



**2019 AMENDED DECLARATION OF
MANAGEMENT COVENANTS
FOR CAPE HAZE RESORT**

This 2019 Amended Declaration of Management Covenants is made and executed this 19th day of March 2019, by two-thirds of the total votes of the Membership as required by Article 18 below.

RECITALS:

WHEREAS, the Association consists of certain real property located in Charlotte County, Florida as described in Exhibit "A" attached hereto; and

WHEREAS, various improvements have been constructed upon the Association Property consisting of residential dwelling units, improved subdivision lots, recreation facilities and other improvements for the Lot Owners in the Association; and

WHEREAS, the developer recorded the Declaration of Management Covenants for Cape Haze Resort ("Original Declaration") at Official Records Book 3125, Page 1213 of the Public Records of Charlotte County, Florida; and

WHEREAS, the Members desire to amend the Original Declaration pursuant to Article 18 thereof.

NOW, THEREFORE, the Membership hereby declares that all of said real property hereinabove-described shall be held, owned, sold and conveyed subject to the following easements, covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property and shall be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

1. DEFINITIONS. The following words and terms, when used in this 2018 Amended Declaration of Management Covenants ("Declaration") or any subsequently amended Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

- (a) **"Assessable Share"** shall mean and refer to the total Assessment to



be levied from time to time by the Board of Directors of the Association against each Member, divided by the total number of completed condominium Units or subdivision dwelling Units within each Member Association. Completion shall be determined as follows:

(1) As to Units within a Condominium, completion shall be determined and evidenced by a surveyor's Certificate of Substantial Completion and the issuance of a temporary or final Certificate of Occupancy by Charlotte County and conveyance of the Unit to a retail purchaser;

(2) As to Dwelling Units within a platted subdivision with a development scheme of a combination of a Lot and house offered by any successor Developer, completion shall be evidenced by the issuance of a Certificate of Occupancy for the house by Charlotte County and conveyance of the Lot to a retail purchaser; and

(3) As to lots within a platted subdivision where the scheme of development does not contemplate the construction of Dwelling Units by any successor developer, completion shall be evidenced by the recording of the subdivision plat in the Public Records of Charlotte County and conveyance of the Lot to a retail purchaser.

(b) **"Assessment"** means and refers to a charge against the Members and the Units/Lots within a Member Association levied by the Board of Directors in accordance with this Declaration and secured by a lien against such Units/Lots as hereinafter provided. The following meanings shall be given to the following types of Assessments:

"Regular Assessment" means recurring periodic or annual assessments for each Member's share of the Common Expenses as indicated in the budget each year.

"Special Assessment" means any Assessment made under the authority of this Declaration other than a Regular Assessment. Special Assessments may include, but shall not necessarily be limited to, amounts necessary to supplement Regular Assessments in order to meet extraordinary and unbudgeted expenses of the Association from time to time.

(c) **"Association"** or **"Community Association"** shall mean and refer to the Cape Haze Resort Community Association, Inc., a Florida corporation not for profit.

(d) **"Board of Directors"** or **"Board"** shall mean and refer to the Board of Directors of the Association.

(e) **"Community"** shall mean and refer to that property described in Exhibit "A" attached hereto.

(f) **"Community Property"** shall mean and refer to those parcels of real



property located within the Community set aside or made available for use, ownership or benefit of the Community from time to time, as discussed in Article 4.

(h) **"Owner"** shall mean and refer to the fee simple owner of any platted Lot or platted condominium Unit within the Community.

(i) **"Unit or Lot"** shall mean a condominium unit, a Lot improved as described in subparagraph 1 (a) (2), or a vacant Lot as described in subparagraph 1(a)(3).

(j) **"Improvement"** means any structural component or landscaping built or constructed on a Lot or added to a Unit, or placed on a Lot, including but not limited to houses, swimming pools, garages, spas, fences, and recreational equipment which is affixed to the Lot.

(k) **"Maintenance" or "Maintain"** means the exercise of reasonable care to keep buildings, roads, Lots, Units, landscaping, fences, lighting and other related improvements and fixtures in a safe condition, free from defects and damages, comparable to their original condition, normal wear and tear excepted.

