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**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR  
SHADOW WOOD**



**THE BROOKS**

• RECORD VERIFIED - CHARLIE GREEN, CLERK •  
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# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

## SHADOW WOOD

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_, by Long Bay Partners, L.L.C., a Florida limited liability company (the "Declarant").

### PART ONE: INTRODUCTION TO THE COMMUNITY

*Long Bay Partners, L.L.C., as the Declarant of Shadow Wood, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance and preservation of Shadow Wood as a portion of The Brooks master planned community. In addition, the Shadow Wood Community Association, Inc. is one of several master Association Entities which have been or will be created within The Brooks master planned community. The Shadow Wood Community Association, Inc. is assigned certain responsibilities for administration, maintenance, and preservation of property outside of Shadow Wood as set forth in this Declaration and The Brooks Covenant to Share Costs. These additional responsibilities shall be performed in cooperation with the Community Development Districts for the benefit of all property owners within The Brooks master planned community.*

#### Article I      **Creation of the Community**

##### 1.1.      Purpose and Intent.

The Declarant, as the owner of the real property described on Exhibit "A," intends by the recording of this Declaration to create a general plan of development for the planned community known as Shadow Wood. This Declaration provides a flexible and reasonable procedure for the future expansion of Shadow Wood to include additional real property, as Declarant deems appropriate, and provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising Shadow Wood. An integral part of the development plan is the creation of Shadow Wood Community Association, Inc., an association comprised of all owners of real property in Shadow Wood, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration.

This document does not and is not intended to create a condominium within the meaning of The Florida Condominium Act, Florida Statutes Section 718.101, et seq.

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1.2. Binding Effect.

All property described on Exhibit "A," and any additional property which is made a part of Shadow Wood in the future by the filing of one or more Supplemental Declarations in the Public Records, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns.

This Declaration shall be enforceable by the Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 25 years from the date this Declaration is recorded in the Public Records. After such time, this Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by not less than 75% of the then Owners of Units (and not Neighborhood Representatives) has been recorded in the Public Records within the year preceding any extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified in such instrument. Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reason of applicability of the rule against perpetuities, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

The Governing Documents create a general plan of development for and operation of Shadow Wood which may be supplemented by additional covenants, restrictions and easements applicable to particular Neighborhoods within Shadow Wood. In the event of a conflict between or among the Governing Documents and any such additional covenants or restrictions, and/or the provisions of any other articles of incorporation, by-laws, rules or policies governing any Neighborhood, the Governing Documents shall control. Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants applicable to any portion of the Properties from containing additional restrictions, exceptions, modifications, or provisions which are more restrictive than the provisions of this Declaration. The Association may, but shall not be required to, enforce any such covenants, restrictions, or other instruments applicable to any Neighborhood.

All provisions of the Governing Documents shall apply to all Owners and to all occupants of their Units, as well as their respective tenants, guests and invitees. Any lease on a Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

If any provision of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

## Article II Concepts and Definitions

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

2.1. "Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, The Brooks Covenant to Share Costs, the Shadow Wood Covenant to Share Costs (collectively, "the Covenants to Share Costs") or other applicable covenants, contracts, or agreements.

2.2. "Articles of Incorporation": The Articles of Incorporation of Shadow Wood Community Association, Inc., as filed with the Secretary of State of the State of Florida.

2.3. "Association": The Shadow Wood Community Association, Inc., a Florida not-for-profit corporation, its successors or assigns.

2.4. "Association Entities": A collective term referring to the Shadow Wood Community Association, the Spring Run Golf Club Community Association, The Brooks Town Center Association, and any other community association or property owners' association (but not including a neighborhood association subordinate to an Association Entity) established within The Brooks, which is subject to The Brooks Covenant to Share Costs.

2.5. "Base Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.1.

2.6. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Florida corporate law.

