landscaping design, which standards are greater or more stringent than standards prescribed in applicable building, zoning, planning or other local governmental codes. Notwithstanding the foregoing, all Units and improvements constructed or installed by the Declarant shall be deemed approved by the ARC and shall not be subject to review or approval by the ARC.

8.2.3. No building, sign, outside lighting, fence, hedge, wall, walk, dock or other improvement, structure or planting shall be constructed, erected, installed, or planted until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and the location, as applicable, of same shall have been submitted to and approved in writing by the ARC.

8.2.4. Prior to the initiation of construction or installation upon any Lot, the Owner thereof shall first submit to the ARC a complete set of plans and specifications for the proposed improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, as applicable, and any other information deemed necessary by the ARC for the performance of its function. In addition, the Owner shall submit the identity of the individual or company intended to perform the work and a projected commencement and completion date.

8.2.5. All plans for the construction or installation of any improvements within the Property impacting drainage of any lot shall contain a drainage plan which shall be consistent with the master drainage plan.



8.2.6. Upon receipt by the ARC of all of the information required by this Article 8, it shall have 30 days in which to review said plans. The proposed improvements will be approved if, in the sole, absolute and unfettered opinion of the ARC, (1) the improvements will be of an architectural style and of materials that are compatible with the other structures in the Property; (2) the improvements will not violate any restrictive covenant or encroach upon any easement or platted building set back lines; (3) the improvements will not result in the reduction in property value or adversely effect the use of adjacent property; (4) the individual or company intended to perform the work is acceptable to the ARC; and (5) the improvements will be substantially completed, including all cleanup, within six (6) months of the date of commencement (twelve (12) months for the construction of a complete house). In the event that the ARC fails to issue its written approval or disapproval of the proposed construction within 30 days of its receipt of the last of the materials or documents required to complete the Owner's submission, the ARC's approval shall be deemed to have been granted without further action.

8.2.7. In the exercise of its sole, absolute, and unfettered discretion, the ARC may require the Owner to provide assurances that the improvements will be completed in accordance with the approved plans. Such assurances may include the posting of a performance bond and/or a completion bond in favor of the Association, independent professional inspection reports or sworn progress reports.

8.2.8. If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article 8 to the same extent as if erected without prior approval of the ARC. The ARC or the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

8.2.9. There is specifically reserved unto the ARC, the right of entry and inspection upon any Unit or Lot, save and except the interior of any Unit, for the purpose of determination by ARC whether there exists any construction of any improvement which violates the terms of any approval by the ARC or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The ARC is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorney's fees at all levels in connection therewith. The Association shall indemnify and hold harmless the members of the ARC from all costs, expenses and liabilities including reasonable attorney's fees incurred by virtue of any member of the ARC's service as a member of the ARC.

8.2.10. A majority of the ARC may take any action of the committee and may designate a representative to act for it. In the event of death, disability or resignation of any member of the ARC, the Board shall designate a successor. If a request for approval is pending before the ARC that must be approved or rejected before the Board has appointed a successor to the ARC member who has resigned or died or become disabled, the surviving member(s) of the ARC shall be deemed to have been named as the agent or representative of the ARC and shall have the authority to act on behalf of the ARC with respect to any such pending applications.

8.2.11. The ARC may impose reasonable fees and charges upon Owners to enable it to carry out its functions.

8.2.12. In each instance where a structure has been erected, or the construction thereof is substantially advanced, in such manner that the same violates the restriction contained in this Declaration or any other covenants which the ARC has the power to enforce, or in such manner that the same encroaches on any easement area or setback line, the Board of the Association shall have the authority to release the property from the restriction which it violated and to grant an exception to permit the encroachment by the structure over the setback line or on the easement area, so long as the ARC, in the exercise of its sole, absolute, and unfettered discretion, determines that the release or exception will not materially and adversely affect the health, safety and appearance of the Property.

8.2.13. The Board of the Association has the right, but not the obligation, to grant waivers for minor deviations and infractions of this Declaration upon its own action or at the request of the ARC. The granting of any waiver for any portion of the Property may be given or withheld in the Board's sole discretion and a prior grant of a similar waiver shall not impose upon the Board the duty to grant new or additional requests for such waivers.

8.2.14. The Association, Declarant and ARC, and any officer, employee, director or member thereof, shall not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant or ARC, or any officer, employee, director or member thereof, to recover any such damages.

**Section 8.3. Declarant Exemption; and Approval of Fences.** This Article shall not apply to the original structures erected on any Lot built by or on behalf of, and/or sold by Declarant, its successors and assigns. Notwithstanding any other provision to the contrary, as long as the Declarant continues to own any Lot or Unit in the Property, no fence, dock, or pier shall be constructed on any Lot or Common Area, unless approved by Declarant, which may be withheld, conditioned or delayed in the sole and absolute discretion of the Declarant. The authority reserved to the Declarant to approve, disapprove or condition any request for construction of a fence shall supersede the authority of the ARC, and the ARC shall not accept any application or request for approval of a fence, dock, or pier unless such application or request is accompanied by the written consent of the Declarant.

**Section 8.4. Modifications.** The ARC shall also have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Units or structures containing Units and the Open Space, if any, appurtenant thereto. The ARC may promulgate detailed standards and procedures governing modifications to existing Units or structures. In addition thereto, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the ARC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance

with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of any Owner to remodel the interior of a Unit or to paint the interior of his Unit any color desired. In the event that the ARC fails to approve or to disapprove such plans or to request additional information reasonably required within thirty (30) days after submission, the Owner shall provide the Board with a notice of such failure, and if the Board fails to respond within five (5) business days after receipt of such notice, the plans shall be deemed approved.

**Section 8.5. Review and Appeal of ARC Decisions.** The Board shall have the right to review and overturn the decisions of the ARC. Any Owner whose request for approval from the ARC has been denied, shall have the right to submit a written request to the Board for a review of the decision of the ARC. Such request must be accompanied by a complete copy of each and every plan, drawing and document submitted to the ARC, as well as copies of any correspondence or written communication between the Owner, or applicant, and the ARC, and shall state the arguments the Owner, or applicant, desires the Board to consider, and the exact form of relief requested. All such appeals shall be deemed *de novo* applications which shall be reviewed by the Board rather than the ARC, but which shall otherwise be governed by the requirements and procedures described in Section 8.2 of this Article 8. The Board shall not review decisions by the ARC granting its approval of applications presented in compliance with Section 8.2.

**Section 8.6. Address for Notice.** Requests for ARC approval or correspondence with the ARC shall be addressed to the Wyngate Forest Architectural Control Committee and mailed or delivered to the principal office of Sentry Management, 2980 Hartley Road West, Suite 4, Jacksonville, Florida, 32257, or such other address as may be designated from time to time by the ARC. No correspondence or request for approval shall be deemed to have been received until actually received by the ARC in form satisfactory to the ARC.

**Section 8.7. Non-conforming Structures.** If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article 8 to the same extent as if erected without prior approval of the ARC. The ARC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

**Section 8.8. Immunity of ARC Members.** No individual committee member of the ARC shall have any personal liability to any Owner or any other person for the acts or omissions of the ARC if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ARC or any committee member thereof arising from acts or omissions of the ARC committed in good faith and without malice.

## **ARTICLE 9**

### **EASEMENTS**

**Section 9.1. Owners' Easements of Access and Enjoyment.** Subject to the provisions below, every Owner shall have a right to use, and an easement of enjoyment in and to the Common Area, together

with an easement of access to and from the Common Area, which shall be appurtenant to and shall pass with the title to the Lot or Unit owned by such Owner, subject to the following:

9.1.1. The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure.

9.1.2. All provisions of the Declaration and the Articles and Bylaws of the Association and rules and regulations adopted by the Association. The Association shall have the right to establish and publish rules and regulations governing the use of the Common Area affecting the welfare of Association members.

9.1.3. Rules and regulations governing the use and enjoyment of the Common Area adopted by the Association; provided, however, that the Association may not restrict the persons described in Section 9.4 of this Article from the reasonable use of the Common Area in connection with the construction and sale of Units and other improvements upon the Property.

9.1.4. Restrictions contained on any and all plats of all or any part of the Common Area or filed separately with respect to all or any part or parts of the Common Area.

9.1.5. The Association shall have the right to suspend the right of use of the Common Area of an Owner for any period during which any assessment against his Lot remains unpaid for a period of over ninety (90) days; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

9.1.6. All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

9.1.7. The Association shall have the right, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Area, if any, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds ( $\frac{2}{3}$ ) of the votes of each class of membership has been recorded agreeing to such dedication or transfer.

9.1.8. The additional restrictions set forth in this Article 9.

**Section 9.2. Delegation of Use.** Any Owner may delegate, in accordance with the appropriate Bylaws, his right of ingress and egress over and across the Common Area and right of use and enjoyment of the Common Area to his guests, invitees and family members, and to tenants and contract purchasers of his Unit, and their respective guests, invitees and family members. Every Owner shall be deemed to have delegated its right of enjoyment to the Common Area to occupants or lessees of that Owner's Unit subject to the provisions of this Declaration and the Rules and Regulations, as may be promulgated, from time to time. Any such delegation or lease shall not relieve any Owner from its responsibilities and obligations

provided herein.

**Section 9.3. Utility Easements.** The Declarant reserves to itself (and its successors or assigns) for so long as Declarant owns any of the Property, and the Association thereafter, the right to grant easements to any private company, public or private utility or governmental authority providing utility and other services within the Property and the Common Property upon, over, under and across the Property. Said easements shall only be given for the purpose of maintaining, installing, repairing, altering and operating sewer lines, irrigation lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal lines and systems, pipes, wires, fiber optics lines, power lines, telephone service, gas lines, syphons, valves, gates, pipelines, cable television service, alarm systems and all machinery and apparatus appurtenant thereto to all of the foregoing as may be necessary or desirable for the installation and maintenance of utilities and providing services to Owners, the Property, and the Common Property. All such easements to be of a size, width and location as Declarant, or the Association, in its discretion, deems best but selected in a location so as to not unreasonably interfere with the use of any improvements which are now, or will be, located upon the Property.

**Section 9.4. Declarant Easements.** Declarant hereby reserves to itself, its successors and assigns, the following rights, privileges and easements, for the use and benefit of Declarant and such persons, entities and/or property as Declarant shall determine in its sole and exclusive judgment, which rights, privileges and easements may be transferred or assigned, in whole or in part, for the exclusive or nonexclusive use and benefit of the assignee provided that such transfer or assignment shall be in writing and recorded in the Public Records of Duval County, Florida.

9.4.1. There is hereby reserved unto Declarant, its successors and assigns, a perpetual easement, privilege and right in and to, over, under, on and across the Common Property for ingress and egress as required by Declarant, its officers, directors, employees, agents, independent contractors, invitees and designees; provided, however, that such access and use does not unnecessarily interfere with the reasonable use and enjoyment of the Common Property by the Owners. Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way on any of the Property owned by Declarant. The easements herein reserved by Declarant shall not structurally weaken any improvements or unreasonably interfere with enjoyment of the Property.

9.4.2. There is hereby reserved unto Declarant, its successors and assigns, a perpetual nonexclusive easement, privilege and right to install erect, operate, maintain, repair and replace utility lines, facilities, apparatus and equipment, including, but not limited to, water, sewer, electricity, natural gas, telephone, television, electronic communication, fiber optic and other service lines, facilities, apparatus and equipment, together with the right of ingress and egress, in, on, over, under and upon all easements, rights-of-way and Common Area depicted on the Plat, save and except any portion of the said areas upon which the Declarant has erected any portion of the Unit or other improvements, in which event that portion of the easement area underlying the improvements shall be deemed abandoned.

9.4.3. There is hereby reserved unto Declarant, its successors and assigns, a perpetual nonexclusive easement, privilege and right to connect the drainage facilities serving adjacent lands not encumbered by this Declaration with and to the Surface Water and Storm Water Management System

to receive and/or discharge surface water runoff in accordance with the approved drainage plans and permits applicable to the Property and such adjacent lands.

9.4.4. There is hereby reserved unto Declarant, its successors and assigns, a perpetual nonexclusive easement, privilege and right of access, ingress and egress for vehicles, equipment and pedestrians over, on and upon all streets, roads, alleys, Private Streets, Preservation Areas, Recreational Areas, Open Space and other Common Area and parking facilities located within the Property for access to the Property and to adjacent lands not encumbered by this Declaration.

9.4.5. There is hereby reserved unto Declarant, its successors and assigns, a perpetual nonexclusive easement, privilege and right for the placement and location of an electronic monitoring system installed within the Property, together with a perpetual easement for the placement and location thereof, including without limitation, conduits, wires, amplifiers, towers, antennae and related apparatus and equipment; and easement for ingress and egress to service, maintain, install, repair and replace the aforesaid apparatus and equipment.

9.4.6. There is hereby reserved unto Declarant, its successors and assigns, the right to use all portions of the Common Area in connection with its marketing activities, including, without limitation, allowing members of the general public to inspect model Units, installing signs and displays, holding promotional parties and picnics, and using the Common Area for every other type of promotional or sales activity that may be employed in the marketing of new and used residential Units. The easements created by this Section, and the rights reserved herein in favor of Declarant, shall be construed as broadly as possible and supplement the rights of Declarant set forth herein. At no time shall Declarant incur any expense whatsoever in connection with its use and enjoyment of such rights and easements.

**Section 9.5. Drainage Easement.** Drainage flow shall not be obstructed or diverted from drainage easements. The Association shall maintain all drainage easements in accordance with the conditions of the applicable drainage permits, if any. Without limitation, drainage easements may be established by the Declarant or by the Association after receiving any necessary permits or approvals from the governmental authorities, within any Lake, Open Space Area, or drainage easement area shown on the Plat of Wyngate Forest, as well as on any Lot prior to conveyance of such Lot by the Declarant to a Class A Member. Declarant hereby reserves for the benefit of Declarant a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage for any Lot. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage improvements within the Property.

Easements for installation and maintenance of utilities, storm water retention/detention ponds, and/or conservation areas are reserved as may be shown on any recorded Plat. Within these easement areas, no structure, landscaping or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements

for which a public authority, utility company or the Association is responsible. Drainage swales may be constructed within drainage easements, or elsewhere on Lots or Common Property, to contain and conduct the flow of surface water runoff. Each Owner, including but not limited to the Association and the Declarant, shall be responsible for the maintenance, operation and repair of drainage swales located on their Property. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance and other storm water management capabilities as permitted by the St. Johns River Water Management District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of a drainage swale shall be authorized, and any damage to a drainage swale, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale returned to its former condition as soon as possible by the Owner of the property upon which the drainage swale is located. No fences, walls, hedges or other improvements that interfere with, retard or redirect the flow of drainage shall be installed, or permitted to remain, in the Unobstructed Access Drainage Easement on Lots 1 through 78 and 81 through 99.

**Section 9.6. Support Easement and Maintenance Easement.** An easement is hereby created for the existence and maintenance of supporting structures (and the replacement thereof) in favor of the entity required to maintain the same. An easement is hereby created for maintenance purposes (including access to perform such maintenance) over and across Wyngate Forest (including Tracts and Units) for the reasonable and necessary maintenance of Common Area, utilities, cables, wires and other similar facilities.

**Section 9.7. Easement to Public Rights-of-Way.** Notwithstanding anything to the contrary set forth in this Declaration, to the extent necessary, each Owner shall have a nonexclusive easement for vehicular and pedestrian access to and from his Unit over any Private Streets to a public right-of-way. The easement herein granted shall be subject to the reasonable regulation of traffic by the Association, including but not limited to: speed limits; one-way streets; stop signs; yield signs; and other common traffic control signs and devices. The Association shall not have the right to restrict access to the Private Streets to Owners, resident members of the Owner's household, invited guests, commercial delivery services, government officials, including but not limited to, postal, police, fire and safety officials, vendors, contractors and tradesmen engaged by an Owner or the Declarant. The Association shall have the right, but not the obligation, to require nonresidents requesting entry to the Private Streets to stop at the entry gate and provide evidence of authorization from an Owner. The right of the Owner to use the Private Streets for access to the Owner's Unit may not be suspended or withheld for any reason, including nonpayment of assessments or failure to obey traffic regulations, however, the Association shall have the right to exercise all other remedies available at law or in equity to recover from any such Owner all unpaid assessments, and to enforce all traffic regulations, and, in the event the Association incurs any expense in so doing, in addition to any other relief obtained by the Association, either voluntarily, by agreement, through arbitration or court action, the Owner shall reimburse the Association for all its costs and expenses, including, but not limited to, all reasonable attorney's fees, expert witness fees, investigation costs and other expenses incurred by the Association at the pre-trial, trial or appellate levels. Notwithstanding anything herein to the contrary, no portion of the Private Streets may be altered without the prior written authorization of the applicable governmental authorities, or their authorized designee. No amendment to this Declaration that materially affects the Private Streets or the use of the Private Streets shall be made without the prior written approval of the applicable governmental authorities, or their authorized designee.