2. ASSOCIATION. Except as may be otherwise provided by the terms hereof responsibility for the operation, management, and maintenance of the Community Property shall be vested in the Association. The primary purpose of the Association shall be to maintain the Community Property, enforce the provisions of this Declaration wherever applicable and appropriate, and perform such other duties as may be assigned to it under the terms hereof or under its Articles of Incorporation and Bylaws. A copy of the Articles of Incorporation of the Association is attached hereto as Exhibit B. A copy of the Bylaws governing the operation of the Association is attached hereto as Exhibit C. The Association shall have all of the rights and powers provided by the Florida corporation statutes, the Articles of Incorporation, the Bylaws, and this Declaration.

3. VOTING RIGHTS. Each Member shall be entitled to a number of votes equal to the number of Assessable Shares allocated to that Member's respective association, all as further discussed in the Articles and Bylaws of the Association.

4. COMMUNITY PROPERTY. The Community Property shall include all real property, easements, rights of way, licenses, use rights, recreational facilities, irrigation system, clubhouse, swimming pool and roadways within the Community that are now or hereafter set aside, designated, reserved, granted, assigned or deed to the Association for the common use and enjoyment of all Members and Owners. Responsibility for operation and maintenance of the Community Property and any Improvements constructed thereon shall lie with the Association. Responsibility for operation and maintenance of the surface water management system within the Community shall also lie with the Association.



(a) **Owners' Easement of Enjoyment.** Subject to the provisions of this Declaration, every Owner shall have a non-exclusive easement for the use and enjoyment of the Community Property in common with the other Owners, which shall be appurtenant to and pass with the Owner's title to a Unit or Lot.

(b) **Right of Emergency and Other Governmental Personnel and Vehicles.** Notwithstanding that the Community Property shall be privately owned, all emergency vehicles, including without limitation, fire, police, ambulance, rescue and similar vehicles, as well as vehicles belonging to County Health and Pollution Control personnel and governmental or private suppliers of utilities, shall be privileged to cross the Community Property for all legitimate, proper and reasonable purposes while in pursuit of their duties.

5. COMMON EXPENSES. All costs and expenses that may be duly incurred by the Association through its Board of Directors from time to time in operating, maintaining, improving, protecting, managing, and conserving the Community Property and in carrying out its duties and responsibilities as provided by this Declaration and by its Articles of Incorporation and Bylaws shall constitute "Common Expenses" of the Association. Funds for the payment of the Common Expenses shall be collected by the Association through Assessments against the Members in accordance with the provisions of this Declaration. By way of illustration and not as a limitation, the common expenses shall include:

(a) Costs of operation, maintenance, repair, and replacement of the Community Property;

(b) Costs of management of the Association and administrative costs of the Association, including professional fees and expenses;

(c) Costs of water and sewerage service, electricity, and other utilities furnished to the Community Property that are not metered separately to the Member Associations;

(d) Labor, material, and supplies used in conjunction with the Community Property

(e) Damages to the Community Property in excess of insurance coverage;

(f) Salary of a manager or managers and their assistants, as shall be determined by the Board of Directors of the Association;

(g) Premium costs of all fire, windstorm, and other insurance procured by the Association pursuant to the terms hereof. This may also include costs of directors and



officers insurance if the Board desires at its option to obtain same.

(h) Costs of real estate, personal property and other taxes assessed against Community Property from time to time;

(i) Costs incurred by the Association, upon approval by the Board of Directors, for the installation of additions, alterations, or Improvements to the Community Property, or for the purchase of additional lands, leaseholds, or other possessory or use rights in lands or facilities, or memberships or other interests in recreational facilities, acquired for the benefit of all the Members and Owners. Provided, however, that if the cost of any of such items is more than 15 percent of the total amount of the annual budget, the purchase or acquisition of such items shall first be approved by the affirmative vote of Members holding a majority of the total votes of the Association Membership;

(j) Other costs as necessary to perform Association's duties hereunder.