2.7. "The Brooks Covenant to Share Costs": That certain Declaration of Easements and Covenant to Share Costs For The Brooks, recorded in the Public Records, creating easements and setting forth a covenant to share costs executed by Declarant for the benefit of the Association and the present and future owners of the real property subject to such covenant to share costs and which obligates the Association and such owners to share the costs of maintaining certain property which may be located within or outside of the Properties as more particularly described in such covenant to share costs. For example and without limitation, the Association and the other Association Entities and Property Owners (as defined therein) are allocated certain rights, responsibilities, and expenses for landscaping and maintaining the entrance monuments and water features, landscaping, lighting, and irrigation along the boundaries and arterial roadways, signage for the master planned community, and other designated areas described in The Brooks Covenant to Share Costs.

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2.8. "The Brooks": The master planned community known as The Brooks, a development of regional impact, as shown on the Master Plan and approved by Lee County, Florida, as it may be amended from time to time.

2.9. "Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business, provided that the Declarant shall designate the status of "Builder" and assign the rights of such Builder in written instrument.

2.10. "By-Laws": The By-Laws of the Shadow Wood Community Association, Inc. attached hereto as Exhibit "E" and incorporated herein by reference, as they may be amended from time to time.

2.11. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term Common Area may include as a part of the Common Area the Conservation Areas and Surface Water Management System if such are transferred to the Association. The term shall include the Exclusive Common Area, as defined below.

2.12. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents, including obligations arising under the Covenants to Share Costs.

2.13. "Community Development District(s)": One or more special service, utility, and taxing district(s) created as a special purpose unit of local government with jurisdiction within, adjacent to, and in the vicinity of the Properties established in accordance with Chapter 190, Florida Statutes, 1980, which is/are vested with certain quasi-governmental powers and responsibilities within or adjacent to the Properties. In the event that more than one such district is created, the districts may share certain responsibilities within their jurisdiction.

2.14. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall be established initially by the Declarant and may be more specifically defined in the Design Guidelines, the Use Restrictions, and Rules and Regulations adopted by Board resolutions.

2.15. "Conservation Areas": The real property and any improvements which are now or are hereinafter made a part of the Properties and designated as Conservation Areas on the recorded plats or other instruments recorded in the Public Records for Shadow Wood.

2.16. "Declarant": Long Bay Partners, L.L.C., a Florida limited liability company, or any successor or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a

recorded instrument executed by the immediately preceding Declarant. The Declarant shall be the "developer" of Shadow Wood as defined in Chapter 617.301, et seq., Florida Statutes (1997).

2.17. "Design Guidelines": The architectural, design and construction guidelines and review procedures adopted pursuant to Article IV, as they may be amended.

2.18. "Environmental Permits": Those permits, easements and other forms of approval granted by local, state or federal governmental entities for activities on or benefiting Shadow Wood (and/or others who may or may not be Members), and identified as such by the Declarant, and which may include, but shall not be limited to the following:

- (a) permits issued by the State of Florida, Department of Environmental Protection,
- (b) permits issued by the U.S. Army Corps of Engineers,
- (c) plans approved by the Florida Game and Freshwater Fish Commission, and
- (d) permits issued by the South Florida Water Management District.

2.19. "Exclusive Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Neighborhoods, as more particularly described in Section 13.1.

2.20. "Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, the Use Restrictions, the Covenants to Share Costs, and the Rules and Regulations, as they may be amended.

2.21. "Master Plan": The land use plan for the development of Shadow Wood prepared by Wilson, Miller, Barton & Peek, Inc., and approved by Lee County, Florida, as it may be amended, which includes all of the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property described on Exhibit "B" from the Master Plan bar its later submission to this Declaration as provided in Article IX.

2.22. "Member": A Person subject to membership in the Association pursuant to Section 6.2.

2.23. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. A "Mortgage" shall refer to a beneficiary or holder of a Mortgage.