**Section 9.8. Service Easements.** Declarant hereby grants to delivery, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities which have been granted rights to service the Units within the Property, and to such other persons as Declarant from time to time may designate, the nonexclusive, perpetual right of ingress and egress over and across the Private Streets and Common Property for the purposes of performing their services and investigations.

**Section 9.9. Right of Entry.** The Association shall have the right, but not the obligation, to enter any Unit for emergency, security, and safety, which right may be exercised by the Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right, but not the obligation, of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board. In the event that the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association shall have the right, but not the obligation, to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

**Section 9.10. Extent of Easements.** The rights and easements of enjoyment created in this Article 9 shall be subject to the following:

9.10.1. The right of Declarant or the Association, in accordance with its Bylaws, to borrow money from any lender for the purpose of improving and/or maintaining the Common Area, Lakes, Open Space, Surface Water and Storm Water Management Systems, Recreational Areas, Preservation Areas, Private Streets, landscaping, and irrigation systems and providing services authorized herein and, in aid thereof, to mortgage said Common Area.

9.10.2. The right of the Association to suspend the rights and easements of enjoyment of any Member or any tenant of any Member for any period during which any assessment remains unpaid for over ninety (90) days, and for any period, not to exceed sixty (60) days, for any infraction of its published rules and regulation, it being understood that any suspension for either non-payment of any assessment or breach of any rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment. Notwithstanding the foregoing, no such suspension shall be imposed in violation of applicable laws.

9.10.3. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility that may be situated on or in the Common Property.

9.10.4. The right and authority of the Board to place (and remove) after notice any reasonable restrictions upon any roadways and/or Private Streets owned by the Association including, but not limited to, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. The fact that such



restrictions on the use of such roads shall be more restrictive than the laws of any state or local government having jurisdiction over the Common Property shall not make such restrictions unreasonable.

9.10.5. The right of the Association to give, dedicate, mortgage or sell all or any part of the Common Property (including leasehold interests therein) to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be determined by the Association; provided that no such gift or sale or determination of such purposes or conditions shall be effective unless the same shall be authorized pursuant to Section 15.3 of this Declaration. The Association shall deliver written notice of the meeting and of the proposed agreement and action thereunder to each Member thereof prior to such meeting as set forth in Article 15. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association, and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Property, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the Members.

**Section 9.11. Lake Maintenance Easement.** There is hereby reserved for the benefit of all Owners, the Declarant, the Association, SJRWMD, Duval County, and all other governmental authorities an easement (herein referred to as the "**Lake Maintenance Easement**") over, upon and across an area adjacent to and parallel with the boundaries of the Lots and Tracts shared with each Lake identified as Unobstructed SWMF/Drainage Easement and shown on the Plat of Wyngate Forest.

Neither the Association, the Declarant, nor any Owner shall obstruct access to the Lake Maintenance Easement, and no fence, hedge, landscaping or other improvement that would impair or restrict access to the Lake Maintenance Easement shall be installed or permitted to remain within said Lake Maintenance Easement. Neither the Association, the Declarant, nor any Owner shall install any bulkhead, pier or other structure within any Lake or Lake Maintenance Easement, and all Owners whose Lots abut the Lake Maintenance Easement shall be responsible for maintaining their Lots, including the repair or prevention of erosion, within the Lake Maintenance Easement, subject to the obligations of the Association to perform landscape maintenance set forth elsewhere in this Declaration. The beneficiaries of the Lake Maintenance Easement, including, but not limited to all Owners, shall have the right to enter the Lake Maintenance Easement at all reasonable times for the purposes of maintenance of the Lake Maintenance Easement. Notwithstanding anything in this Section to the contrary, this easement shall not interfere with home construction or any other improvement approved by Declarant and/or ARC.

**Section 9.12. Community Wall, Fence, Signage and Landscape Easement.** An easement is hereby created for the use and benefit of the Association and the Declarant for the erection and maintenance of a wall or fence, and the installation of landscaping and the erection of signs over, across and upon an area ten (10) feet wide from the rear property line boundaries including, but not limited to, Lots 1 through 7, and Lots 94 through 99, as depicted on the recorded subdivision Plat. The Declarant and/or the Association shall have the right to install, erect, construct, operate and maintain within such easement, a fence or wall, sidewalks, paths, landscaping, irrigation systems, signs, lighting and other improvements, subject to the requirements and limitations of ordinances or regulations of the governmental authorities. All improvements permanently installed in such easement by Declarant or the Association shall be and remain the property of the Association, and the Association shall operate and maintain all such permanent improvements as part

of the Common Maintenance Property of the Association as a common expense. No Owner shall unreasonably inhibit access by the Association or the Declarant for inspection or maintenance of the wall, fence or other improvements in the easement, and no Owner shall erect or install any permanent improvement within the easement area without the prior written consent of the Declarant as long as the Declarant retains Class "B" membership status, or by the Association thereafter, and such approval shall not be unreasonably withheld provided that the proposed improvements are approved by the Architectural Control Committee, and do not materially affect the use of the easement by the Association or Declarant. In those areas where the easement described herein affects easements for utilities or drainage, this easement, and the rights of the Declarant, Association and Owners, as herein described, shall be subordinate to the easements for utilities or drainage, and nothing set forth in this Section 9.12 shall limit or affect the rights of the beneficiaries of easements for utilities or drainage, nor shall the Association, the Declarant or any Owner, by virtue of this Section, have any right to erect any improvement, temporary or permanent, within the easement in violation of the rights of the beneficiaries of utility or drainage easements. All improvements installed in the easement that are designed, constructed and intended to remain indefinitely are deemed to be permanent improvements for the purposes of this easement. Declarant's marketing signs and paraphernalia intended to remain only as long as Declarant continues to market new homes in the Property, are not deemed to be permanent improvements, and shall be erected, maintained and removed by Declarant at its sole expense, and shall not be or become the property of the Association. **Nothing contained in this Section 9.12 or elsewhere in this Declaration shall obligate the Declarant or the Association to erect any particular wall, fence, or other improvements, or sign, and the design, size, style, materials and location of any such wall, fence, or other improvements, and/or signs shall be at the sole and exclusive election and determination of the Declarant and the Association.**

Section 9.13. Easement for Encroachment. The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Area caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching Property to the extent of such encroachment. An easement is hereby granted for encroachment in favor of an Owner in the event any portion of his or her dwelling unit or appurtenant improvements such as a driveway encroaches upon any of the Lots as a result of inaccuracies in survey, initial construction by Declarant, or due to settlement or movement or caused by changes in the building design or site plan, provided such changes have been approved by appropriate governmental authorities. Such encroaching improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching improvements in favor of the Owner thereof.

Section 9.14. Temporary Completion Easement. All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon adjacent Lots, provided that such easement shall terminate 24 months after the date such adjacent Lot is conveyed to the Owner by the Declarant.

Section 9.15. Sale and Development Easement. For as long as Declarant owns any Lot, there

is hereby reserved for the benefit of Declarant and its designees an easement over, upon, across and under the Property as may be reasonably required by Declarant in connection with the development, construction, sale and promotion, or leasing of any Lot or Unit within the Property, including but not limited to the free right to access and use the recreational building/facilities located or to be located on the Property, the street in front of any model areas designated by Declarant for parking by visitors and staff, to maintain and show model homes, to construct residential dwellings and related improvements, to have employees in the office, and the free right to use the Common Property, in connection with the development, construction, sale, promotion, marketing, or leasing, of any Lot or Unit within the Property. In addition, the Declarant shall have the right, without the prior approval of the Association or any Owner, to erect marketing signs within and on Declarant owned Units, and within all Tracts, and to change, move, remove, repaint, maintain and otherwise exercise complete and unfettered control over such marketing signs at all times prior to the sale of the last Unit constructed by Declarant in Wyngate Forest, and all such marketing signs shall be and remain the exclusive property of the Declarant and shall not be deemed part of the Common Property owned by the Association.

**Section 9.16. Conservation Easements.** Pursuant to the provisions of Section 704.06, Florida Statutes, Declarant hereby voluntarily grants and conveys unto St. Johns River Water Management District a non-exclusive conservation easement in perpetuity over the portions of the Property described in **Exhibit "E"**, attached hereto and incorporated herein by reference (herein referred to as the "**Conservation Easement Property**"), of the nature and character and to the extent hereinafter set forth (herein referred to as the "**Conservation Easement**").

9.16.1. **Purpose.** The purpose of this Conservation Easement is to assure that the Conservation Easement Property will be retained forever in its existing natural condition and to prevent any use of the Conservation Easement Property that will impair or interfere with the environmental value of the Conservation Easement Property.

9.16.2. **Prohibited Acts and Uses.** Any activity on or use of the Conservation Easement Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- a. Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.
- b. Dumping or placing soil or other substances or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.
- c. Removing, mowing, trimming or destroying trees, shrubs, or other vegetation.
- d. Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.
- e. Surface use, except for purposes that permit the land or water area

to remain predominantly in its natural condition.

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

g. Acts or uses detrimental to such retention of land or water areas.

h. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

i. Construction or installation of utilities on, below or above the ground without appropriate local, state and federal permits or other authorization.

j. Application of herbicides, pesticides or fertilizers.

9.16.3. **Reserved Rights.** Declarant reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Conservation Easement Property, including the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Property, that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement.

9.16.4. **Rights of SJRWMD.** To accomplish the purposes stated herein, Declarant conveys the following rights to SJRWMD:

a. To enter upon and inspect the Conservation Easement Property in a reasonable manner and at reasonable times to determine if the Association, the Owners, and Declarant or their successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.

b. To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Conservation Easement Property that may be damaged by any activity inconsistent with its Conservation Easement.

9.16.5. **SJRWMD's Discretion.** SJRWMD may enforce the terms of this Conservation Easement at its discretion, but if the Association, Declarant, or any Owner, breaches any term of this Conservation Easement and SJRWMD does not exercise its rights under this Conservation Easement, SJRWMD's forbearance shall not be construed to be a waiver by SJRWMD of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the SJRWMD's rights under this Conservation Easement. No delay or omission by SJRWMD in the exercise of any right or remedy upon any breach by the Association, Declarant, or any Owner shall impair such right or remedy or be construed as a waiver. SJRWMD shall not be obligated to Declarant, or to any other person or entity, to enforce the provisions of this Conservation Easement.

9.16.6. **SJRWMD's Liability.** The owner of the fee interest in the Conservation Easement Property shall retain all liability for any injury or damage to the person or property of third parties which may occur on the Conservation Easement Property. Neither Declarant, nor any Owner, nor any person or entity claiming by or through Declarant or any Owner, shall hold SJRWMD liable for any damage or injury to person or personal property which may occur on the Conservation Easement Property.

9.16.7. **Acts Beyond Declarant's Control.** Nothing contained in this Conservation Easement shall be construed to entitle SJRWMD to bring any action against Declarant for any injury to or change in the Conservation Easement Property resulting from natural causes beyond Declarant's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Declarant under emergency conditions to prevent, abate or mitigate significant injury to the Conservation Easement Property or to persons resulting from such causes.

9.16.8. **Recordation.** Declarant shall record this Conservation Easement in a timely fashion in the Official Records of Duval County, Florida, and Declarant and the Owners of any Lots encumbered by this Conservation Easement shall re-record it by separate instrument at any time SJRWMD may require to preserve its rights. The Owners of any Lots encumbered by this Conservation Easement shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Declarant will hold SJRWMD harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.

9.16.9. **Successors.** The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Conservation Easement Property.

**Section 9.17. Restrictive Covenants Affecting Conservation Easements and Community Wall, Fence, Signage and Landscape Easement.** No Owner or other person shall cut, remove, destroy or otherwise disturb any plant, shrub, tree or other vegetation within any Conservation Easement or Community Wall, Fence, Signage and Landscaping Easement created pursuant to Sections 9.5; 9.11; 9.12; 9.16 and 11.34, nor shall any person, including, but not limited to any Owner, the Declarant and the Association, deposit dirt, fill, grass clippings, trash, rubbish, tree trimmings, building materials or other waste within such easements without the prior written consent (as evidenced by any required permit or other official certification) of the Association, the Declarant, the County of Duval, the City of Jacksonville, and the St. Johns River Water Management District.

**Section 9.18. Easement for Access and Drainage.** There is hereby reserved for the benefit of the Association, the Declarant and SJRWMD, a perpetual non-exclusive easement over all areas of the Surface Water and Storm Water Management System for access to operate, maintain and repair the system. By this easement, the beneficiaries shall have the right to enter upon any portion of any Lot which is a part of the Surface Water and Storm Water Management System, at any reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water and Storm Water Management System as required by the SJRWMD permits. Additionally, the beneficiaries shall have a perpetual non-exclusive easement for drainage over the entire Surface Water and Storm Water Management System. No person shall alter the flow

of the Surface Water and Storm Water Management System, including the Buffer and any drainage swales, without the prior written approval of SJRWMD.

**ARTICLE 10**

**USE AND OCCUPANCY; LEASES; OWNERS MAINTENANCE**

**Section 10.1. Single Family Residential Use Only.** All Lots and dwellings shall be used and occupied for single family residence purposes only; except for normal construction activity, sale, and re-sale of a Unit, sale or re-sale of other property owned by Declarant, and administrative offices of Declarant. No Lot or dwelling may be used for commercial, institutional or other non-residential purpose if such use involves the attendance or entry of non-residents upon the Lot or otherwise diminishes the residential character of the Lot or neighborhood. This prohibition shall not apply to: (a) "garage sales" conducted with the prior written consent of the Board of the Association provided that no Owner shall conduct more than one (1) garage sale of no more than two (2) days duration during any six (6) month period; or (b) the use of any Units by Declarant as model homes or sales offices; or (c) the use of any Lots as a site for a construction office trailer or sales office trailer by Declarant; or (d) the use of a portion of a dwelling Unit as an office by the residents of the dwelling provided that such use does not involve the attendance of any person other than the residents of the dwelling, and does not establish the dwelling as the place of employment of any person not a resident of the dwelling, and, provided further, that the use does not involve attendance of clients, customers, consultants, visitors or others, or any other activity or indication of use that affects the residential character of the dwelling or the neighborhood. No Owner may actively engage in any solicitations for commercial purposes within Wyngate Forest. Notwithstanding the foregoing, this Declaration shall not be deemed to permit or authorize any use or activity that violates any applicable zoning ordinances, land use laws, professional regulations or other local, state or federal law, ordinance or regulation.

**Section 10.2. Rental of Units; Leases; Time Share.** No Unit may be used as a rooming house, hostel or hotel. No "Time-Sharing Plan" (as defined in Section 721.05 of the Florida Statutes) or any similar plan shall be permitted for any Unit. Rentals of less than 30 days duration or operation of a rooming house, hostel or hotel shall be deemed to be commercial uses for the purposes of enforcement of this Declaration, and are prohibited. No Unit may be subdivided or leased by the room, and all leases shall comply with this Declaration.

**10.2.1. Instrument in Writing.** All leases shall be in writing, and complete copies of all leases shall be delivered to the Board of the Association on or before the date of occupancy of any Tenant (herein so called) under any such lease. Each lease shall set forth the name, address and telephone number of the Owner of the Unit; the name, address and telephone number of the Tenant; the date of occupancy; the date of termination; the names of all persons who will occupy the Unit and their relationships to the Tenant; a description of each motor vehicle owned or operated by the Tenant or members of the Tenant's household; and a description of all outdoor pets to be kept at the Unit.

**10.2.2. Minimum Lease Term.** All leases shall be for a term of 6 months or longer. No Owner may rent any portion or all of a Unit for a period of less than 6 months. No Owner may rent all or any portion of a Unit more than twice in any 12-month period. If a Tenant, who has signed a lease

of 6 months or longer, defaults on the lease or abandons the Unit before the expiration of the lease term, the Owner shall have the right to find a replacement Tenant provided that the term of the lease for the replacement Tenant shall be at least 6 months, and provided further that if the replacement Tenant defaults or abandons the Unit, or if the term of the replacement lease expires before the expiration of 12 months after the date of the original lease, the Owner may not replace the replacement Tenant until the 12-month period has expired.