6. INSURANCE. DESTRUCTION. AND RECONSTRUCTION. Except as otherwise provided herein, the Association, as agent for and on behalf of the Members and mortgagees of the respective Members or Owners, may obtain and maintain fire and extended coverage insurance with a responsible insurance company upon all of the insurable Community Property for the full replacement cost or insurable value thereof. The Association Board of Directors also is authorized to obtain and maintain such other types of insurance as it deems appropriate. The premium for all insurance shall be paid by the Association and shall be included in the Assessment for Common Expenses. The Association shall have full authority as agent for the insureds to compromise and settle all claims against its insurance carrier and may institute legal proceedings for the collection thereof. The original policy of insurance shall be held by the Association, and institutional first mortgagees shall be furnished, upon request, mortgage endorsements covering their respective interests. Each Member shall be responsible for insuring all Improvements and potential liability or insurable events occurring within its own association. Component Project, Notwithstanding the foregoing, any insurance otherwise required to be maintained by the Members by the respective association governing documents may be included in the insurance coverage purchased by the Association and paid for as part of the Common Expenses, if so authorized by the Association Board of Directors (because of savings, economies of scale or otherwise) and approved by majority vote of the Membership.

In the event of a destruction or casualty loss to any of the Improvements within the Community Property or other property serving the Members, all insurance proceeds payable under the Association's policies shall be collected by the Association. If the proceeds are in excess of the total annual budget, they shall be immediately paid over by the Association to a banking corporation having trust powers selected by the Association Board of Directors. The proceeds shall be held by the bank in and used for the immediate repair and reconstruction of the damaged Improvements under the supervision and control of the



Board. The insurance carrier shall not be responsible to ensure that the proceeds are paid over to the bank trustee or are properly applied as provided herein. The bank trustee shall disburse the proceeds held by it upon written draw requests signed by the president or vice president of the Association as reconstruction progresses. Upon completion of reconstruction, any insurance proceeds shall be returned to the Association and added to the Association's general funds. In the event the proceeds are not sufficient to pay the cost of the reconstruction and the bank trustee's costs and reasonable fees, the Association shall furnish sufficient additional funds to Trustee as a part of the Common Expenses of the Association. The Association's insurance carrier shall not have a right of subrogation against any Member, but if it is determined by the Board of Directors that the damage was proximately caused by the gross negligence or willful and wanton misconduct or intentional acts of an Owner, such Owner may be assessed a sum sufficient to reimburse the Association for any deficiency in insurance proceeds, which sum shall be payable by such Owner within 30 days after delivery of written notice of the Assessment. In the event the insurance proceeds are less than the amount of the total annual budget, they need not be placed in trust but shall be held by the Association and applied directly by the Board of Directors for the above purposes.

Mortgagees and other lienholders will evidence their acceptance of and consent to the foregoing provisions by the acceptance of their mortgages or perfection of their liens. The provisions of this Paragraph 6 may be enforced by injunction, by suit for specific performance, or by other appropriate remedy upon suit filed by the Association in a court of competent jurisdiction.

7. LIABILITY INSURANCE. The Association shall obtain and maintain public liability insurance covering the Community Property insuring the Association and the Members and Owners as their interests may appear in such amount as the Board of Directors may deem appropriate. The premiums for such insurance coverage shall be a part of the Common Expenses. The Board of Directors shall have authority to compromise and settle all claims against the Association or claims made under insurance policies held by the Association. The Members and Owners shall have no personal liability upon any such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Members or Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage. Each Member will be responsible for procuring and maintaining public liability insurance covering losses which may occur in and about its respective condominium or homeowners' association.

8. RESTRICTIONS UPON USE.

(a) No Owner or Member or party other than the Association shall within the Community undertake alterations to a building exterior, or the construction of additional Improvements, or the painting of existing Improvements a color other than as initially developed, without first obtaining the prior written consent of the Board. The Board at its



discretion may cause to be promulgated architectural standards to control such work, and the Board may delegate its duties hereunder to an architectural review committee.