2.24. "Neighborhood": A group of Units designated as a separate Neighborhood for purposes of sharing Exclusive Common Area, Neighborhood Common Area and/or receiving other benefits or services from the Association which are not provided to all Units within the Properties, and/or for the purpose of electing Neighborhood Representatives as provided in Section 6.4. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association, if any, having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 6.4.

2.25. "Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Section 8.2.

2.26. "Neighborhood Association": A condominium association or homeowners association having concurrent jurisdiction with the Association over any Neighborhood.

2.27. "Neighborhood Common Area": All real and personal property, including easements, owned, leased or otherwise possessed by a Neighborhood Association for the common use and enjoyment of the Owners within such Neighborhood. Neighborhood Common Area may include Conservation Areas or components of the Surface Water Management System if assigned by the Declarant as provided herein.

2.28. "Neighborhood Expenses": The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, if any, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may specifically be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s).

2.29. "Neighborhood Representative": The representative selected by the Class "A" Members within each Neighborhood pursuant to Section 6.4(b) to cast the Class "A" votes attributable to their Units on all matters requiring a vote of the membership (except as otherwise specifically provided in the Governing Documents). Where the context permits or requires, the term "Neighborhood Representative" shall also refer to alternate Neighborhood Representatives acting in the absence of the Neighborhood Representative and any Owners authorized personally to cast the votes for their respective Units pursuant to Section 6.4(b) or elsewhere in the Governing Documents.

2.30. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

2.31. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

2.32. "Private Amenities": Certain real property and any improvements and facilities thereon located adjacent to or in the vicinity of Shadow Wood, which are privately owned and

operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, and shall include, without limitation, the golf course, if any, which is so located and all related and supporting facilities and improvements.

2.33. "Properties" or "Shadow Wood": The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article IX.

2.34. "Public Records": The Official Records of Lee County, Florida.

2.35. "Rules and Regulations": Board-adopted Rules and Regulations which establish administrative procedures for internal Association governance and operating procedures for use of the Common Area and property included within the Area of Common Responsibility.

2.36. "Shadow Wood Covenant to Share Costs": An agreement creating easements and setting forth a covenant to share costs executed by Declarant and recorded in the Public Records for the benefit of the Association and the Private Amenity which obligates the Association and the Private Amenity to share the costs of maintaining certain property which is located within or around the Properties as more particularly described in such Shadow Wood Covenant to Share Costs.

2.37. "Special Assessment": Assessments levied in accordance with Section 8.4.

2.38. "Specific Assessment": Assessments levied in accordance with Section 8.5.

2.39. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article IX which subjects additional property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument filed by the Declarant pursuant to Section 6.4(c) which designates Voting Groups.

2.40. "Surface Water Management System": Any portion of real property, improvement, work or feature such as swales, ditches, canals, impoundments, berms, ponds, lakes, retention/detention areas, conservation areas, culverts and pumps required or described in any permits issued by South Florida Water Management District and any other applicable governmental agency for the management and storage of surface waters, drainage and flood protection for Shadow Wood and adjacent areas and identified as an element or component of the Surface Water Management System by the Declarant at the time such is conveyed or transferred to the Association. The Surface Water Management System may be divided into one or more categories, including without limitation the following:

(a) The "Primary Surface Water Management System" will generally include those features of the Surface Water Management System which benefit the Properties as a whole rather than any single Unit or Neighborhood, as determined by the Declarant and may be added to or

deleted from by the Declarant at any time prior to the termination of the Class "B" Membership;  
and

(b) The "Secondary Surface Water Management System" will generally include that portion of the Surface Water Management System not designated by Declarant as Primary Surface Water Management System and may benefit a portion of the Properties, a Unit or Neighborhood, as determined by the Declarant and may be added to or deleted from by the Declarant at any time prior to the termination of the Class "B" Membership.

2.41. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

2.42. "Use Restrictions": The initial Use Restrictions set forth on Exhibit "C," as they may be supplemented, modified and repealed pursuant to in Article III.