10.2.3. **Subleases**. If an Owner elects to permit a Tenant to sublease the Unit during the term of any lease, such sublease shall be subject to the limitations and requirements established in this Declaration to the same extent and effect as original leases.

10.2.4. **Roommates and Paying Guests**. Any person unrelated to the Owner of a Unit by parentage or marriage who pays rent or other financial consideration or otherwise contributes financially to the upkeep of the Unit or income of the Owner as a condition of cohabitation with the Owner or other occupancy of the Unit shall be considered a Tenant and shall be subject to this Declaration. Such leasing roommate/guest/tenant arrangements shall be in writing and shall comply with the conditions of this Article 10.

10.2.5. **Compliance with Amended Declaration**. All Owners and Tenants shall certify in writing to the Association, at the time copies of the leases are delivered to the Board pursuant to Section 10.2, that the Owner has delivered to the Tenant a complete copy of the Declaration, and that the Tenant acknowledges the obligation of the Tenant and all members of the Tenant's household to comply with the covenants, conditions and restrictions contained in this Declaration. No Owner may assign or otherwise transfer the Owner's rights and/or obligations under this Declaration to any Tenant, and the Association shall have the right to enforce the covenants, conditions and restrictions set forth in this Declaration against the Owner, Tenant or any member of the Tenant's household, individually or collectively. The Association shall not be bound by any provision in the lease or other agreement between the Owner and Tenant requiring prior notice or imposing other conditions on the rights of the Association. The Association shall have the right to collect all annual and special assessments imposed on the Unit from the Owner thereof, and shall not be obligated to collect any such amounts from a Tenant.

10.2.6. **Association as Third Party Beneficiary**. The Association shall be deemed a third party beneficiary of all leases of Units, and shall have the right, but not the obligation, to enforce the terms and conditions of such leases against the Tenant or the Owner. Notwithstanding the foregoing, the Association's failure to object to any term or condition of a lease or occupancy arrangement prior to commencement of the lease term shall not be deemed to be consent or approval of any term or condition of the lease, nor shall the Association have any obligation whatsoever for the performance of any obligation of Owner or Tenant contained in the lease or otherwise.

10.2.7. **Vicarious Liability of Owner for Acts of Tenant**. Notwithstanding any condition of any lease to the contrary, Owner, by acceptance of the deed to the Unit, hereby covenants and agrees with the Association and all other Owners of Units or Lots in the Wyngate Forest Community, including but not limited to Declarant, that Owner shall be responsible for the acts or omissions of any Tenant or member of the Tenant's household to the same extent that Owner would be liable for such acts or

omissions if committed by Owner or a member of Owner's household. Owner's obligations hereunder shall be deemed a guaranty of performance by Tenant, and the Association shall have the right to take any action or seek any remedy for Tenant's failure or refusal to comply with the covenants, conditions and restrictions of this Declaration directly from or against the Owner without first taking such action or obtaining such remedy from or against the Tenant. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies' of rights of subrogation.

**Section 10.3. Construction of Common Area Facilities.** Declarant as "Developer" has constructed or will construct, at its sole cost and expense, certain facilities and improvements as part of the Common Area, together with equipment and personalty contained therein, and such other improvements and personalty as Declarant determines in its sole and absolute discretion. Declarant shall be the sole judge of the composition of such facilities and improvements. Prior to the Community Completion Date Declarant reserves the absolute right to construct additional Common Area facilities and improvements within Wyngate Forest, from time to time, in its sole and absolute discretion, and to remove, add, modify, and change the boundaries, facilities and improvements now or then part of the Common Area. Declarant is not obligated to, nor has it represented that it will, modify or add to the facilities, improvements, Common Area as they are contemplated as of the date hereof. Declarant is the sole judge of the foregoing, including the plans, specifications, design, location, completion schedule, materials, size, and contents of the facilities, improvements, appurtenances, personalty (e.g., furniture), color, textures, finishes, or Common Area, or changes or modifications to any of them.

10.3.1. **Use of Common Area by Developer.** Until the Community Completion Date Developer shall have the right to use any portion of the Common Area, without charge, for any purpose deemed appropriate by Developer.

10.3.2. **Conveyance.** Within one hundred eighty (180) days after the Community Completion Date, or earlier as determined by Declarant in its sole discretion, or as otherwise designated elsewhere by this Declaration, all or portions of the Common Area may be dedicated by Plats, created in the form of easements, or conveyed by written instrument recorded in the Public Records, or by Quitclaim Deed from Declarant to Association. The dedication, creation by easement, or conveyance shall be subject to easements, restrictions, reservations, conditions, limitations, and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership operation, maintenance, and administration of the conveyed portions of Common Area and other obligations relating to the Common Area imposed herein. Association shall, and does hereby, indemnify and hold Declarant harmless on account thereof. Association, by its joinder in this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. The Common Area, personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREA BEING CONVEYED.

10.3.3. **Operation After Conveyance.** After the conveyance or dedication of any portion of the Common Area to Association, the portion of the Common Area so dedicated shall be owned,



operated and administered by Association for the use and benefit of the owners of all property interests in Wyngate Forest including, but not limited to, Association, Declarant, Owners and any Lenders. Subject to Association's right to grant easements, and other interests as provided herein, Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Area to a third party **without** (i) if prior to the Community Completion Date, the approval of (a) a majority of the Board; **and** (b) the consent of Declarant, **or** (ii) from and after the Community Completion Date, approval of (a) sixty-six and two-thirds percent (66  $\frac{2}{3}$ %) of the Board; and (b) seventy-five percent (75%) of all of the votes in Association.

**Section 10.4. Owners' Maintenance Obligations.** Each Owner, at its own cost, shall be exclusively responsible for performance of all maintenance obligations for their Unit including, without limitation:

10.4.1. **Lawn Care and Landscape Maintenance.** Mowing, trimming, edging of lawns, and all grass areas of said Unit and in the area between the front Lot line and the curbing or road pavement, and pruning, trimming, weeding, of trees, shrubs and flower beds;

10.4.2. **Lake Banks.** Certain Units within the Property abut a Lake Tract, as more specifically set forth in the Plat. Each Owner of such a Unit shall be responsible for the maintenance of the "lake bank," as hereinafter defined, including the maintenance and replacement of all grass and plants therein, and such Owner shall be responsible for maintaining an extension of such Owner's sprinkler system upon such "lake bank" and to irrigate such "lake bank." For the purposes hereof, the term "lake bank" is defined to mean the upland area abutting a Unit which is bounded by the water's edge, and the extension, to the water's edge, of the Unit's boundary lines which are perpendicular to the water's edge.

10.4.3. **Irrigation System.** Operation, maintenance and replacement of all irrigation system lines, pumps, meters, timers, sprinkler heads or other apparatus, equipment or machinery;

10.4.4. **Exterior of Unit.** Maintenance, repair and replacement of all portions of any Unit, including but not limited to all plumbing and electrical components thereof, exterior elements of the Unit, including but not limited to the walls, roof, paint, garage doors, entry/exit doors, window screens, all glass surfaces and windows, all swimming pools, pool equipment and machinery, swimming pool screen enclosures, swimming pool decks, all planters and landscaping incorporated into swimming pool decks or enclosures, or affixed to the Unit or any patio or extension of the Unit, patios, walkways and driveways, outbuildings or other improvements.

10.4.5. **Alterations.** Owners shall not make any alterations or additions to any Unit, including any changes or alterations of landscaping, ground cover or grass, without first obtaining the written consent of the ARC pursuant to Article 8.

10.4.6. **Maintenance of Premises and Landscaping.** No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any Lot, and no refuse or unsightly objects shall be allowed to be placed or suffered to remain upon any Lot. All lawns, landscaping and irrigation systems, and any property, structure, improvement and appurtenance shall be kept in good, safe, clean, neat and attractive condition. All areas not covered by Structures, walkways or paved parking facilities shall be

maintained as lawn or landscape areas, with underground irrigation systems, to the pavement edge of any abutting streets and to the water line of any abutting lakes, canals or water bodies. No stone, gravel, or paving of any type shall be used as a lawn unless approved as part of the final landscape plan.

10.4.7. **Irrigation System.** Operation, maintenance and replacement of all irrigation system lines, pumps, meters, timers, sprinkler heads or other apparatus, equipment or machinery within the Lot and/or Unit shall be the sole responsibility of the Lot and/or Unit Owner. Due to water quality, irrigation systems may cause staining on Units, other structures or paved areas. It is each owner's responsibility to treat and remove any such staining. Association may require from time to time, that Owners adopt systems to prevent stains (e.g., automatic deionization systems). No Owner whose Unit adjoins a waterway or lake may utilize the waterway or lake to irrigate unless so provided by Declarant as part of original construction, subject to applicable permitting. Association may use waterways and lakes to irrigate Common Area, as applicable subject to applicable permitting. BY ACCEPTANCE OF A DEED TO A UNIT OR PARCEL, EACH OWNER ACKNOWLEDGES THAT THE WATER LEVELS OF ALL LAKES AND WATER BODIES MAY VARY. **THERE IS NO GUARANTEE BY DECLARANT OR ASSOCIATION THAT WATER LEVELS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME.** Declarant and Association shall have the right to use one or more pumps to remove water from lakes and water BODIES for irrigation purposes at all times, subject to applicable permitting. Declarant may utilize a computerized loop system to irrigate the Common Area and/or Units. Any computerized loop irrigation system that is not specifically the maintenance obligation of Owners, shall be the maintenance obligation of Association and shall be deemed part of the Common Area.

10.4.8. **Alterations.** Owners shall not make any alterations or additions to any Unit or Common Area, including without limitation, any changes or alterations of landscaping, ground cover or grass, without first obtaining the written consent of the ARC pursuant to Article 8. Alterations or additions to Units that would affect the expense of the maintenance obligation of the Association may be rejected for that reason alone, without consideration of the aesthetics or benefits of the proposed alteration or addition.

10.4.9. **Lake Banks.** Certain Units within the Property abut a Lake, as more specifically set forth in the Plat. The Association shall be responsible for the maintenance of the Lake Bank, as hereinafter defined, including the maintenance and replacement of all grass and plants therein, and such Owner shall be responsible for maintaining a sprinkler system upon such Lake Bank and to irrigate such Lake Bank. For the purposes of this Section, the term "**Lake Bank**" is defined to mean the upland area abutting a Unit which is bounded by the water's edge, and the extension, to the water's edge, of the Unit's boundary lines which are perpendicular to the water's edge.

10.4.10. **Duty to Report.** Owners shall promptly report to the Association, any condition of the landscaping or irrigation of any Unit in need of maintenance or repair.

10.4.11. **Liability for Actions.** Each Owner shall be liable for the expense incurred by the Association for any maintenance, repair or replacement of any real or personal property made necessary by the act, neglect or carelessness of the Owner or the Owner's tenants or any member of their families, or their guests, employees or agents (normal wear and tear excepted). Each Owner shall also be liable for any personal injuries caused by his negligent acts or those of his tenants or any member of their

families, or their guests, employees or agents. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies' of rights of subrogation.

**Section 10.5. Amenity Maintenance.** The Association shall be responsible for the maintenance, repairs, and up-keep of the amenities and Common Area of Wyngate Forest.

**Section 10.6. Scheduling and Control.** The Association shall have the exclusive right to control the timing of the performance of the services described in the notice sent to Members by the Board, including the hours of the day and days of the week on which such services will be performed, as well as the schedule of irrigation and application of fertilizers, pesticides, herbicides, fungicides and other agents. No Owner shall interfere with the performance of the services by the Association or its contractors, agents or employees, or alter the schedule of irrigation established by the Association.

**Section 10.7. Indemnification.** The Association covenants and agrees that it will indemnify and save and hold harmless Declarant from and against: (i) any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about any Unit within the Property or elsewhere within the Property; (ii) any and all costs, reasonable legal fees, expenses and liabilities incurred in connection therewith; (iii) the investigation thereof or the defense of any action or proceeding brought thereon; and (iv) any and all orders, judgments and/or decrees in connection with, relating to, arising from the performance by or failure to perform by the Association of its obligations under this Declaration. Included in the foregoing provisions of indemnification are any expenses that Declarant may incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions, and covenants contained in this Declaration to be kept and performed by the Association.

**Section 10.8. Exculpation of Association and Declarant.** The Declarant shall have no obligation whatsoever for the performance of any service described in this Declaration, or for the failure or refusal of the Association to perform such services.

**Section 10.9. Events of Force Majeure.** Notwithstanding anything herein to the contrary, neither the Association, nor its officers or directors, nor Declarant shall be liable for any damages suffered by any Owner resulting from acts of God, natural disaster, bad weather or other events or conditions beyond the control of the Association, including but not limited to, damage or destruction of landscaping (including trees, shrubs and other plants), or damage caused by wind blown debris. In the event of loss or damage to landscaping on any Lot, the Owner of said Lot shall be exclusively responsible for payment of all costs of restoration or replacement, and shall cause such damage to be completely repaired within six (6) months after the event. If any Owner shall fail to repair such damage within such time period, the Association shall have the right, but not the obligation, to perform such restoration, repair or replacement, and the cost thereof shall be assessed against the Lot as a Special Assessment. By acceptance of the deed to the Lot, each Owner, for and on behalf of himself/herself and any insurer, hereby waives all rights of subrogation against the Association, its officers and directors, and Declarant for recovery of costs expended by any such insurer for the restoration, repair or replacement of damage to, or caused by, any landscaping (including trees, shrubs and other plants) or wind blown debris.

**Section 10.10. Re-zoning Prohibited.** No Lot shall be re-zoned to any classification allowing commercial, institutional or other non-residential use without the express consent of the Association and Declarant, which may be withheld in Declarant's sole discretion. Notwithstanding Section 16.2 to the contrary, Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved re-zoning at the expense of the enjoined party.

## **ARTICLE 11**

### **USE RESTRICTIONS**

**Section 11.1. Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**Section 11.2. Development Activity.** Notwithstanding any other provision herein, Declarant and its successors and assigns, shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of dwelling units on the Property.

**Section 11.3. Temporary Structures.** No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, or for any other purpose, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant to use trailers or outbuildings as sales offices, construction offices or material storage facilities.

**Section 11.4. Signs.** No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the subdivision or carried by any person, or by any other means displayed within the subdivision except the following:

11.4.1. **Address Signs.** An Owner may display an address sign or marker in the form and style first installed by the Declarant, or in such other form or style approved by the ARC pursuant to Article 8.

11.4.2. **For Sale Signs.** An Owner may erect one (1) sign not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground, or in form and size otherwise approved by the ARC, advertising the Unit for sale.

11.4.3. **Declarant's Signs.** Signs or billboards may be erected by the Declarant.

11.4.4. **Political Signs.** Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election.

11.4.5. **Compliance with Laws.** Notwithstanding the foregoing, Owners erecting signs permitted by this Section 11.4 shall comply with all local and state laws, ordinances and regulations governing such signs, including any requirements for permits. This paragraph shall not be deemed to permit any signs except those specifically enumerated in paragraphs (a) through (d) above.

**Section 11.5. Campers, Boats and Recreational Vehicles.** No campers, boats, boat trailers, recreational vehicles and other types of non-passenger vehicles, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within the garage located on such Lot and/or said vehicles and accessories are screened from view by a screening structure or fencing approved by the ARC, and said vehicles and accessories are in an operable condition. The ARC, as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view, other than that which is previously approved by Declarant prior to Turnover, which approval previously given by Declarant shall not be rescinded by the Board and/or the ARC. Upon an adverse determination by the ARC, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this paragraph. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. No commercial vehicle bearing commercial insignia or names shall be parked on any Lot except within an approved enclosed structure or a screened area which prevents such view thereof from adjacent lots and streets, unless such vehicle is temporarily parked for the purpose of serving such Lot.

**Section 11.6. Animals, Pets, Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that cats, dogs or other generally recognized household pets of a reasonable number may be kept in a Unit, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further, than no more than four (4) animals may be kept on a single Lot. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Wyngate Forest Owners' Association. Notwithstanding the foregoing, this Section 11.6 shall not be deemed to permit any Owner to keep any animal in violation of any local, state or federal law, ordinance or regulation.