(b) No Owner or Member shall without prior written consent of the Board erect any exterior lights or signs; place any signs or symbols in windows or on any balcony or exterior surface; enclose or place any awning or device upon any balcony; tint any window; erect or attach any structures or fixtures outside a Unit interior; make any structural additions or alterations to the Community Property; fasten any objects to the exterior walls; or discharge saline or other regenerating solution from water softening equipment or any other chemicals into any street, easement, surface water drain, or area of the Community so as harmfully to affect any landscaping or plants or pollute the Community drainage system.

(c) The Board at its discretion and in the event that a Member fails to so enforce, may choose to enforce property covenants, such as a declaration of condominium, which are recorded in connection with any Member Association within the Community.

(d) There shall be no parking of vehicles other than in designated parking areas. The Association shall have the right to tow vehicles and to pass rules related to vehicle parking and the towing of vehicles in violation thereof, or the towing of trailers or other non-permitted vehicles, trailers or equipment. Parking spaces within the Community not located beneath a building or enclosed shall be used only for parking of vehicles, and not for storage of equipment, grills, bicycles, or for uses other than vehicle parking. A Unit/Lot Owner must park first in the space appurtenant to the Unit/Lot owned by that Owner (it being the intent hereof to the extent possible to preserve non- assigned spaces for guests). Thus, a Unit/Lot Owner with a single vehicle would at all times park in their assigned space. All vehicles within the Community and within Member Associations must be fully licensed, registered and operational.

(e) No business or commercial building or outbuilding may be erected on any Lot. No commercial activity of any kind shall be conducted on or from any Unit or Lot nor in or from any dwelling unit except as provided herein. The term "commercial activity" means an activity undertaken as part of a commercial enterprise of or pertaining to commerce. This restriction does not prohibit any Owner from keeping personal business or professional records in the dwelling unit, or from handling personal, business or professional communication and written correspondence in and from the dwelling unit. Owners may use their dwelling units for "home office" or "telecommuting" purposes, if and only if such uses do not involve the posting of any signage upon the Unit/Lot and/or in the Community, the creation of noxious or undesirable odors/fumes and the creation of loud noises, extra traffic, or other nuisances in the Community.

(f) No noxious or offensive activity shall be allowed on any Unit/Lot, nor shall anything be done or placed thereon which may become an annoyance, nuisance or detriment to the Community or the environment. Owners shall at all times maintain their



dwelling units and Improvements therein and all Improvements upon the Lot in good condition and in a state of neat appearance.

(g) The Community Property and other areas within the Association may contain potentially dangerous wildlife such as alligators, snakes, insects, raccoons, bears, panthers, deer, swine and other similar animals. The Association is not responsible to monitor these areas for the presence of such wildlife or to protect the Owners or their tenants, guests or invitees from any harm or injury that may occur from interaction with such wildlife. Therefore, Owners (and their tenants, guests and invitees) should respect Florida's wildlife and be vigilant of its presence and take precautions when entering upon the Community Property, lakes, open areas and other portions within the Association.

(h) Personal and professional use of a drone is governed by Florida Statute 934.50, as amended from time to time by State or Federal law. No person, including but not limited to Owners, tenants, guests or invitees may operate any drone in any manner that results in an invasion of the privacy of other Owners. Owners and their guests, tenants or invitees intending to fly a drone equipped with an imaging device over any Unit or Lot within the Association must first obtain the written consent of the Lot owner or occupant (934.50 3 (b), 2018). Persons using a drone for professional purposes must advise the Association of the date and time, as well as the purpose, of the event.

9. ASSESSMENTS. The Common Expenses of the Association shall be payable by Regular (periodic or annual) and Special Assessments levied by the Board against all Members, based upon the number of Assessable Shares as determined at the time of such assessment. The Board shall approve annual budgets reflecting anticipated income and Common Expenses for each fiscal year and thereupon shall levy a Regular Assessment against each Member. The Regular Assessment shall be collected in the manner provided in the Articles and Bylaws. The Board shall have the power to levy Special Assessments against the Members as prescribed in the Bylaws. Payment of any Special Assessment levied by the Board shall be due on a date which is not less than 60 days following written notice thereof and may be payable in such installments as the Board may specify.