2.43. "Voting Group": One or more Neighborhood Representatives who vote on a common slate for election of directors to the Board, as more particularly described in Section 6.4(c) or, if the context so indicates, the group of Members whose Units are represented thereby.

## **PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*The standards for use and conduct, maintenance and architecture within Shadow Wood are what give the community its identity and make it a place that people want to call "home." Yet those standards must be more than a static recitation of "thou shalt not's." This Declaration establishes procedures for enacting Use Restrictions as a dynamic process which allows the community standards to evolve as the community changes and grows and as technology and public perception change.*

**Article III Use and Conduct**

3.1. Framework for Regulation.

Declarant has established a general plan of development for the Properties as a planned community in order to enhance all Owners' quality of life and collective interests and the aesthetics and environment within Shadow Wood and the surrounding communities. To accomplish this objective, the Properties are subject to the Design Guidelines enacted in accordance with Article IV, other Rules and Regulations adopted by the Board, and individual restrictions on conduct and use of or actions upon the Properties promulgated pursuant to this Article which establish affirmative and negative covenants, easements, and restrictions on Properties. With respect to the Use Restrictions promulgated pursuant to this Article, the Board and the Members shall have the ability, in the manner set forth below, to respond to changes in circumstances and needs within Shadow Wood.

All provisions of the Governing Documents and supplements shall apply to all Persons on the Properties. The lessee and all occupants of leased Units shall be bound by the terms of the Governing Documents and supplements, whether or not the lease so provides. All Owners shall be responsible for inserting a provision in any lease informing the lessee and all occupants of the Unit of all applicable Use Restrictions and Rules and Regulations affecting the Unit and the Common Area.

3.2. Authority to Enact Use Restrictions.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Use Restrictions. The Board shall send notice by mail to all Owners or broadcast or publish via a medium readily available throughout the Properties concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Neighborhood Representatives shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective, after compliance with subsection (c) below, unless disapproved at a meeting by Neighborhood Representatives representing more than 50% of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Neighborhood Representatives to consider disapproval except upon receipt of a petition of the Neighborhood Representatives as required for special meetings in the By-Laws. Upon such petition of the Neighborhood Representatives prior to the effective date of any Board action under this Section 3.2(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, the Neighborhood Representatives, at an Association meeting duly called for such purpose, may adopt Use Restrictions which modify, cancel, limit, create exceptions to, or expand the Use Restrictions by a vote of Neighborhood Representatives



representing more than 50% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall publish, broadcast, or send a copy of the new Use Restriction or explanation of any changes to the Use Restrictions to each Owner, specifying the effective date. The Association shall provide, without cost, a copy of the Use Restrictions then in effect to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Neighborhood Representatives to modify, repeal or expand the Design Guidelines. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

(e) Procedures required under this Section shall not apply to enactment and enforcement of Rules and Regulations unless the Board chooses in its discretion to submit to such procedures. Examples of such Rules and Regulations shall include, but not be limited to, administrative procedures, traffic regulations, and parking rules on the Common Area. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such Rules and Regulations.

(f) Nothing in this Article shall limit the Declarant's ability to unilaterally amend this Declaration and the Use Restrictions during the Class "B" membership as provided in Section 19.1. Amendments made under Section 19.1 shall be effective when recorded.

3.3. Owners' Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Units and the Common Area is limited by the Use Restrictions as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Use Restrictions may change from time to time. All purchasers of Units are on notice that changes may have been adopted by the Association. Copies of the current Use Restrictions may be obtained from the Association.

3.4. Protection of Owners and Others.

No Use Restriction shall be adopted in violation of the following provisions, except as may be specifically set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth on Exhibit "C":

(a) Equal Treatment. Similarly situated Owners shall be treated similarly; provided, the Use Restrictions may vary by Neighborhood.