**Section 11.7. Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment and containers for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage and rubbish and on which days only, such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but shall be removed from view before the following day.

**Section 11.8. Sight Distance at Intersections.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) and ten (10) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and in a line connecting them at points thirty-five (35) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line

limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

**Section 11.9. Parking.** No vehicles, trailers, implements or apparatus may be driven or parked in the Common Area or areas not intended for vehicular access or on any easement area unless in use for maintaining such Common Area.

**Section 11.10. Business, Commercial or Institutional Use.** No trade, business, profession, or commercial activity, or any other non-residential use, shall be conducted by a Unit Owner or resident of a Unit, if in connection therewith customers, patients, deliveries, or the like come to the Unit or if such nonresidential use is otherwise apparent from the exterior of the Unit. The foregoing shall not apply to construction offices, model homes and sales offices of Declarant as set forth in this Declaration, and shall not preclude Declarant's activities association with the construction, development and sale of Lots and Units within the Property or any portion thereof.

**Section 11.11. Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior consent of the ARC. Every outbuilding, inclusive of such structures as a storage building, greenhouse or children's playhouse shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. In no instance shall an outbuilding exceed one (1) story in height or have total floor area in excess of ten percent (10%) of the floor area of the main dwelling. Notwithstanding the foregoing, this Section 11.11 shall not be deemed to permit the erection of any outbuilding in violation of any construction, zoning or land use laws, ordinances or regulations of the local, state or federal governments.

**Section 11.12. Fences, Walls, and Hedges.** No fence, walls or hedge shall be erected or maintained on any Lot except for: (1) fences, walls, and hedges erected in conjunction with model homes or sales offices; (2) Common Area walls, fences, hedges, or buffering or screening structures, landscaping or improvements erected by the Declarant or the Association; (3) fences, walls, and hedges erected by the Declarant as part of the original architecture of the Unit to which they are appurtenant and in compliance with the plans and specifications therefor approved by the Declarant or the ARC; (4) fences, walls, hedges or enclosures for swimming pools in compliance with local or state ordinances and laws, subject to approval by the ARC pursuant to Article 8; or (5) subject to approval by the ARC pursuant to Article 8, wood shadowbox fences, and aluminum picket rail fences situate on rear Lot lines and side Lot lines and hedges; provided, that no such fence or hedge shall exceed a height of six (6) feet measured from ground level; and no fence shall be permitted on the lot side adjacent to a street unless such fence is screened by a landscape hedge approved by the ARC. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) and ten (10) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and in a line connecting them at points thirty-five (35) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley

pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. Except as may be necessary to maintain the sight distances required by Section 11.8, side yard fences on corner Lots must be erected inside the side street setback line of the Lot. All fences shall be constructed of wood or masonry except for retaining walls installed by Declarant or retaining walls or decorative walls approved by the ARC. All fences shall be of uniform height except sales office or model home fences. No chain-link, metal cloth or agricultural fences may be built or maintained on any Lot. This prohibition shall not apply to any chain link fence erected by the Association or Declarant between any Lot and any Wetland Areas. Unless otherwise agreed between Owners, side and rear yard fences that separate adjacent lots shall be owned and maintained by the Owner on whose Lot the fence exists, or if the location is indefinite, such fence will be maintained by the Owners whose Lots are involved jointly with expenses being shared equally.

**Section 11.13. Landscaping.** Decorative ground cover rock in the front and side yard may not exceed ten (10) percent of the total area of the front and side yard. Lawns must be properly maintained (not to exceed six (6) inches in height).

**Section 11.14. Television and Radio Receiving Devices.** No exterior radio or television antenna, satellite dish, microwave antenna or other antenna or device for sending or receiving television or radio signals may be erected or maintained on the exterior of any Unit in the Property in such a manner as to be visible to an observer from the street in front of the Unit. Television and/or radio receiving devices may be erected on the exterior of a Unit in a location that does not allow them to be visible to an observer from the street in front of the Unit if such devices are approved for installation by the ARC, provided however, that satellite receiving dishes in excess of 39 inches in diameter shall be prohibited on all Lots. Notwithstanding the foregoing, the Board of the Association shall have the authority to establish size limitations for television and radio receiving devices that do not have a material effect upon the appearance of the Unit which devices may be approved for use in areas that are visible to an observer from the street if advances in technology create devices that are unobtrusive and do not materially affect the appearance of the Unit. By acceptance of a deed to a Unit within the Property, each Owner agrees that this restrictive covenant is a reasonable limitation on the Owners' ability to receive television and/or radio transmissions, and (1) does not unreasonably delay or prevent installation, maintenance or use of television or radio receiving devices, (2) does not unreasonably increase the cost of installation, maintenance or use of television or radio receiving devices, (3) does not preclude reception of an acceptable quality television or radio signal, and (4) does not impose an unnecessary burden, expense or delay on any Owner. Each Owner covenants with Declarant and every other Owner that the rights of the Association and all other Owners of Units in the Property in the protection of property values and the architectural character and aesthetics of the Property supersedes and takes precedence over the interests of each individual Owner in the placement of television and radio receiving devices, and that the limitations established in this Declaration provide each Owner reasonable alternatives for receiving quality television and radio signals without the necessity of erecting receiving devices in locations that are visible to observers from the street in front of the Unit or otherwise materially affect the appearance of the Unit. Therefore, each Owner agrees to be bound by this limitation and waives the benefits of any contrary rule or regulation promulgated by the Federal Communications Commission or other governmental body or agency.

**Section 11.15. Exterior Finish.** All exterior walls of all dwellings, garages and approved accessory

buildings shall be completely finished with wood, stucco, brick, stone, paneling or other material acceptable to the ARC in keeping with the general appearance fo the neighborhood. No unpainted concrete block surfaces shall be visible on any exterior wall. The first floor exterior walls of the main residence building constructed on any Lot shall be composed of masonry or masonry veneer (including stucco), said requirement to apply to all first floor exterior walls, excluding windows, doors or other openings and gable ends. The minimum masonry requirement specified shall apply to the lower floor only for a two-story dwelling. Masonry or masonry veneer includes stucco, ceramic tile, clay, brick, rock and all other materials commonly referred to in the Duval County, Florida area as masonry. Notwithstanding the foregoing, the ARC is empowered to waive this restriction if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and the resulting structure will not detract from the general appearance of the neighborhood.

**Section 11.16. Chimneys.** All fireplace flues, smoke stacks and spark arresters shall be completely enclosed and concealed from public view in finished chimneys of materials architecturally compatible with the principal finish material of the exterior walls of the dwelling or otherwise approved by the ARC.

**Section 11.17. Clothes Hanging Devices.** Clothes hanging devices exterior to a dwelling shall not exceed six (6) feet in height and shall not be placed nearer to any street abutting the Lot than the side yard setback line or the back of the Unit constructed on the Lot. Clothes hanging devices shall be screened from public view by a fence approved by the ARC. Such fence shall be erected by the Owner before any clothes hanging device is erected.

**Section 11.18. Window Treatment.** No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

**Section 11.19. Oil and Mining Operations; Hazardous Materials.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground. No hazardous, flammable or explosive materials shall be kept, stored or disposed of on any Lot except household chemicals, cleansers, lubricants and the like, which may be kept and used in conventional domestic applications and amounts in accordance with applicable environmental laws and regulations.

**Section 11.20. Mail Boxes.** Mail boxes shall be erected and maintained upon areas determined by the U.S. Postal Service in accordance with the current postal authority standards and the approval of the ARC. If the U.S. Postal Service requires the use of "cluster" type mailboxes, such mailboxes shall be erected and maintained by the Association within the right-of-way of the Private Streets or on other Common Property at locations required or approved by the Postal Service. If the Postal Service provides door-to-door delivery service, each Owner shall be responsible for erecting and maintaining the Owner's mail box in accordance with Postal Service regulations, subject to approval of the ARC of any deviation from the original mail box installed by the Declarant.



**Section 11.21. Garages.** An enclosed garage able to accommodate at least two (2) automobiles must be constructed and maintained for each residence. The openings of such garages must be situated within the setback lines set out herein. If the garage is detached from the house, it shall be located entirely in the rear yard area and not less than five (5) feet from any side or rear Lot line and in the case of corner Lots, not less than the distance required for dwellings from side streets. Garages may be used as the Declarant's sales offices prior to permanent occupancy of the main structure, however, sales offices must be converted to garages prior to permanent occupancy. Detached garages may not exceed a height of eighteen feet (18') at the highest ridge point of the roof measured from the existing ground unless prior written approval is obtained from the Architectural Review Committee. With the exception of periods when garages are used as sales offices, all garages shall be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation.

**Section 11.22. Roof.** No exposed roof surfaces on any principal and/or secondary structures shall be of wood shingles or wood shakes unless rated by the State Insurance Board or other appropriate governmental authority as meeting fire retardant standards. The ARC shall have the authority to approve roof treatments and materials when in its determination such treatments and materials, in the form utilized will not be a detriment to the quality of the Community.

**Section 11.23. Setback Lines.** All buildings or other structures, permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with setback lines shown on the recorded Plat or imposed by the governmental authorities. In no event shall any such building or other structure be constructed, placed or maintained within 5 feet of the side boundary of a Lot (except for Lots bordering a side street, in which case the side street setback line shall be 10 feet) or within 10 feet of the rear boundary of a Lot. Front setback lines for one story homes are hereby established at 20 feet, and for two story homes at 20 feet. Detached garages and temporary structures shall be located entirely in the rear yard area and not less than 5 feet from any side or rear Lot line and in the case of corner Lots, not less than the distance required for dwellings from side streets. The eaves, steps and porches of buildings shall not be deemed to be a part of a building or structure for the purpose of this covenant. Notwithstanding the foregoing, the ARC shall have the right and authority to approve variances from the setback requirements for reasonable cause or to alleviate a hardship, however, no such variances granted by the ARC shall effect to rights of the governmental authorities to enforce the setback requirements shown on the Plat.

**Section 11.24. Sports Equipment, Athletic and Recreational Facilities.** Outdoor athletic and recreational facilities such as basketball goals, swing sets and sport courts of either a permanent or temporary nature shall not be placed on any Lot in Wyngate Forest between the street right-of-way and the front of a Unit and at all times must be approved by the ARC pursuant to Article 8. No permanently installed basketball poles and backboards are permitted. No portable basketball backboards may be kept outside of a Unit overnight or when not in use. Tennis court lighting and fencing shall be allowed only with the approval of the ARC.

**Section 11.25. Water and Sewage Systems.** No individual water supply system or sewage disposal system shall be permitted on any Lot, including but not limited to water wells, cesspools or septic tanks.

**Section 11.26. Exterior Holiday Decorations.** Lights or decorations may be erected on the exterior of Units in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sight-seers. All lights and decorations that are not permanent fixtures of the Unit which are part of the original construction or have been properly approved as permanent improvements by the ARC shall be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 15th of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday. The Association shall have the right, upon thirty (30) days prior written notice to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Association, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion or damages of any kind except intentional misdeeds and gross negligence.

**Section 11.27. Solar Energy Devices.** No Owner may erect or maintain solar collector panels or other solar energy devices or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view at a point in the center of the public street right-of-way directly in front of the house erected on such Lot; and no such apparatus shall be erected without the prior written consent of the ARC.

**Section 11.28. Lakes.** The Association will maintain the Lakes. The Lakes may be used by the Association for irrigation. No swimming is permitted. The use of sailboats, rowboats, or any other boats with or without engines or motors are not permitted. The parking and storage of boats, boat trailers, or the like is prohibited unless fully enclosed and stored within a garage upon a Unit. Declarant and Association shall not be obligated to provide supervisory personnel for the Lakes. ANY INDIVIDUAL USING THE LAKES SHALL DO SO AT HIS/HER OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

**Section 11.29. Docks.** Docks, ramps or floats are prohibited in any of the water bodies or lake banks within Wyngate Forest. Any permanent disturbance to the existing natural shoreline is not permitted. This prohibition does not apply to the Declarant or the Association for a Common Area installation.

**Section 11.30. Discharge into Water Bodies.** Nothing other than storm water or irrigation waters may be discharged into any lake, canal, or other body of water located within or adjacent to the Property. The construction and/or installation of any device through which water is drawn shall be subject to the prior written approval of the ARC as set forth in Article 8 of the Declaration. Irrigation water may not be withdrawn from any body of water within the Property or the ground without the consent of the Declarant, its successors and assigns, which consent may be withheld in the sole discretion of Declarant, its successors and assigns.

**Section 11.31. No Interference With Construction.** No Owner nor the Association, no the ARC shall interfere with or impede any of Declarant's development, construction and marketing activities within the Property, so long as Declarant shall be performing same.

**Section 11.32. Swimming Pools.** No above-ground swimming pools, spas, or the like, shall be installed without the consent of the Association.

**Section 11.33. Hurricane Shutters.** Any hurricane or other protective devices visible from outside a Unit shall be of a type approve by the ARC. Panel, accordion and roll-up style hurricane shutters may not be left closed during hurricane season. Any such approved hurricane shutters may be installed or closed up to seventy-two (72) hours prior to the expected arrival of a hurricane and must be removed or opened within seventy-two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise.

**Section 11.34. Notice to Owners; Non-Disturbance; and Maintenance.** Certain Lots or Units may include, or be adjacent to wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements. It is the Lot Owner's responsibility not to remove native vegetation that becomes established within the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements abutting their property. Removal includes dredging, the application of herbicide, and cutting. Lot Owners should address any question regarding authorized activities within the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements to SJRWMD, Environmental Resource Regulation Department. The SJRWMD may authorize removal of certain exotic or nuisance vegetation upon application by Lot Owners or the Association. Each Lot Owner, by acceptance of the deed conveying title to the Owner, is deemed thereby to have accepted the partial assignment of the surface water permit(s) affecting the Lot and to have agreed to abide by all conditions of the permit(s) including, but not limited to, agreement of the Lot Owner not to violate the conditions of the permit(s) regarding dumping of household trash, fill or landscape trimmings or planting or removal of plant life. Lot Owners are hereby notified that activities such as planting grass, sodding, planting any shrub, tree or flower, trimming or removing dead or damaged vegetation, filling low areas, distributing dirt more evenly, digging drainage ways, erecting fences, paving, constructing playhouses or treehouses, or in any other way disturbing the wetlands or preserve areas is subject to strict regulation, and no such activities should occur unless a valid permit has been first obtained.

## **ARTICLE 12**

### **PICKETING AND DEMONSTRATIONS**

By acceptance of the deed to any Lot covered by this Declaration, the Owner covenants and agrees with the Owners of all other Lots within the subdivision, that no Owner or resident of any Lot shall engage in picketing, protest marches, sit-in demonstrations, protest speeches or other forms of public protest, including without limitation, displaying signs or placards within public view, upon any Lot or within any Common Area, easement or street adjacent to any Lot, or affixed to any vehicle or apparatus upon or adjacent to any Lot, street, easement or Common Area. This prohibition shall not affect the right of any person to participate in any other form of public protest conducted outside the area depicted on the recorded Plat of Wyngate Forest. No Owner or resident of any Lot shall engage in conduct that tends to vilify, ridicule, denigrate, or impugn the character of any other Owner or resident if such conduct occurs on any Lot, Common Area, easement or street depicted on any Plat of Wyngate Forest. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations

on his or her constitutional right of free speech and to recognize and agree that all Owners have the right to the peaceful enjoyment of their property; the right of privacy; the right to practice their own religion; the freedom of association; the right to engage in a profession, business or life-style of their own choosing provided that the conduct of such profession, business or life-style is not illegal and does not otherwise violate any provision of this Declaration.

### ARTICLE 13

#### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Units in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 13.1. Rights of Eligible Holders. The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

13.1.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any Association insurance policy;

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders; or

(e) If the U.S. Department of Housing and Urban Development is insuring or the U.S. Department of Veterans Affairs is guaranteeing the Mortgage on any Lot, material amendment to the Governing Documents or extraordinary action of the Association, as defined under VA Pamphlet 26-7, as it may be amended or superceded.

Otherwise, no consent from Eligible Holders shall be necessary to enable the Association to accomplish any of its operational duties and responsibilities or to exercise any of its rights.