(a) **Assessment.**

(i) Each Member shall be subject to assessment on the basis of its total number of Assessable Shares. In this event, the Association shall have all rights as to collection and lien rights as for Regular Assessments hereunder, and this shall be considered a personal obligation of the affected Owners.

(ii) As a matter of billing and collection procedure and convenience, the Community Association shall be entitled to bill individual Unit Owners or Lot Owners within a Member Association for their respective share of the obligation of that



Member towards its Community Association Assessment. In the event the Owner is delinquent in the payment of the Community Association Assessment (whether billed directly by Community Association or collected by the Member Association), then the Community Association shall have the right to file a lien against that individual Unit or Lot to secure the collection of the delinquent Assessment. Community Association shall have the right to assess interest and fees incurred in collection with regard thereto, in the same manner as set forth in Paragraph 10.

(iii) For the period of time that an individual Unit Owner or Lot Owner is delinquent in the payment of their respective share of the Member's Assessments to the Community Association, the Community Association shall have the authority to deny that Owner the use of Community Association amenity facilities, including but not limited to the clubhouse and swimming pool. If the Owner uses Community Association amenity facilities while still delinquent in payment of Assessments to Community Association, then Community Association may treat this as a violation subject to fines that may not exceed limits set by statute.

(b) **Delinquent Assessments.** Any Assessment or other monetary obligation due to the Association which is not paid when due shall be subject to a late charge not to exceed the greater of \$25 or 5 percent of the amount of each installment that is paid past the due date, or such higher amount as may be permitted by law and also shall bear interest from the due date until paid at the rate of 18 percent per annum or at such other rate as may be established by resolution of the Board (up to the maximum rate allowed by law). If any Assessment is payable in installments and a Member defaults in the payment of an installment, the remaining installments of such Assessment may be accelerated by the Association to maturity by giving the defaulting Member 10 days' notice of intent to accelerate unless all delinquent sums are paid within that time.

(c) **Contractual Obligation of Member.** Every Assessment levied by the Board shall be the contractual obligation of the Member against which the Assessment is levied. If any such Assessment is not paid within 30 days after the same is due, then the Association may bring suit against the Member on this obligation, and there shall be added to the amount of such Assessment the aforementioned late charge, interest, and all collection costs including reasonable attorneys' fees incurred by the Association in preparation for and in bringing such action, including reasonable attorneys' fees for appellate proceedings.

10. ASSOCIATION LIEN RIGHTS. To provide an additional means to enforce the collection of any Assessment, the Association shall have a lien against each Member's common property and all Improvements thereon. A lien may also be filed against every Unit or Lot within the defaulting Member's condominium or homeowners' association with the total of the Assessment deficiency being apportioned equally on a pro rata basis to each assessable Unit or Lot therein.



A lien filed hereunder may be enforced by the Association by foreclosure suit in the same manner as a mortgage or mechanics lien foreclosure or in such other manner as may be permitted by law. In the event the Association files a claim of lien hereunder, the Association shall be entitled to recover from the Member the late charge and interest described in Paragraph 9 (b) and all costs and reasonable attorneys' fees incurred by the Association in preparing, filing, and foreclosing the claim of lien, including reasonable attorneys' fees for appellate proceedings. All such late charges, interest, costs, and attorneys' fees shall be secured by the lien of the Assessment.