(b) Displays. The rights of Owners to display inside structures on their Units religious and holiday symbols, and decorations of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may

adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

(c) Household Composition. No Use Restriction shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) Activities Within Dwellings. No Use Restriction shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(e) Alienation. No Use Restriction shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 30 days. The Association may require that Owners use lease forms approved by the Association and may impose administrative fees, transfer fees, and reserve assessments on the lease or transfer of any Unit in such amount as may be reasonably determined by the Board and which may be graduated in rates based on length of the lease, type of occupancy, or other factors deemed appropriate by the Board. Additionally, the Association may require the prior payment of a lease deposit to ensure compliance with the Association's Use Restrictions and to constitute liquidated damages in the event of non-compliance or damage to the Common Area. Any Owner which leases his or her Unit shall be presumed to have delegated his or her easements and rights to use the Common Area to his or her tenant or occupant, and such Owner's easements and rights to use shall be suspended during the term of the lease. The use rights and privileges delegated to a guest or tenant may be limited to a greater extent than the use rights and privileges of an Owner occupying his or her Unit. Such limitations may be enacted by the sole discretion of the Board and may include, without limitation, imposing additional or higher fees and periods of use being reserved or restricted.

(f) Abridging Existing Rights. If any Use Restriction would otherwise require Owners to dispose of personal property which they maintained in or on the Unit prior to the effective date of such Use Restriction, or to vacate a Unit in which they resided prior to the effective date of such Use Restriction, and such property was maintained or such occupancy was in compliance with this Declaration and all Use Restrictions previously in force, such Use Restriction shall not apply to any such Owners without their written consent.

(g) Reasonable Rights to Develop. No Use Restriction or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

(h) Interference With Private Amenities. No rule or action by the Association shall interfere with the use or operation of any Private Amenity.

The limitations in subsections (a) through (g) of this Section 3.4 shall only limit the promulgation of Use Restrictions under Section 3.2; they shall not apply to amendments to this Declaration adopted in accordance with Article XIX.

#### **Article IV    Architecture and Landscaping**

##### **4.1.    General.**

No structure or thing shall be placed, erected, installed or posted on the Properties and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Properties, except in compliance with this Article and the Design Guidelines. No signage shall be placed, erected, installed, or displayed on any portion of the Properties except for signage installed by the Declarant or a Builder unless such signage has been approved in writing by the Reviewer.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer unless otherwise approved by the Declarant or its designee in its sole discretion.

This Article shall not apply to the activities of the Declarant, nor to activities of the Association during the Class "B" membership.

##### **4.2.    Architectural Review.**

(a) By Declarant. Until 100% of the property described on Exhibit "A" and "B" has been developed and conveyed to Owners other than Builders, the Declarant shall have the exclusive right to exercise architectural review under this Article. The rights reserved to Declarant under this Article shall continue so long as Declarant owns any portion of the Properties or any real property adjacent to the Properties, unless earlier terminated in a written instrument executed by Declarant and recorded in the Public Records.

The Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder

Each Owner and Builder, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as the developer of the Properties and as an Owner of portions of the Properties as well as other real estate within the vicinity of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties preserve its reputation and do not impair the Declarant's ability to market its property. Therefore, each Owner and Builder covenants and agrees that no activity within the scope of this Article ("Work") shall be commenced on such Owner's Unit unless and until the Declarant or its designee has given its prior written approval for such Work, which approval may be granted or withheld in the Declarant's or its designee's sole discretion. In reviewing and acting upon any request for approval, Declarant and its designee shall owe no duty to any other Person.

The Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) an architectural review committee appointed by the Association's Board of Directors (the "ARC"); or (ii) a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) the right of Declarant to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as the Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as are specifically delegated to it by the Declarant.

(b) Architectural Review Committee. Upon delegation by Declarant or upon expiration or termination of the Declarant's rights under this Article, the Association, acting through the ARC, shall assume jurisdiction over architectural matters hereunder. The ARC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or the Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees; Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

4.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of the Properties as well as specific provisions which vary from Neighborhood to Neighborhood. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Design Guidelines does not guarantee approval of any application.

The Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Properties or has a right to expand the Properties pursuant to Section 9.1, notwithstanding a delegation of reviewing authority to the ARC, unless the Declarant also delegates the power to amend to the ARC. Upon termination or delegation of the Declarant's right to amend, the ARC shall have the authority to amend the Design Guidelines with the consent of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Prior to commencing any Work within the scope of this Article, an Owner shall submit to the appropriate Reviewer an application for approval of the proposed Work in such form as the Design Guidelines or the Reviewer may specify. Such application shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall, within 45 days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may (i) approve the application, with or without conditions;

(ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond within 45 days, approval shall be deemed to have been given, subject to the Declarant's right to veto approval by the ARC pursuant to this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which Plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, the Declarant or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

#### 4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the reviewer may refuse to approve similar proposals in the future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

#### 4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules and

Regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design. Neither the Declarant, the Association, the Board, any committee, nor member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work, nor for any defects in plans revised or approved hereunder, nor for any injury, damages, nor loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the ARC and all persons comprising the ARC shall be defended and indemnified by the Association as provided in Section 7.6.

4.7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that on such Owner's Unit there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

**Article V Maintenance and Repair**

5.1. Maintenance of Units.

Each Owner shall maintain his or her Unit and all landscaping and improvements comprising the Unit in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

Each Owner shall also be responsible for maintaining and irrigating the landscaping on the Common Area adjacent to the Unit to the edge of any (a) pavement of the adjacent paved roadway, (b) water's edge, or (c) Conservation Area; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article IV.

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Owners are prohibited from trimming, pruning, or removing trees, shrubs or similar vegetation on any portion of the Private Amenities. Any Owner desiring to trim, prune, or alter the vegetation on the Private Amenities shall make a written request to the Association to request appropriate action of the Private Amenity owner, who shall have sole and final decision-making authority on what, if any, vegetation shall be removed or altered.

5.2. Maintenance of Neighborhood Common Area.

A Neighborhood Association shall maintain its Neighborhood Common Area and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping on the Common Area adjacent to the Neighborhood Association to the edge of any pavement, water's edge, or Conservation Area; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article IV. The Neighborhood Association shall be responsible for maintaining any portion of the Surface Water Management System located within such Neighborhood which is designated by the Declarant as a Secondary Surface Water Management System.

Upon resolution of the Board, the Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

The Association may, but shall not be obligated to, assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.3. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary, to maintain the property to a level consistent with the Community-Wide Standard.



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, unless the Neighborhood Association in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to, do hereunder).

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 IV. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association responsible for Neighborhood Common Area in the same manner as if the Neighborhood Association were an Owner and the Neighborhood Common Area were a Unit. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

**PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION**

*The success of the community is dependent upon the support and participation of every Owner in its governance and administration. The Declaration establishes the Shadow Wood Community Association, Inc. as the mechanism by which each owner is able to provide that support and participation. While many powers and responsibilities are vested in the Association's board of directors, some decisions are reserved for the Association's membership - the owners of property in the community.*

**Article VI The Association and its Members**

**6.1. Function of Association.**

The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also shall be responsible for enforcement of the Governing Documents, subject to the delegation of certain obligations and enforcement responsibilities to the Neighborhood Associations. Neighborhood Associations shall be primarily responsible for enforcement of the Governing Documents and any governing documents of the Neighborhood Association within its jurisdiction. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Florida.

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6.2. Membership.

Every Owner shall be a Member of the Association in addition to a member of a Neighborhood Association. There shall be only one membership in the Association per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting.

The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.9. All Class "A" votes shall be cast as provided in Section 6.3(c) below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. Until the Class "B" membership expires or is terminated, the Class "B" Member may appoint a majority of the members of the Board of Directors as specified in the By-Laws. Additional rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles.