13.1.2. **Special FHLMC Provision.** If any portion of the Community is a condominium, then to the extent required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Class "A" Members representing at least 67% of the total Association vote consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (any decision or action in accordance with the provisions of this Declaration or any Supplemental Declaration subsequently recorded on any portion of the Community resulting in the levy of Neighborhood Service Area Assessments shall not be subject to this provision);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

13.3. **Other Provisions for First Lien Holders.** To the extent not inconsistent with Florida law:

(a) Any restoration or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to Mortgages held by such Eligible Holders are

allocated.

13.4. **Amendments to Documents.** The following provisions do not apply to amendments to the Governing Documents or termination of the Association as a result of destruction, damage, or condemnation pursuant to Section 15.3(a) and (b), or to the addition of land in accordance with Article IX.

(a) The consent of at least 67% of the Class "A" votes, and the consent of Declarant, during the Development and Sale Period, and the approval of the Eligible Holders of first Mortgages on Lots to which at least 67% of the votes of Lots subject to a Mortgage appertain, shall be required to terminate the Association.

(b) If and to the extent FHA or VA is insuring or guaranteeing any Mortgage on a Lot, the consent of at least 67% of the Class "A" votes, and the consent of Declarant, during the Development and Sale Period, and the approval of Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, By-Laws, or Articles, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Maintenance Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Maintenance Area;
- (vi) responsibility for maintenance and repair of the Community;
- (vii) expansion or contraction of Community or the addition, annexation, or withdrawal of property to or from the jurisdiction of the Association;
- (viii) boundaries of a Lot;
- (ix) leasing of Lots;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;
- (xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or

(xii) any provisions included in the Governing Documents which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots.

13.5. **Construction of Article XV.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the By-Laws, or Florida law for any of the acts set out in this Article.

13.6. **No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.7. **Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering the Owner's Lot.

13.8. **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be conclusively deemed to have irrevocably approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified mail, return receipt requested; overnight delivery by a nationally recognized courier that provides tracking and receipt services; or personal delivery.

13.9. **HUD/VA Approval.** As long as there is a Class "B" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA"), if either such agency is insuring or guaranteeing the Mortgage on any Lot or has granted project approval for such Mortgages: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; dedication, conveyance (other than to correct errors on property descriptions or other inconsequential or immaterial conveyances), or mortgaging of Common Area; or material amendment of this Declaration or the By-Laws. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section.

## **ARTICLE 14**

### **INSURANCE AND CASUALTY LOSSES**

**Section 14.1. Common Area.** The Association shall keep all improvements, facilities and fixtures located within the Common Area insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance for and on behalf of itself and all Members. The insurance coverage with respect to the Common Area shall

be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the assessments made by the Association.

To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Association shall contain provisions, or be accompanied by endorsements, for: agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction.

All insurance policies shall contain standard mortgagee clauses, if applicable.

The Association shall also maintain, to the extent any insurable improvements to Common Area are within an "A" flood zone, flood insurance in an amount equal to the lesser of 100% of the replacement costs of all insurable improvements (if any) within the Common Area or the maximum amount of coverage available under the National Flood Insurance Program, whichever is less.

**Section 14.2. Waiver of Subrogation.** As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Members, Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

**Section 14.3. Liability and Other Insurance.** The Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, with coverage of at least \$1,000,000.00 (if available at reasonable rates and upon reasonable terms) for any single occurrence, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross liability endorsement insuring each Member against liability to each other Member and to the Association and vice versa. The Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Member and the Association and its Board and officers, from liability in connection with the Common Area, the premiums for which shall be common expenses and included in the assessments made against the Members. The Association may also obtain such other insurance as the Board deems appropriate. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its discretion.

The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board or any management company engaged by the Association against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or any committee thereof. At a minimum, however, there shall be blanket fidelity bonding of anyone (compensated or not) who handles or is responsible for funds held or administered by the Association, with the Association to be an obligee thereunder. Such bonding shall cover the maximum funds to be in the hands of the Association or management company during the time the bond is in force. In addition, the fidelity bond coverage must at least equal the sum of three (3) months' of regular



assessments, plus all reserve funds.

**Section 14.4. Damage and Destruction.**

14.4.1. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Property to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

14.4.2. In the event of damage or casualty loss to the improvements, if any, erected on the Common Property, which in the opinion of the Board, should not be repaired or reconstructed, the Board shall deliver written notice thereof to each Member stating (1) the amount of the insurance proceeds to be paid to the Association by the insurer as a result of the loss; (2) the estimated cost of repair or reconstruction; and (3) a request that each Member deliver a written response voting for or against repair or reconstruction within 30 days after receiving the Board's notice. Such notice shall be sent to each Member within 60 days after the Board has received the settlement offer of the insurer and the estimated cost of repair or reconstruction from a qualified contractor. The Association shall make the repairs or reconstruct the improvements unless at least 75% of the Members of each class of membership vote not to do so. No Eligible Holder shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed; provided, however, this provision shall not apply to construction Mortgagees, if any, providing construction financing for such damaged Common Property.

14.4.3. In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized by the Members, then and in that event the affected portion of the Common Property shall be restored to its natural state and maintained by the Association in a neat and attractive condition.

**Section 14.5. Disbursement of Proceeds.** If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Property shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Eligible Holders as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Eligible Holder of a Unit and may be enforced by such Mortgagee.

**Section 14.6. Repair and Reconstruction.** If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a Special

Assessment against all Owners on the same basis as provided for Annual Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

**Section 14.7. Owners' Insurance.** By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 8. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition. The Owner shall pay any costs which are not covered by insurance proceeds.

## **ARTICLE 15**

### **GENERAL PROVISIONS**

**Section 15.1. Duration.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, Voting Members representing three-fourths ( $\frac{3}{4}$ ) of the votes of the Association vote in favor of terminating this Declaration at the end of its then current term. Termination of this Declaration is deemed to be an "Extraordinary Action" subject to the provisions of Sections 15.3 and 15.3.

Written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least sixty (60) days in advance of said meeting. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution.

Said certificate shall be recorded in the Public Records of Duval County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Termination of the Association shall not have the effect of terminating easements herein provided or granted prior to such termination, or terminating contractual rights created prior to termination which from the context of the contract were meant to survive termination.

**Section 15.2. General Restrictions on Amendments.** Notwithstanding any other provision herein to the contrary, no amendment to this Declaration shall affect the rights of Declarant unless such amendment receives the prior written consent of Declarant which may be withheld for any reason whatsoever. No amendment shall alter the provisions of this Declaration benefitting Lenders without the prior approval of the Lender(s) enjoying the benefit of such provisions. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to this Declaration, then the prior written consent of such entity or agency must also be obtained. All amendments must comply with Article 9 as it benefits the SJRWMD. No amendment shall be effective until it is recorded in the Public Records.

**Section 15.3. Amendments By Declarant.** This Declaration may be amended at any time by an instrument signed by the Declarant until Turnover, without the approval of any other party, and after Turnover, by an instrument signed by the President or Vice President and the Secretary or Assistant Secretary of the Association, certifying that such amendment has been adopted in accordance with this Declaration, the Articles and/or the By-Laws. The amendment shall become effective upon its filing in the public records of Duval County, Florida. Provided, however, that:

a. As long as Declarant is an Owner of any Lot or Unit, no amendment shall become effective without the written consent of Declarant.

b. Until Turnover, any amendments to this Declaration (including, without limitation, any amendment which results in the annexation of additional lands into the Property, the merger or consolidation of the Association with any other owners associations, the dedication of any part of the Common Property for public safety, and the conveyance, mortgaging, or encumbrance of any part of the Common Property) must have prior written approval of the FHA or VA in accordance with HUD regulations, if the FHA or VA is the insurer of any Mortgage encumbering a Lot.

c. Declarant specifically reserves the absolute and unconditional right (subject only to FHA or VA approval as set forth above, if required), so long as it owns any of the Property, to amend this Declaration without the consent or joinder of any party: (i) to conform to the requirements of any holder of a Mortgage; (ii) to conform to the requirements of title insurance companies; (iii) to conform to the requirements of any governmental entity having control or jurisdiction over the Property; (iv) to clarify the provisions of this Declaration; or (v) in such other manner as Declarant may deem necessary or convenient.

d. After the Turnover Date, but subject to the general restrictions and amendments set forth above, this Declaration may be amended with the approval of sixty-six and  $\frac{2}{3}$  (66  $\frac{2}{3}$ %) percent of the Board and Members.

In addition to specific amendment rights granted elsewhere in this Declaration, until the first

conveyance of a Lot to a Person other than Declarant or a Builder, Declarant may unilaterally amend this Declaration for any purpose.

Thereafter and until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or VA, to make, purchase, insure, or guarantee mortgage loans on the Lots; (iv) to satisfy the requirements of any local, state, or federal governmental agency; or (v) for any other purpose which does not materially adversely affect title to any Lot, unless the Owner of such Lot consents to such amendment.

**Section 15.4. Amendments By the Members.** Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least two-thirds ( $\frac{2}{3}$ ) of the Association's total Class "A" votes. In addition, during the Development and Sale Period, Declarant's written consent is required for any amendment. The approval requirements set forth in Article XV also shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**Section 15.5. Approval by St. Johns River Water Management District.** Notwithstanding anything contained in Section 15.2, any amendment to the Declaration that alters any provision relating to the Surface Water and Storm Water Management System, beyond maintenance in its original condition, including the water management portions of the Common Areas, or amendment to this Section must have the prior approval of the SJRWMD.

Amendments to the Articles and By-Laws shall be made in accordance with the requirements of the Articles and By-Laws and need not be recorded in the public records of Duval County, Florida.

**Section 15.6. Validity and Effective Date.** No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon the earliest of (a) actual notice; (b) recording; or (c) later effective date specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Section 15.7. Non-Material Amendments.

15.7.2. Amendments by Declarant Without Consent by Members. During the period in which the Declarant retains the status of the Class "B" Member, Declarant shall have the right to amend this Declaration, without the necessity of consent or joinder by Owners or any other persons or entities, to make non-substantial changes that do not materially or adversely affect the interests of other Owners or other affected parties, and to clarify any ambiguities or conflicts, or correct any scrivener's errors in this Declaration. No approval by the Association or by any Member shall be required for Declarant to amend this Declaration pursuant to this Section 15.7.2.

Section 15.8. Assignment of Rights and Duties. Any and all of the rights, powers and reservations of the Association and Declarant may be assigned to any person, corporation or association which will assume the duties of the Association or Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment and assume such duties, he or it shall to the extent of such assignment have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Association or Declarant. Further, the Association or Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate.

Section 15.9. Municipal Service Taxing Units. In order to perform the services contemplated by this Declaration, the Association or Declarant, in conjunction with Duval County, Florida, may seek the formation of special purpose municipal service taxing units ("MSTUs"). The MSTUs will have responsibilities defined in their enabling resolutions which may include, but are not limited to, maintaining roadway informational signs, traffic control signs, benches, trash receptacles and other street furniture, keeping all public roadways and roadside pedestrian easements clean of windblown trash and debris, mowing, payment of electrical charges, maintenance of drainage canals, ponds and structures, maintenance of designated landscape areas, payment of energy charges for street and pedestrian lighting, and other services benefitting the Property. In the event such MSTUs are formed, the Property will be subject to assessment for the cost of services performed within the MSTU and personnel working for or under contract with Duval County shall have the right to enter upon lands within the Property to affect the services contemplated. Each Owner by acquiring lands within the Property agrees to pay each and every MSTU assessment imposed upon the Owner's land in a timely manner, failing which such assessments and special charges shall be a lien upon those lands. The Association retains the right to contract with Duval County to provide the services funded by the MSTUs. Services performed by an MSTU that would otherwise be performed by the Association and for which the MSTU imposes assessments on the Owners shall be removed from the Association's budget and the Board shall reduce the Annual Maintenance Assessment accordingly.

Section 15.10. Severability. Should any covenant, condition or restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

**Section 15.11. Interpretation.** The Board shall have the right except as limited by any other provisions of this Declaration or the Bylaws to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its good faith, determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the maintenance of Common Area and the facilities located thereon.

**Section 15.12. Disposition of Common Property on Termination of Declaration.** Should the Members of the Association vote not to renew and extend this Declaration as provided for herein, all Common Property owned by the Association at such time shall be transferred to another association or appropriate public agency having similar purposes. If no other association or agency will accept such property then it will be conveyed to a Trustee appointed by the Circuit Court of Duval County, Florida, which Trustee shall sell the Common Property free and clear of the limitations imposed hereby upon terms established by the Circuit Court of Duval County, Florida. That portion of the Open Space or Common Property consisting of the Surface Water and Storm Water Management System cannot be altered, changed or sold separate from the lands it serves except that Declarant shall be obligated to and shall convey that portion of the Open Space consisting of the Surface Water and Storm Water Management System to the Association upon completion and approval of such system by all applicable governmental authorities. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Property, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of the Common Property. The excess of proceeds, if any, from Common Property shall be distributed among Owners in a proportion which is equal to the proportionate share of such Owners in common expenses.

**Section 15.13. Execution of Documents.** The approved Plat may require from time to time the execution of certain documents required by governmental authorities. To the extent that said documents require the joinder of Owners, Declarant by its duly authorized officers may, as the agent or the attorney-in-fact for the Owners, execute, acknowledge and deliver such documents and the Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint Declarant, through its duly authorized officers, as their proper and legal attorneys-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section shall recite that it is made pursuant to this Section.

**Section 15.14. Indemnification.** The Association shall indemnify, defend, and hold harmless every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify, defend, and forever hold each such officer and director free and harmless against any and all liability to others on account of any such

contract or commitment. Any right to indemnification provided for herein shall not be exclusive of, but shall be in addition to, any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 15.15. Prohibited Actions.** Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

**Section 15.16. Singular, Plural and Gender.** Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

**Section 15.17. Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Property.

**Section 15.18. Conflicts.** In the event of conflict between the terms of this Declaration and any Bylaws, rules, regulations or Articles of the Association, this Declaration shall control.

**Section 15.19. Partial Invalidity.** The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

**Section 15.20. Certain Rights of Declarant.** Declarant reserves, and the Declarant and its nominees shall have the right to enter into and transact on the Property any business necessary to consummate the construction and sale of Units including but not limited to, the right to maintain models and a sales office, place signs, employ sales personnel, use the Common Property and show Units. Any such models, sales office, signs and any other items pertaining to such efforts shall not be considered a part of the Association Property and shall remain the property of Declarant. The rights and privileges of Declarant herein described in this Section 15.17 shall terminate upon Declarant no longer owning any portion of the Property.

**Section 15.21. Temporary Committees.** The Declarant, prior to the Turnover of the Association, at its sole discretion, may create temporary committees for the purposes of aiding in the transition of the Association from Declarant control to the control of the Members.

**Section 15.22. Prohibited Actions.** Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

**Section 15.23. LIABILITY.** NEITHER DECLARANT NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY WHATSOEVER TO OWNERS, GUESTS, TENANTS, OR INVITEES IN CONNECTION WITH THE LAKES, WATER BODIES, AND DRAINAGE EASEMENTS OR ANY PART OF THE SURFACE WATER MANAGEMENT SYSTEMS. EACH OWNER FOR ITSELF AND ITS

GUESTS, TENANTS, OR INVITEES RELEASES DECLARANT AND THE ASSOCIATION FROM ANY LIABILITY IN CONNECTION THEREWITH. NEITHER DECLARANT, THE ASSOCIATION, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, AND DIRECTORS, SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY LEVEL IN ANY LAKE OR WATER BODY WITHIN OR ADJACENT TO THE PROPERTY.

**ARTICLE 16**

**ENFORCEMENT**

**Section 16.1. Enforcement.** Enforcement of these covenants, conditions and restrictions shall be in accordance with this Article 16 by any proceeding at law or in equity and may be instituted by Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and to enforce any obligation and/or lien created by these covenants; and failure by the Association or any Owner or Declarant, or their successors or assigns, to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same thereafter. Further, the Association shall have the right of self help to cure, but no obligation to cure any violations that remain uncured after any required notice is given. If the Association elects to commence enforcement proceedings after delivery of notice thereof to any Owner in violation hereof, and incurs any expenses in the commencement of such proceedings, the Association shall prosecute such enforcement proceedings to conclusion notwithstanding subsequent voluntary compliance by the Owner until the Association shall have recovered its expenses from such Owner.