11. EASEMENTS. The respective rights and obligations of the Members, Owners, the Association and others concerning easements affecting the Community shall include the following:

(a) **Reserved by Association.** The Association hereby reserves for its benefit, their successors and assigns, and for the benefit of all of the real property in the Community, perpetual easements, and the Association is hereby granted, for its benefit and that of its successors and assigns, perpetual easements, in each case for: (1) the installation, construction, repair, maintenance, and replacement of lines, pipes, wells, drains, cables, equipment, apparatus, structures, roads, driveways, and other Improvements for private or public utility services of all kinds, including without limitation, water, sewer, drainage, irrigation, fire protection, electricity, telephone, cable television, and trash disposal, over, under, through and across those portions of the Community Property designated for such uses; and (2) ingress and egress by pedestrians, runners, bicycles, golf carts, automobiles, commercial and other vehicles over, under, through and across the Community Property for the purpose of obtaining access to a Member Association and properties adjacent thereto, together with the right to construct, maintain, and replace such roads, walkways, bike paths, and other Improvements as may be reasonably appropriate for the use and enjoyment of such easement. The Association (through its Board of Directors) may assign and convey any of the foregoing easements to such persons or entities as either may deem appropriate for the use of such persons or groups of persons as may be designated and upon such terms as may be established by the Association over areas designated for such use.

(b) **Granted to Members and Owners.** Each Member and Owner is hereby granted a non-exclusive perpetual easement: (1) over and across Community Property roadways for ingress and egress to and from the Owner's property; and (2) for any encroachments by a condominium building constructed as part of a Component Project or an Owner's dwelling unit on adjoining property, including Community Property, which may exist now or in the future by virtue of overhangs, foundation slab or footer underground extensions across property lines, inaccuracies in construction or settlement or movement of the dwelling unit, recreational facilities, utility lines or otherwise, which encroachments shall be allowed to remain undisturbed until they no longer exist.

(c) **Granted to Utilities.** There is hereby granted to all public and private



utility companies furnishing utility services to the Community as of the time of recording of this Declaration, or hereafter authorized by the Association to furnish such services, a perpetual non-exclusive easement for the construction, installation, maintenance, repair, and replacement of the equipment, structures, and other Improvements by which such utility services are respectively provided over, under, across, and through such portion of the Community Property as may be reasonably necessary therefore.

(d) **Granted to and by the Association.** There is hereby granted to the Association a perpetual non-exclusive easement across and through the common areas/elements of each Member Association for the purpose of maintaining the Community Property. The Association shall have the right to grant easements under, over, across, and through the Community Property to such persons or entities and for such purposes as the Association Board of Directors may deem reasonable and appropriate by recording in the Public Records of Charlotte County, Florida, an instrument duly executed by the president or vice president of the Association. The use of any easement granted under the provisions of this paragraph shall not include the right to disturb any building or structure, and any damage caused to same shall be repaired at the expense of the party causing such damage. In the event a party's use of an easement granted pursuant to the terms hereof causes a disturbance of the surface of the land, then the roadways, grass, landscaping, and other improvements which are disturbed thereby shall be restored promptly by such party as nearly as possible to their prior condition.

12. MANAGEMENT AGREEMENT. The Association, acting through its Board of Directors, is authorized to enter into an agreement with any person or legal entity to act as managing agent to handle the administrative affairs and maintenance obligations of the Association upon such terms and conditions as the Board may deem to be in the best interests of the Members. The Board of Directors shall, however, retain at all times the power and obligation to adopt budgets, levy assessments, promulgate rules and regulations, and otherwise determine matters of a non-ministerial character.

13. REMEDIES FOR DEFAULT. In addition to the remedies provided by statute and common law and the remedies elsewhere provided herein, a default by a Member, Owner, or occupant of any dwelling unit within a Member Association, in complying with the provisions and requirements of this Declaration, the Articles of Incorporation, the Bylaws, and such regulations and rules as may be promulgated by the Board, shall entitle the Association to injunctive relief or money damages or both. In any such legal or equitable action or proceeding in which the Association is the prevailing party, the Association shall be entitled to recover its costs and reasonable attorneys' fees, including reasonable attorneys' fees for appellate proceedings.

14. DURATION. The provisions of this Declaration shall run with and bind all of the property in the Community and shall inure to the benefit of and be enforceable by the Association, each Owner, and their respective legal representatives, heirs, successors, and



assigns, for a term of 99 years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of 10 years each unless prior to the commencement of any such 10-year period: (1) Members holding at least two-thirds of the total votes of the Association Membership approve the termination of the provisions of this Declaration, and (2) a written instrument certifying that such approval has been obtained is signed by the president and secretary of the Association and recorded in the Public Records of Charlotte County.