**Section 16.2. Mediation and Arbitration of Disputes.** Before commencing any other form of legal action to enforce the provisions of this Declaration (other than an action for specific performance or an injunction by Declaration or the Association) the party desiring enforcement shall first demand mediation by an independent third party professional mediator. If a settlement of the dispute is reached through voluntary mediation, a notice thereof shall be executed by the parties, and, if appropriate, shall be recorded in the real property records to place all successors and assigns of the Owner on notice of such settlement. If no settlement is achieved through voluntary mediation, either party shall have the right to initiate mandatory binding arbitration according to the rules of the American Arbitration Association. All persons owning any portion of any Lot, their family members and tenants, shall be deemed to have consented to mandatory binding arbitration of all disputes arising under this Declaration, and shall cooperate and participate in such arbitration proceedings. The award of the arbitrator may be entered as an agreed judgment in any litigation or legal proceeding concerning the subject matter of the arbitration, and shall be enforceable in accordance with its terms. In any such arbitration proceedings, the arbitrator shall award recovery of the arbitration fees, reasonable attorneys' fees, expert witness fees, and other costs and expenses of such proceeding to the prevailing party. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted by Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and failure by the

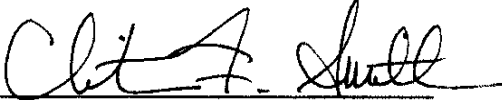



Association or any Owner or Declarant to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. Further, the Association shall have the right of self help to cure any violations that remain uncured after any required notice is given.

**Section 16.3. Effect of Declaration.** Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf as of this 13<sup>th</sup> day of May 2002

**WITNESS**

  
Print Name: Clinton F. Smith

  
Print Name: Tina Thompson

**DECLARANT**

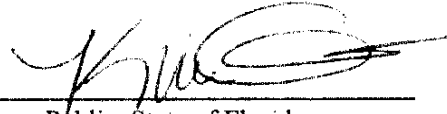
**CENTEX HOMES, a Nevada general partnership**

By: Centex Real Estate Corporation, a Nevada corporation, its managing general partner

By:   
Robert S. Porter, Division President

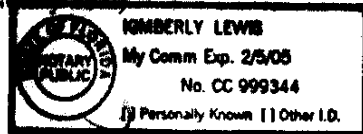
STATE OF FLORIDA       §  
                                      §  
COUNTY OF DUVAL       §

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of May 2002 by Robert S. Porter, Division President of Centex Real Estate Corporation, a Nevada corporation, managing general partner of Centex Homes, a Nevada general partnership, who is personally known to me or who produced a valid Florida driver's license as identification, and did not take an oath.



\_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(Notary Seal)



JOINDER

WYNGATE FOREST OWNERS' ASSOCIATION, INC. does hereby join in the document to which this Joinder is attached, and the terms thereof are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, the undersigned has executed this Joinder on this 13<sup>th</sup> day of May 2002.

WITNESSES:

WYNGATE FOREST OWNER'S ASSOCIATION, INC.,  
a Florida not-for-profit corporation

*Tina Thompson*  
Print Name: Tina Thompson

By: *Clinton Smith*  
Clinton Smith, President

*Joe Beck*  
Print Name: Joe Beck

STATE OF FLORIDA            )  
  )ss:  
COUNTY OF DUVAL         )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of May 2002, by CLINTON SMITH, President of WYNGATE FOREST OWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation, freely and voluntarily under authority duly vested in him by said corporation. He is personally known to me.

*Kimberly Lewis*  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(Notary Seal)

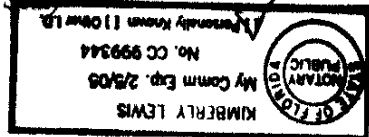


EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

All the tracts, lots, land and property of Wyngate Forest according to the plat thereof as recorded in Plat Book 55 at Pages 17 through 17E, Public Records of Duval County, Florida.

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF COMMON PROPERTY**

Tract "A," Tract "B," Tract "C," Tract "D," Tract "E," Open Space Tracts, Lake Tracts, Unobstructed SWMF/Drainage Easements, Recreation Tracts, P.U.D.E., and U.D.E, all of Winnsboro Drive, a 78' private road right-of-way, Warlin Drive East, a 50' private road right-of-way, Warlin Drive North, a 50' private road right-of-way, Warlin Drive South, a 50' private road right-of-way, Whitmire Court, a 50' private road right-of-way and Warnell Drive, a 50' private road right-of-way, all inclusive, of Wyngate Forest according to the plat thereof as recorded in Plat Book 55 at Pages 17 through 17E, Public Records of Duval County, Florida.

EXHIBIT "C"

ARTICLES OF INCORPORATION

of

WYNGATE FOREST OWNERS' ASSOCIATION, INC.

(Attached)

Department of State 1/9/2002

# State of Florida



Department of State

I certify from the records of this office that WYNGATE FOREST OWNERS' ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on January 8, 2002.

The document number of this corporation is N02000000129.

I further certify that said corporation has paid all fees due this office through December 31, 2002, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 802A00001203-010902-N02000000129-1/1, noted below.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Ninth day of January, 2002

Authentication Code: 802A00001203-010902-N02000000129-1/1



CR2E022 (1-99)

*Katherine Harris*  
Katherine Harris  
Secretary of State

Department of State 1/9/2002

# State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of WYNGATE FOREST OWNERS' ASSOCIATION, INC., a Florida corporation, filed on January 8, 2002, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H02000006493. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N02000000129.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Ninth day of January, 2002

Authentication Code: 802A00001203-010902-N02000000129-1/1



CR2EO22 (1-99)

*Katherine Harris*  
Katherine Harris  
Secretary of State



Department of State 1/9/2002



FLORIDA DEPARTMENT OF STATE  
Katherine Harris  
Secretary of State

January 9, 2002

WYNGATE FOREST OWNERS' ASSOCIATION, INC.  
6620 SOUTHPOINT DRIVE SUITE 400  
JACKSONVILLE, FL 32216

The Articles of Incorporation for WYNGATE FOREST OWNERS' ASSOCIATION, INC. were filed on January 8, 2002, and assigned document number N02000000129. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number H02000006493.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file date year. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have questions regarding corporations, please contact this office at the address given below.

Becky McKnight  
Document Specialist  
New Filings Section  
Division of Corporations

Letter Number: 802A00001203

Division of Corporations - P.O. BOX 6327 - Tallahassee, Florida 32314

**ARTICLES OF INCORPORATION  
OF  
WYNGATE FOREST OWNERS' ASSOCIATION, INC.  
a Florida corporation, Not-for-Profit**

In compliance with the requirements of Chapter 617, Florida Statutes, the undersigned persons do hereby make, subscribe and acknowledge that they have voluntarily associated themselves together for the purpose of forming a corporation not-for-profit, the articles of incorporation of which read as follows. All capitalized words or phrases used herein shall have the meanings herein ascribed, and if not, defined in this instrument, such capitalized words or phrases shall have the meanings given in the Declaration of Covenants, Conditions and Restrictions for Wyngate Forest and Wyngate Forest Owners' Association, Inc., hereinafter identified.

**ARTICLE I**

**NAME**

The name of the corporation is **Wyngate Forest Owners' Association, Inc.**, hereinafter referred to as the "**Association**" or the "**Homeowners' Association**."

**ARTICLE II**

**PRINCIPAL OFFICE**

The principal office of the Association is located at 6620 Southpoint Drive South, Suite 400, Jacksonville, Florida 32216.

**ARTICLE III**

**REGISTERED OFFICE AND REGISTERED AGENT**

The registered office of the Association shall be at 6620 Southpoint Drive South, Suite 400, Jacksonville, Florida 32216 with the privilege of having its office and branch offices at other places within or without the State of Florida. The registered agent at that address shall be CENTEX REAL ESTATE CORPORATION (herein referred to as "**Centex**").

**ARTICLE IV**

**PURPOSE AND POWERS OF THE ASSOCIATION**

This Association does not contemplate pecuniary gain or profit to the members thereof, will make no distribution of income to its members, directors or officers and the specific purposes for which it is formed

are to provide for the ownership, operation, maintenance and preservation of the Common Area, Area of Common Responsibility, and for the maintenance and improvement of any easements granted to the Association within the lands identified as Wyngate Forest (the "**Association Properties**") pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Wyngate Forest and the Wyngate Forest Owners' Association, Inc., recorded in the Public Records of Duval County, Florida, (hereinafter called the "**Declaration**"), and such additional properties as may be added thereto from time to time by annexation or otherwise as provided in the Declaration and in these Articles. The Association is formed to promote the health, safety and welfare of its members and the residents within the Association Property and any additions thereto as may hereafter be brought within the jurisdiction of this Association, and to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration which is hereby incorporated into this instrument as is fully reproduced herein;

(b) Fix, levy, collect and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) Borrow money, and with the assent of two-thirds ( $\frac{2}{3}$ ) of the votes of each class of Members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the Common Area to any public agency or authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. Such dedication or transfer shall only be effective with the assent of two-thirds ( $\frac{2}{3}$ ) of the votes of each class of Members, agreeing to such dedication, sale or transfer;

(f) Participate in mergers and consolidations with other not-for-profit corporations organized for the same purposes or annex additional residential property and Common Area, provided that any such merger, consolidation or annexation shall have the assent of two-thirds ( $\frac{2}{3}$ ) of the votes of each class of Members; and

(g) Purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of interests in, real or personal property, except to the extent restricted hereby; to contract for the management and maintenance of the Common Area and Area of Common Responsibility and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and Homeowners, repair and replacement of the Common Area and Area of Common Responsibility with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, including but not limited to the making of assessments, promulgation of rules and execution of contracts on behalf of the Association;

(h) Have and to exercise any and all powers, rights and privileges which a corporation organized under the corporation not for profit law of the State of Florida, by law may now or hereafter have to exercise.

**ARTICLE V**

**MEMBERSHIP**

Section 5.1 Every Owner of a Lot or Unit within the lands subjected to the Declaration (as defined in the Declaration), including Declarant, shall be a Member of the Association. Memberships in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Unit.

Section 5.2 There shall be two (2) classes of Members as follows:

(a) Class A Members. Class A Members shall be all Owners with the exception of Declarant.

(b) Class B Members. The Class B Member shall be Declarant or its specifically designated (in writing) successor who shall remain a member so long as it owns a Lot or Unit subject to the Declaration; provided that the Class B membership shall cease and be converted to Class A membership as set forth in Section 6.3 hereof.

**ARTICLE VI**

**VOTING RIGHTS**

Section 6.1. Members of the Association shall be allocated votes as follows:

Class A. Each Class A Member shall be entitled to one vote for each Lot or Unit owned. For the purposes of determining voting rights, each Lot or Unit owned by a Class A Member shall be deemed entitled to one (1) vote regardless of the number of persons sharing common ownership interests.

Class B. The Class B Member shall be allocated three (3) votes for each Lot or Unit owned by it within the Association Property; provided, that at such time as the Class B membership shall cease and become converted to Class A membership as set forth in Section 6.3. the Declarant shall have one vote for each Unit or Lot owned by it within the Association Property.

Section 6.2. When any Unit or Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it, or a copy thereof, is filed with the secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote allocated to any Unit or Lot (including Units or Lots owned by the Declarant) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot or Unit. If the Homeowners fail to designate their official representative, then the Association may accept the person

asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

Section 6.3. The Declarant’s Class B membership status shall continue, and shall be in effect, during the period from the inception of the Declaration until either (1) seven (7) years from the date the Declaration is recorded; or (2) five (5) years after the date of recording of the last Supplemental Declaration annexing additional property into the Homeowners Association, whichever event, (1) or (2) occurs later; or (3) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; or (4) in any event, one hundred twenty (120) days after the conveyance of seventy-five (75%) percent of the Lots in the Property that will ultimately be operated by the Association have been converted to Class A status, whichever event, (1), (2), (3) or (4), occurs first (“**Turnover**”); provided however, that if Class B status is converted to Class A pursuant to clause (4) and, subsequent to such event, the Declarant annexes additional Lots to the Property which annexation causes the number of Lots or Units owned by the Declarant in the Property to exceed twenty-five percent (25%) of the total number of Lots and Units within the Property, Declarant’s Class B status shall be restored as to all Lots and Units within the Property then owned by Declarant, and shall continue until the next occurrence of an event of conversion described above.

Section 6.4. The Declarant shall have the right to partially assign its status as Declarant and Class B Member by recorded instrument executed by the original Declarant and acknowledged and accepted by the assignee Declarant to any person or entity acquiring any portion of the Property, or adjacent lands eligible for annexation into the Property, for the purpose of development of a residential subdivision consistent with the Master Plan, and any such assignee shall thereafter be deemed to be the Declarant as to the Lots or Units owned by such person or entity, and shall have the right to exercise all of the rights and powers of the Declarant as to such Lots and Units, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots and Units owned by such original Declarant. If any action of the Association requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

**ARTICLE VII**

**BOARD OF DIRECTORS**

Section 7.1. The names and addresses of the members of the first Board of Directors who shall hold office until the annual meeting of the members and until their successors are elected or appointed and have qualified, are as follows:

<b>NAME</b>	<b>ADDRESS</b>
Clinton Smith	6620 Southpoint Drive South, Suite 400 Jacksonville, Florida 32216
Kim Lewis	6620 Southpoint Drive South, Suite 400 Jacksonville, Florida 32216

Angela Gould

6620 Southpoint Drive South, Suite 400  
Jacksonville, Florida 32216

Section 7.2. The affairs of the Association shall be managed by a Board of Directors as provided in and subject to the requirements of Article IV the Bylaws. Such Board of Directors shall consist of an odd number of directors with a minimum of at least three (3) directors and a maximum of no more than seven (7) directors. Directors need not be Members of the Association and need not be residents of the Association Property. Each Director shall serve for a term from the date of the meeting at which he is elected until the next annual meeting subject to the provisions governing resignation, death, disability, removal and replacement set forth in the Declaration, Bylaws and this instrument.

## ARTICLE VIII

### AMENDMENTS

Section 8.1. **Proposal.** An amendment or amendments to these Articles of Incorporation may be proposed by the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by a majority of the Members of the Association, whether meeting as Members or by instrument in writing signed by them. Upon any amendment or amendments to these Articles of Incorporation being proposed by the Board of Directors or Members, such proposed amendment or amendments shall be transmitted to the President of the Association, or the acting chief executive officer in his absence, and a Meeting of the Members of the Association shall be called not later than sixty (60) days from the receipt by him of the proposed amendment or amendments.

Section 8.2. **Notice.** It shall be the duty of the Secretary to give each Member written notice of such meeting, stating the proposed amendment or amendments in reasonably detailed form, which notice shall be prepared by and at the expense of the Association and mailed by the Association or presented personally to each Member not less than thirty (30) days nor more than sixty (60) days before the date set for the meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the Member at his post office address as it appears on the records of the Association, with postage thereupon prepaid. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the records of the Homeowners Association, whether before, during or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. If the Homeowners Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Homeowners Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Homeowners Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in these Articles of Incorporation or in the Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

Section 8.3. **Resolution.** At the meeting at which the amendment is to be proposed and considered, a resolution for the adoption of the proposed amendment may be made by any member of the Board of Directors of the Association, or by any Member of the Association, present in person or by proxy.

The approval of a resolution for the adoption of a proposed amendment to these Articles of Incorporation shall require the affirmative vote of a majority of the members of the Board of Directors of the Association.

**Section 8.4. Approval.** Amendments may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least sixty-seven (67%) percent of the Class A Members (i.e. all Members except the Declarant who retains Class B status) who are present, in person or by proxy, and voting at a meeting called as described in the notice and conducted by the Homeowners' Association at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least sixty-seven (67%) percent of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting. In addition to the approval of the Members and the Declarant set forth above, the following conditions shall apply:

(a) Any Material Amendment or Extraordinary Action (as defined in the Declaration) that changes the rights of any specific class of Members (i.e. Class A or Class B) must also be approved either (1) by the affirmative vote of at least fifty-one (51%) percent of the Members of such Class who are present, in person or by proxy, and voting at meetings called as described in the required notice at which a quorum of such Class of Members is present, or (2) by the written consent of at least fifty-one (51%) percent of all Members of such Class to any action taken in lieu of a meeting.

(b) Any Material Amendment or Extraordinary Action proposed during the period in which the Declarant retains its Class B status must also be approved by the Federal Housing Administration ("FHA"), and the Department of Veterans Affairs ("VA") if any Unit within the Property has been financed by a mortgage insured by FHA or guaranteed by VA. The Association shall deliver written notice of the proposed Material Amendment or Extraordinary Action to the FHA and VA simultaneously with its notice to the Members. If the FHA or VA fails to deliver written notice to the Association of its objection to the proposed Material Amendment or Extraordinary Action within 30 days after receipt of the notice, FHA and VA will be deemed to have approved the matters contained in the notice, and the Association shall be entitled to record an affidavit signed by an authorized officer averring that written notice was delivered to the FHA and VA and no objection was timely received from such agencies.

Notwithstanding the foregoing, during the period in which the Declarant retains the status of the Class "B" Member, the Declarant shall have the right to amend these Articles of Incorporation, without the necessity of joinder by the Members or any other persons or entities, to make non-substantial changes that do not materially or adversely affect the interests of other Members or other affected parties, and to clarify any ambiguities or conflicts, or correct any scrivener's errors in these Articles of Incorporation.

**Section 8.5. Limitation.** No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of Members, nor any changes in the provisions of Article IV hereof, without approval of sixty-seven percent (67%) of the votes of each class of Members and the joinder of all Eligible Holders of mortgages upon Units. No amendment shall be made that is in conflict with the Declaration, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Declarant, or the designated successor of the Declarant, unless the Declarant or such successor shall join in the execution of the amendment.

**Section 8.6. Recording.** Any amendment or amendments of these Articles of Incorporation shall be transcribed and certified in such form as may be necessary to file the same in the office of the Secretary

of State of the State of Florida. A certified copy of each amendment of these Articles of Incorporation shall be recorded in the Public Records of Duval County, Florida.

## ARTICLE IX

### OFFICERS

The affairs of the Association will be administered by the officers designated in the Bylaws of the Association. Said officers will be elected by the Board of Directors at its first meeting following the annual meeting of Members of the Association and will serve at the pleasure of the Board of Directors. The names and addresses of the Officers who are to manage the affairs of the Association until the annual meeting of the Board of Directors and until their successors are duly elected and qualified are:

PRESIDENT	Clinton Smith
VICE PRESIDENT	Kim Lewis
SECRETARY/TREASURER	Angela Gould

## ARTICLE X

### INDEMNIFICATION

**Section 10.1. Indemnity.** The Association shall indemnify, defend, and hold harmless any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a Director, employee, officer or agent of the Association, against expenses (including reasonable attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceedings, if he or she acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceedings, has no reasonable cause to believe his or her conduct was unlawful, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or misfeasance or malfeasance in the performance of his or her duty to the Association, unless and only to the extent that the Court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

**Section 10.2. Expenses.** To the extent that a Director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.1 above, or in defense of any action, suit or proceeding referred to in Section 10.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including reasonable attorneys' fees and reasonable appellate attorneys' fees) actually and reasonably incurred by him or her in connection therewith.



**Section 10.3. Approval.** Any indemnification under Section 10.1 above (unless ordered by a Court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Directors, officers, employees or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 10.1 above. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or by a majority of the Members.

**Section 10.4. Advances.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in any specific case upon receipt of an undertaking by or on behalf of the affected Director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article X.

**Section 10.5. Miscellaneous.** The indemnification provided by this Article shall not be deemed exclusive of (but shall be in addition to) any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members or otherwise, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

**Section 10.6. Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Association, as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

## **ARTICLE XI**

### **BYLAWS**

The first Bylaws of the Association will be adopted by the Directors named herein, and may be altered, amended, or rescinded in the manner provided by said Bylaws. Any Bylaws adopted by the Board of Directors shall be consistent with these Articles.

## **ARTICLE XII**

### **TRANSACTIONS IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED**

**Section 12.1.** No contract or transaction between the Association and one or more of its Directors or officers, or between the Association and any other corporation, partnership, or Association, or other organization in which one or more of its Directors or officers are Directors or officers have a financial interest, shall be invalid, void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or committee thereof which authorized the contract or

transaction, or solely because his or their votes are counted for such purpose. No Director or officer of the Association shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction.

Section 12.2. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorized the contract or transaction.

**ARTICLE XIII**

**SUBSCRIBER**

The name and address of the subscriber to these Articles of Incorporation is:

Centex Homes  
6620 Southpoint Drive South, Suite 400  
Jacksonville, Florida 32216

**ARTICLE XIV**


**DISSOLUTION**

The Association may be dissolved with the assent given by not less than two-thirds (2/3) of the votes of each Class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be disposed of or transferred to another association or appropriate public agency having similar purposes. Dissolution of the Association shall be deemed an Extraordinary Action and shall be subject to the provisions of these Articles of Incorporation and the Declaration governing Extraordinary Actions.


IN WITNESS WHEREOF, the undersigned subscriber has executed these Amended and Restated Articles of Incorporation this 7<sup>th</sup> day of January, 2002.

CENTEX HOMES, a Nevada general partnership

CENTEX REAL ESTATE CORPORATION, a Nevada corporation, managing general partner

  
Print Name: Clinton F. Smith

By:   
Robert S. Porter - Division President

  
Print Name: Thompson

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of January, 2002, by Robert S. Porter, Division President of Centex Real Estate Corporation, a Nevada corporation, managing general partner of Centex Homes, a Nevada general partnership, on behalf of the corporation. Said person is personally known to me.

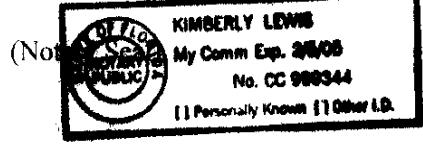


Print Name: KIMBERLY LEWIS

Notary Public, State of Florida

Commission No.: 999344

My Commission Expires: 2-5-05



**CERTIFICATE DESIGNATING PLACE OF BUSINESS  
FOR SERVICE OF PROCESS WITHIN THIS STATE,  
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED**

Pursuant to Chapter 48.091, Florida Statutes, the following is submitted in compliance with said Act:

That, **Wyngate Forest Owners' Association, Inc.**, desiring to organize under the laws of the State of Florida, with its principal offices at 6620 Southpoint Drive South, Suite 400, Jacksonville, Florida 32216 has named Centex Real Estate Corporation, whose office is located at 6620 Southpoint Drive South, Suite 400, Jacksonville, Florida 32216 as its agent to accept service of process within the State.

**ACKNOWLEDGMENT**

Having been named to accept service of process for the above stated corporation, at the place designated in this Certificate, Centex Real Estate Corporation hereby accepts to act in this capacity, and agrees to comply with the provisions of said Act relative to keeping open said office.

CENTEX REAL ESTATE CORPORATION, a Nevada corporation

By:   
Robert S. Porter - Division President

**EXHIBIT "D"**

**BYLAWS**

of

**WYNGATE FOREST OWNERS' ASSOCIATION, INC.**

(Attached)

**BYLAWS OF**

**WYNGATE FOREST OWNERS' ASSOCIATION, INC.,  
a Florida corporation, Not-for-Profit**

**ARTICLE I**

**GENERAL PLAN OF OWNERSHIP**

**Section 1.** **Name.** The name of the corporation is **WYNGATE FOREST OWNERS' ASSOCIATION, INC.**, a Florida corporation, and is hereafter referred to as the "**Association.**" The principal office of the corporation shall be located at 6620 Southpoint Drive South, Suite 400, Jacksonville, Florida 32216.

**Section 2.** **Bylaws Applicability.** The provisions of these Bylaws are applicable to the Association created pursuant to the Declaration of Covenants, Conditions and Restrictions for Wyngate Forest and the Wyngate Forest Owners' Association, Inc. recorded in the Public Records of Duval County, Florida (herein referred to as the "**Declaration**"). All capitalized words or phrases used herein shall have the meanings herein ascribed, and if not defined in this instrument, such capitalized words or phrases shall have the meanings given in the Declaration or Articles (the "**Articles**") of the Association.

**Section 3.** **Personal Application.** All present and future Owners of Lots or Units within the Association Property (as defined in the Articles and Declaration of the Association) and their tenants, guests and invitees are subject to the regulations set forth in these Bylaws.

The recording of a declaration authorizing the creation of a homeowners association and the mere acquisition of a Lot or acquisition or rental of any Unit or the mere act of occupancy of any Unit signify that

these Bylaws are accepted, ratified, and will be complied with.

## ARTICLE II

### MEMBERSHIP, VOTING RIGHTS, MAJORITY OF QUORUM, QUORUM, PROXIES

**Section 1. Membership.** Every Owner of a Unit or Lot, by virtue of the ownership of such Unit or Lot, and the Declarant and its successors and assigns, shall be Members of the Association, and by acceptance of a deed or other instrument evidencing an ownership interest, each Owner, and Declarant accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of the Declaration, the Articles, these Bylaws and other rules and regulations of the Association. The term "**Member**" shall include each person or entity owning any right, title or interest in any Unit or Lot, except persons or entities holding mortgages or other security or trust interests unless such persons or entities also have the right of possession. Tenants or others occupying any Unit who do not have an ownership interest therein shall not be Members for the purposes of the Declaration. Membership in the Association is appurtenant to, and may not be severed from, the Unit or Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in the Declaration, the Articles or Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot or Unit. Members shall be responsible for compliance with the terms and conditions of the Declaration, the Articles and Bylaws, and rules and regulations of the Association by all occupants, tenants, guests, invitees and family members while residing in or visiting any Unit, Common Area or other portion of the Property.

**Section 2. Voting Rights.** Members of the Association shall be allocated votes as follows:

**Class A.** Class A Members shall be all Owners with the exception of the Declarant. Each Class "A" Member shall be entitled to one vote for each Lot or Unit owned.

**Class B.** The Class B Member shall be the Declarant, or its specifically designated (in writing) successor. The Class B Member shall be allocated three (3) votes for each Lot or Unit owned by it within the Property; provided, that the Class B membership shall cease and become converted to Class A membership as set forth in Section 5 of this Article 2. Upon conversion to Class A membership, the Declarant shall have one vote for each Unit or Lot owned by it within the Property so long as said Unit or Lot is subject to assessment by this Association.

**Section 3. Common Ownership.** When any Unit or Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs, and it or a copy thereof is filed with the secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote allocated to any Unit or Lot (including Units or Lots owned by the Declarant) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot or Unit. If the Owners fail to designate their official representative, then the Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such

notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

**Section 4. Change of Membership.**

4.1. **Ownership.** Change of membership in the Association shall be established by recording in the Public Records of Duval County, Florida, a deed or other instrument conveying record fee title to any Lot or Unit, and by the delivery to the Association, of a copy of such recorded instrument. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior Owner shall be terminated. In the event that a copy of said instrument is not delivered to the Association, said Owner shall become a Member, but shall not be entitled to voting privileges until delivery of a copy of the conveyance instrument to the Association. The foregoing shall not, however, limit the Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot or Unit acquired. Notwithstanding the foregoing, Declarant shall have the right to notify the Association in writing of conveyance of a Unit to an Owner without the requirement of providing a copy of the deed, and the Association shall recognize the Owner identified in such written notice as a Member of the Association and Owner of the Unit.

4.2. **Interest in Association.** The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

**Section 5. Class B Membership Status.**

5.1. **Duration.** The Declarant's Class B membership status shall continue, and shall be in effect, during the period from the inception of the Declaration until either (1) seven (7) years from the date the Declaration is recorded; or (2) five (5) years after the date of recording of the last Supplemental Declaration annexing additional property into this Association, whichever event, (1) or (2) occurs later; or (3) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; or (4) in any event, within one hundred-twenty (120) days after the conveyance of seventy-five (75)% percent of the Lots or Units in the Property that will ultimately be operated by the Association have been converted to Class A status, whichever event, (1), (2), (3) or (4), occurs first ("**Turnover**"); provided however, that if Class B status is converted to Class A pursuant to clause (4) and, subsequent to such event, the Declarant annexes additional Lots to the Property which annexation causes the number of Lots or Units owned by the Declarant in the Property to exceed ten (10%) percent of the total number of Lots and Units within the Property, Declarant's Class B status shall be restored as to all Lots and Units within the Property then owned by Declarant, and shall continue until the next occurrence of an event of Turnover described above.

5.2. **Assignment.** The Declarant shall have the right to partially assign its status as Declarant and Class B Member, by recorded instrument executed by the original Declarant and acknowledged and accepted by the assignee Declarant, to any person or entity acquiring any portion of the Property, or the

land eligible for annexation into the Property, for the purpose of development of a residential subdivision consistent with the Plat, and any such assignee shall thereafter be deemed to be the Declarant as to the Lots or Units owned by such person or entity, and shall have the right to exercise all of the rights and powers of the Declarant as to such Lots and Units, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots and Units owned by such original Declarant. If any action of the Association requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

**Section 6. Majority of Quorum.** Unless otherwise expressly provided in these Bylaws or the Declaration any action which may be taken by the Association may be taken by a majority of a quorum of the Members of the Association.

**Section 7. Quorum.** Each Association meeting required by the Association pursuant to the Declaration shall require the presence, either in person or by proxy, of a quorum of the members of the Association. If the Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in these Bylaws or in the Articles or in the Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section, and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

**Section 7. Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary at least twenty-four (24) hours before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease after completion of the meeting for which the proxy was filed, and upon conveyance by the Member of his Unit.

### ARTICLE III

#### ADMINISTRATION

**Section 1. Place of Meetings of Members.** Meetings of the Members shall be held within the Association Property or such other suitable place as close thereto as practicable in Duval County, convenient to the Owners as may be designated by the Board of Directors (the "Board").

**Section 2. Annual Meetings.** The first annual meeting of the Members shall be held on the date at the place and at that the time, as determined by the Board, provided, however, that said meeting shall be held, to the extent possible, within one (1) year from the date of incorporation of the Association. Thereafter, the annual meeting of the Association shall be held on the anniversary date of the first annual meeting; provided, however, that should the anniversary date fall on a legal holiday, then such annual meeting of the Members shall be held on the next day thereafter which is not a legal holiday. Subject to the provisions of Article IV, Section 1 herein, at each annual meeting there shall be elected by ballot of the Members a Board, in accordance with the requirements of Section 5 of Article IV of these Bylaws. At the first annual meeting,



the Directors shall be elected to serve until the second annual meeting, and at the second annual meeting, Directors shall be elected for a term of one (1) year beginning with the second annual meeting. Unless a Director resigns before the expiration of his term of office, each Director shall hold his office until his successor has been elected and the first meeting involving such successor is held. The term of office of any Director elected to fill a vacancy created by the resignation of his predecessor shall be the balance of the unserved term of his predecessor. The Members may also transact such other business of the Association as may properly come before them. Each First Mortgagee of a Unit may designate a representative to attend all annual meetings of the Members.

**Section 3. Special Meetings of Members.** Special meetings of the Members may be called at any time by the President or by a majority of a quorum of the Board, or upon a petition signed by Class A Members holding at least thirty percent (30%) of the voting power of the Class A Members having been presented to the Secretary. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof.

No business shall be transacted at a special meeting except as stated in the notice, unless by consent of those Members holding at least four-fifths (4/5) of the voting power of the Association, either in person or by proxy. Each First Mortgagee of a Unit may designate a representative to attend all special meetings of the Members.

**Section 4. Notice of Meetings of Members.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting of Members stating the purpose thereof as well as the day, hour, and place where it is to be held, to each Member of record and to each First Mortgagee of a Unit which has filed a written request for notice with the Secretary, at least fourteen (14) but not more than sixty (60) days prior to such meeting. The notice may set forth time limits for speakers and nominating procedures for the meeting. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, after said notice has been deposited in a regular depository of the United States mail. If no address has been furnished to the Secretary, notice shall be deemed to have been given to a Member if posted in a conspicuous place on the Common Property.

**Section 5. Adjourned Meetings.** If any proposed meeting cannot be organized because a quorum has not been attained, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

**Section 6. Order of Business.** The order of business at all meetings of the Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election; (g) election of Directors; (h) unfinished business; and (i) new business. Meetings of Members shall be conducted by the officers of the Association in order of their priority.

**Section 7. Action Without Meeting.** Any action, which under the provisions of Florida law may be taken at a meeting of the Members, may be taken without a meeting if authorized by a writing signed by the required number of Members who would be entitled to vote at a meeting for such purpose, and such writing is filed with the Secretary.

**Section 8. Consent of Absentees.** The transaction of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the Members not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

**Section 9. Minutes, Presumption of Notice.** Minutes or similar record of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

#### ARTICLE IV

#### BOARD OF DIRECTORS

**Section 1. Number, Term and Qualifications.** The affairs of this Association shall be governed by a Board composed of no fewer than three (3) nor more than seven (7) persons as is determined from time to time by the Members. The term of each Director's service shall extend until the next annual meeting of the Members, and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 8 below.