15. SURFACE WATER MANAGEMENT. The following section is included at the direction of the Southwest Florida Water Management District ("District").

(a) No construction activities may be conducted within any portion of the surface water management system facilities in a manner inconsistent with the approved storm water plan without prior District approval. Prohibited activities include, but are not limited to: 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 management system facilities. If the project includes a wetland mitigation area, as defined in Section 1.7.24 of the Environmental Resource Permitting Manual, or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed, or sprayed with herbicide without specific written approval from the District. Construction and maintenance activities which are consistent with the design and permit conditions approved by the District in the Environmental Resource Permit may be conducted without specific written approval from the District.

(b) The District has the right to take enforcement measures, including a civil action for injunction and/or penalties, against the Association to compel it to correct any outstanding problems with the surface water management system facilities.

(c) If the Association ceases to exist, all of the Lot Owners, parcel Owners, or Unit owners within the Community shall be jointly and severally responsible for operation and maintenance of the surface water management system facilities in accordance with the requirements of the Environmental Resource Permit, unless and until an alternate entity assumes the responsibility.

(d) Should the Community from time to time have on-site wetland mitigation as defined in Section 1.7.24 of the Environmental Resource Permitting Manual, which requires ongoing monitoring and maintenance, then Association shall allocate sufficient funds in its budget for monitoring and maintenance of the wetland mitigation area(s) each year until the District determines that the area(s) is successful in accordance with the Environmental Resource Permit.

(e) It shall be the responsibility of each Owner or any successor developer at the time of construction of a dwelling, or structure, to comply with the plans for the Community Surface Water Management System approved and on file with the District.



(f) Any amendment of this Declaration affecting the Surface Water Management System facilities or the operation and maintenance thereof shall have the prior written approval of the District.

16. AMENDMENTS. The provisions of this Declaration may be amended by affirmative vote of Members holding at least two-thirds of the total votes of the Association Membership, except that provisions relating to sharing of Common Expenses, rights of institutional first mortgagees, and voting rights of Members may be amended only with the written consent of all persons or entities adversely affected thereby, either signed personally or by virtue of a specific limited proxy (but not general proxy). Amendments to the Association's Articles of Incorporation and Bylaws may be made in the manner provided therein and shall not be subject to the requirements set forth herein for amendments to the provisions of this Declaration. Amendments to this Declaration of the Articles of Incorporation which would affect the surface water management system must have the prior approval of the Southwest Florida Water Management District.

No amendment shall be effective unless it is in writing, executed by the Association president or vice president with the formalities required for a conveyance of real property in the State of Florida, and recorded in the Public Records of Charlotte County. Any amendment so executed and recorded shall be prima facie evidence that the amendment was duly adopted in accordance with the requirements of this Declaration and the Association's Articles of Incorporation and Bylaws. It shall not be necessary for the individual Members or Owners of Units or Lots or holders of recorded liens thereon to join in the execution of any amendment, except as specifically provided herein. All amendments shall reasonably conform to the general purposes of the covenants and restrictions set forth herein and shall take effect immediately upon recordation in the Public Records of Charlotte County.

17. BINDING EFFECT. All provisions of this Declaration shall be enforceable as equitable servitudes and shall run with the land and shall be in full force and effect until a particular provision is duly amended or until this Declaration is duly revoked and terminated. Any gender used herein shall include all genders and legal entities; the plural number shall include the singular and the singular shall include the plural. No representations or warranties of any kind, express or implied have been given or made by Association or its agents or employees in connection with any portion of the Community Property except as specifically and expressly set forth in this Declaration.

18. SEVERABILITY. If any provision of this Declaration or the incorporation herein by reference of the Association's Articles of Incorporation or Bylaws, or any section, sentence, clause, phrase or word thereof, or the application thereof in any circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of such instruments and of the application thereof in other circumstances shall not be affected thereby.