**Section 2. Powers and Duties.** The Board has the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done exclusively by the Members.

**Section 3. Special Powers and Duties.** Without prejudice to such foregoing general powers and duties and such powers and duties as are set forth in the Declaration and Articles, the Board is vested with, and responsible for, the following powers and duties:

a. To select, appoint, and remove all officers, agents and employees of the Association, to prescribe such powers and duties for them as may be consistent with law, with the Articles, the Declaration and these Bylaws; to fix their compensation and to require from them security for faithful service when deemed advisable by the Board.

b. To conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations therefor consistent with law, with the Articles, the Declaration, and these Bylaws, as the Board may deem necessary or advisable.

c. To change the principal office for the transaction of the business of the Association from one location to another within the State of Florida as provided in Article I hereof; to designate any place within said State for the holding of any annual or special meeting or meetings of Members consistent with the provisions of Article III, Section 2 hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time, as the Board, in its sole judgment may deem best, provided that such seal shall at all times comply with the provisions of law.

d. To borrow money and to incur indebtedness for the purposes set forth in the

Declaration, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor.

e. To fix and levy from time to time, Assessments upon the Owners, as provided in the Declaration; to determine and fix the due date for the payment of such Assessments, and the date upon which the same shall become delinquent; provided, however, that such Assessments shall be fixed and levied only to provide for the general benefit and welfare of the Association and its Members in accordance with the provisions of the Declaration. The Board is hereby authorized to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided, adequate reserves for replacements as it shall deem to be necessary or advisable in the interest of the Association or welfare of its Members. Disbursements from such trust reserve fund shall be made only in accordance with the provisions of the Declaration. Should any Owner fail to pay such Assessments before delinquency, the Board in its discretion is authorized to enforce the payment of such delinquent assessments as provided in the Declaration.

f. To enforce the provisions of the Declaration covering the Common Area, and areas on which the Association has an easement (the "Easement Areas"), these Bylaws or other agreements of the Association.

g. To contract for and pay fire, casualty, errors and omissions, blanket liability, malicious mischief, vandalism, and other insurance, insuring the Members, the Owners, the Association, the Declarant, the Board and other interested parties, in accordance with the provisions of the Declaration, covering and protecting against such damages or injuries as the Board deems advisable, which may include without limitation, medical expenses of persons injured on the Common Area and Easement Areas, and to bond the agents and employees of any management body, if deemed advisable by the Board. The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on behalf of the Association.

h. To contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, public areas, and Easement Areas and to employ personnel necessary for the operation of the Common Area, public areas and Easement Areas, including legal and accounting services, and to contract for and pay for improvements to the Common Area, public areas and Easement Areas.

i. To delegate its powers according to law, and subject to the approval of the Members, to adopt these Bylaws.

j. To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Association.

k. To fix, determine and name from time to time, if necessary or advisable, the public agency, fund, foundation or corporation which is then or there organized or operated for charitable purposes, to which the assets of this Association shall be distributed upon liquidation or dissolution, according to the Articles of the Association. The assets so distributed shall be those remaining after satisfaction of all just debts and obligations of the Association, and after distribution of all property held or acquired by the Association under the terms of a specific trust or trusts.

1. To adopt such uniform and reasonable rules and regulations as the Board may deem necessary for the management of the Common Area and Easement Areas which rules and regulations shall become effective and binding after (1) they are adopted by a majority of the Board at a meeting called for that purpose, or by the written consent of such number of Directors attached to a copy of the rules and regulations of the Association, and (2) they are posted in a conspicuous place in or near the Common Area. For so long as the Declarant enjoys Class B Membership status, such rules and regulations shall not materially adversely affect the rights, privileges or preferences of any Member or owner as established by the Association, the Articles of the Association and these Bylaws and such rules and regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles and these Bylaws.

**Section 4. Management Agent.** The Board shall have the option to employ a managing agent to manage the Common Area and Easement Areas and the affairs of the Association. The managing agent shall perform such duties and services as the Board shall authorize.

**Section 5. Election and Term of Office.** Subject to the provisions of Article IV herein, at the first annual meeting of the Association, and thereafter at each annual meeting of the Members, Directors shall be elected by secret written ballot by a plurality of Members as provided in these Bylaws, each Member voting being entitled to cast its votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. In the event that an annual meeting is not held, or the Board is not elected thereat, the Board may be elected at a special meeting of the Members held for that purpose. Each Director shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence. Any person serving as a Director may be reelected, and there shall be no limitation on the number of terms during which he may serve.

**Section 6. Books and Records.** The Board shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association in manner consistent with generally accepted accounting principles and Florida statute.

**Section 7. Vacancies.** Vacancies in the Board caused by any reason other than the removal of a Director by a vote of the Members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and such person so elected shall be a Director until a successor is elected at the next annual meeting of the Members of the Association, or a special meeting of the Members called for that purpose. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director, or in case the Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place.

**Section 8. Removal of Directors.** At any regular or special meeting of the Members duly called, any one or more of the Directors may be removed with or without cause by a majority vote of the Members of the Association, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. If any or all of the Directors are so removed, new Directors may be elected at the same meetings.

**Section 9. Organization Meeting.** The first regular ("organization") meeting of a newly elected Board shall be held within ten (10) days of election of the Board, at such place as shall be fixed and announced by the Directors at the meeting at which such Directors were elected, for the purpose of

organization, election of officers and the transaction of other business. No notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board shall be present.

**Section 10. Other Regular Meeting.** Other regular meetings of the Board may be held at such time and place in or near the Association Property as shall be determined, from time to time by a resolution adopted by a majority of a quorum of the Directors; provided, however, that such meeting shall be held no less frequently than annually. Notice of regular meetings of the Board shall be given to each Director, personally or by mail, e-mail, telephonic facsimile, telephone or telegraph, at least seventy-two (72) hours prior to the date named for such meeting, and shall be posted at a prominent place or places within the Common Area.

**Section 11. Special Meeting.** Special meetings of the Board may be called by the President (or, if he is absent or refused to act, by the Vice President) or by any two (2) Directors. At least seventy-two (72) hours notice shall be given to each Director personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and the purpose of the meeting, and shall be posted at a prominent place or places in or near the Association Property. If served by mail, each such notice shall be sent, postage prepaid, to the address reflected on the records of the Association, and shall be deemed given, if not actually received earlier, at 5:00 P.M. on the second day after it is deposited in a regular depository of the United States mail as provided herein. Whenever any Director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such Director, as required by law and as provided herein.

**Section 12. Waiver of Notice.** Before or at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. The transactions of any meeting of the Board, however, called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the Directors not present signs such a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.

**Section 13. Quorum and Adjournment.** Except as otherwise expressly provided herein, at all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board. If at any meeting of the Board, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 14. Action Without Meeting.** The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the vote or written consent of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

Section 15. **Fidelity Bonds.** The Board may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

Section 16. **Committees.** The Board by resolution may from time to time designate such committees as it shall desire, and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee shall provide for the appointment of its Members, as well as a chairman, shall state the purposes of the committee, and shall provide for reports, termination, and other administrative matters as deemed appropriate by the Board.

## ARTICLE V

### OFFICERS

Section 1. **Designation.** The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board. The Board may appoint an Assistant Treasurer and an Assistant Secretary, and such other officers as in their judgment may be necessary. Officers other than the President and Vice President need not be Directors. The office of Secretary and Treasurer may be held by the same person, but the office of President and Secretary may not be held by the same person.

Section 2. **Election of Officers.** The officers of the Association shall be elected annually by the Board at the Organization Meeting of each new Board, and each officer shall hold his office until he shall resign or be removed or otherwise disqualified to serve, or his successor shall be elected and qualified to serve.

Section 3. **Removal of Officers.** Upon an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary of the Association. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and unless otherwise specified in said notice, acceptance of such resignation by the Board shall not be necessary to make it effective.

Section 4. **Compensation.** Officers, agents, and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board. Appointment of any officer, agent or employee shall not of itself create contractual rights of compensation for services performed by such officer, agent, or employee, provided that no officer, employee or Director of Declarant or any affiliate of Declarant may receive any compensation.

Section 5. **President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power, subject to the provisions of Article IV, Section 16, to appoint committees from among the members from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board, have general supervision, direction and control of the business of the Association. The President shall be ex-officio a member of all standing

committees, and he shall have such other powers and duties as may be prescribed by the Board or these Bylaws of the Association.

**Section 6. Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent, disabled, refuses or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board or these Bylaws of the Association.

**Section 7. Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association at the principal office of the Association or at such other places as the Board may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board may direct; and the Secretary shall, in general perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notice of meetings of the Members of the Association and of the Board required by these Bylaws or by law to be given. The Secretary shall maintain a book of record Owners, listing the names and addresses of the Owners as furnished by the Association, and such books shall be changed only at such time as satisfactory evidence of a change in ownership of a Unit is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board.

**Section 8. Treasurer.** The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board. The Treasurer shall co-sign all promissory notes on behalf of the Association. The Treasurer shall disburse the funds of the Association as may be ordered by the Board, in accordance with the Declaration, shall render to the President and Directors, upon request, an account of all of his transactions as Treasurer and of the financial conditions of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

## ARTICLE VI

### OBLIGATIONS OF OWNERS FOR ASSESSMENTS

**Section 1. Payment.** The Association shall obtain funds with which to operate by assessment of the members of each Member in accordance with the provisions of the Declaration as supplemented by the provisions of the Articles of the Association relating thereto. Said assessments shall be payable monthly, or in the manner determined by the Board, in advance, without notice, and shall be due on the first day of each month, or payment schedule period as determined by the Board.

**Section 2. Special Assessments.** Special Assessments for charges by the Association against Members for other than Common Expenses or for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be levied in the same manner as herein provided for regular Assessments, except that notice thereof shall be given and they shall be payable in the manner determined by the Board.

Section 3. **Past Due Assessments.** Assessments and installments thereon not paid when due shall bear interest from the date when due until paid at the rate set forth in the Declaration and shall result in the filing of a claim of lien as set forth in the Declaration.

Section 4. **Default.** As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessment, if not paid within thirty (30) days after the due date, shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

## ARTICLE VII

### AMENDMENTS TO BYLAWS

Section 1. **Proposal.** Amendments to these Bylaws may be proposed by the Board of the Association by resolutions adopted by a majority vote of the Directors present at any regular or special meeting of the Board at which a quorum is present or, in the alternative, by a written instrument signed by a majority of the Board, or by the vote of a majority of a quorum of Members present in person or by proxy at a special or regular meeting of the Members or by written instrument signed by them. Such proposed amendment or amendments shall be transmitted to the President of the Association, or the acting chief executive officer in the absence of the President, who shall thereupon call a Special Meeting of the Members of the Association not later than sixty (60) days from the receipt by him of the proposed amendment or amendments.

Section 2. **Notice.** It shall be the duty of the Secretary to give each Member written notice of such meeting, stating the proposed amendment or amendments in reasonably detailed form, which notice shall be prepared by and at the expense of the Association and mailed by the Association or presented personally to each Member not less than thirty (30) days nor more than sixty (60) days before the date set for the meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the Member at his post office address as it appears on the records of the Association, with postage thereupon prepaid. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the records of the Association, whether before, during or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting.

Section 3. **Resolution.** At the meeting at which the amendment is to be proposed and considered, a resolution for the adoption of the proposed amendment may be made by any member of the Board of the Association, or by any Member of the Association, present in person or by proxy. The approval of a resolution for the adoption of a proposed amendment to these Bylaws shall require the affirmative vote of a majority of the members of the Board of the Association.

Section 4. **Approval.** Amendments may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 67% of the Class A Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by



proxy, and voting at a meeting called as described in the notice and conducted by the Associations at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 67% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting. In addition to the approval of the Members and the Declarant set forth above, the following conditions shall apply:

a. Any Material Amendment or Extraordinary Action (as defined in the Declaration) that changes the rights of any specific class of Members (i.e. Class A or Class B) must also be approved either (1) by the affirmative vote of at least 51% of the Members of such Class who are present, in person or by proxy, and voting at meetings called as described in the required notice at which a quorum of such Class of Members is present, or (2) by the written consent of at least 51% of all Members of such Class to any action taken in lieu of a meeting.

b. Any Material Amendment or Extraordinary Action proposed during the period in which the Declarant retains its Class B status must also be approved by the Federal Housing Administration ("FHA"), and the Department of Veterans Affairs ("VA") if any Unit within the Property has been financed by a mortgage insured by FHA or guaranteed by VA. The Association shall deliver written notice of the proposed Material Amendment or Extraordinary Action to the FHA and VA simultaneously with its notice to the Members. If the FHA or VA fails to deliver written notice to the Association of its objection to the proposed Material Amendment or Extraordinary Action within 30 days after receipt of the notice, FHA and VA will be deemed to have approved the matters contained in the notice, and the Association shall be entitled to record an affidavit signed by an authorized officer averring that written notice was delivered to the FHA and VA and no objection was timely received from such agencies.

Notwithstanding the foregoing, during the period in which the Declarant retains the status of the Class "B" Member, the Declarant shall have the right to amend these Bylaws, without the necessity of joinder by the Members or any other persons or entities, to make nonsubstantial changes that do not materially or adversely affect the interests of other Members or other affected parties, and to clarify any ambiguities or conflicts, or correct any scribes' errors in these Bylaws.

**Section 5. Limitation.** No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of Members without approval of sixty-seven percent (67%) of the votes of each class of Members and the joinder of all Eligible Holders (as defined in the Declaration) of mortgages upon Units. No amendment shall be made that is in conflict with the Declaration, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Declarant, or the designated successor of the Declarant, unless the Declarant or such successor shall join in the execution of the amendment.

**Section 6. Recording.** Such amendment or amendments of these Bylaws shall be transcribed and certified in such form as may be necessary to file the same in the office of the Association and shall be recorded in the Public Records of Duval County, Florida within thirty (30) days from the date on which the same is approved.

ARTICLE VIII

MORTGAGES

Section 1. **Notice to Association.** An Owner who mortgages his Unit shall notify the Association through the managing agent or the Secretary of the Board in the event there is no managing agent, of the name and address of his Mortgagee and the Association shall maintain such information in a book entitled "Mortgagees of Units." Any such Owner shall likewise notify the Association as to the release or discharge of any such mortgage.

Section 2. **Notice of Unpaid Assessments.** The Board of the Association shall at the request of a Mortgagee of a Unit report any unpaid assessments due from the Owner of such Unit, in accordance with the provisions of the Declaration.

ARTICLE IX

MEANING OF TERMS

All terms appearing herein initially capitalized shall have the same meanings as are applied to such terms in the Declaration, which terms include without limitation: "Owner," "Board," "Unit," "Articles," "Member," "Mortgage," "Mortgagee," and "Common Assessments."

ARTICLE X

CONFLICTING PROVISIONS

In case any of these Bylaws conflict with any provisions of the laws of the State of Florida, such conflicting Bylaws shall be null and void upon final Court determination to such effect, but all other Bylaws shall remain in full force and effect. In a case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XI

MISCELLANEOUS

Section 1. **Execution of Documents.** The Board, except as in these Bylaws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent, committee member, or employee shall have any power or authority to bind the Association by any contract or engagement or to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.


Section 2. **Inspection of Bylaws.** The Association shall keep in its office for the transaction of business the original or a copy of these Bylaws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members and all First Mortgagees at all reasonable times

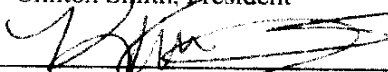
during office hours.

Section 3. **Fiscal Year.** The fiscal year of the Association shall be determined by the Board and having been so determined is subject to change from time to time as the Board shall determine.

Section 4. **Membership Book.** The Association shall keep and maintain in its office for the transaction of business a book containing the name and address of each Member. Termination or transfer of ownership of any Unit by an Owner shall be recorded in the book together with the date on which such ownership was transferred, in accordance with the provisions of the Declaration.

WE HEREBY CERTIFY that the foregoing Bylaws of the Association were duly adopted by the Board of Directors of the Association in a meeting held for such purpose on the 13<sup>th</sup> day of May 2002.

  
\_\_\_\_\_  
Clinton Smith, President

  
\_\_\_\_\_  
Kim Lewis, Secretary

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