The Class "B" membership shall terminate upon the earlier of:

(i) three months after 90% of the maximum number of Units reserved by Declarant on Exhibit "B" and which may be constructed on all phases of the property described on Exhibits "A" and "B" under the resolutions of the Lee County Board of County Commissions, as amended from time to time, have been conveyed to Class "A" Members; or

(ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Neighborhood Representative representing the Neighborhood, as provided in Section 6.4(b). The Neighborhood Representative may cast all such votes as it, in its discretion, deems appropriate.

In any situation where a Member is entitled personally to exercise the vote for his or her Unit, and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

6.4. Neighborhoods, Neighborhood Representatives, and Voting Groups.

(a) Neighborhoods. Every Unit shall be a part of a Neighborhood. Exhibit "A" to this Declaration, and each Supplemental Declaration submitting additional property to this Declaration shall initially assign the property submitted thereby to a specific Neighborhood (by name or other identifying designation), which Neighborhood may be then existing or newly created. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Neighborhood boundaries for any purpose.

Any Neighborhood, acting either through a Neighborhood Committee elected as provided in the By-Laws or through a Neighborhood Association, may request that the Association provide a higher level of service that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the Neighborhood, the Association may, but shall not be obligated to, provide such services to the Neighborhoods (e.g., landscaping, maintenance, administrative services) under such terms and conditions as the Association and such Neighborhood may agree from time to time. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed as a Neighborhood Assessment.

(b) Neighborhood Representatives. The Class "A" Members in each Neighborhood shall be represented by a Neighborhood Representative who shall be responsible for casting all votes attributable to Units owned by Class "A" Members in the Neighborhood on all Association matters requiring a membership vote, except as otherwise specified in this Declaration or the By-Laws. The senior elected officer of each Neighborhood Association, or duly elected representative of a Neighborhood Committee elected as provided in the By-Laws, shall serve as the Neighborhood Representative. The next highest officer within the Neighborhood shall serve as the alternate. The Neighborhood Representative shall cast all the votes of the Class "A" Members in his or her Neighborhood as he or she deems appropriate in his or her discretion.

The Board shall call for the designation of a Neighborhood Representative for each Neighborhood not later than the date upon which the non-Declarant and non-Builder Owners hold record title to 75% of the Units in such Neighborhood. Until such time as Neighborhood Representatives are designated for the Neighborhood, the Owners within such Neighborhood

shall be entitled personally to cast the votes attributable to their respective Units on any issue requiring a membership vote under the Governing Documents. Unless otherwise provided in the documents governing a Neighborhood Association, each Class "A" Member owning a Unit within the Neighborhood shall be entitled to cast one equal vote per Unit owned in Neighborhood elections, and the presence, in person or by proxy, of Class "A" Members representing at least 30% of the total Class "A" votes attributable to Units in the Neighborhood shall constitute a quorum at any Neighborhood meeting. Neighborhood Representatives and alternates shall serve a term of one year and until their successors are elected. Any Neighborhood Representative or alternate may be removed, with or without cause, upon the vote or written petition of a majority of the total number of Class "A" votes in the Neighborhood.

(c) Voting Groups. Anytime prior to the expiration of termination of the Class "B" membership, Declarant may designate or redesignate Voting Groups consisting of one or more Neighborhoods for the purpose of electing directors to the Board. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid allowing Neighborhood Representatives representing similar Neighborhoods to elect the entire Board, due to the number of Units in such Neighborhoods, excluding representation of others. The number of Voting Groups within the Properties shall not exceed the total number of directors to be elected by the Class "A" Members pursuant to the By-Laws. The Neighborhood Representatives representing the Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of directors specified in the By-Laws.

Voting Groups shall be established, if at all, by filing with the Association and recording in the Public Records, a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by the Declarant, acting alone, at any time prior to the expiration of the Class "B" membership. Until such time as Voting Groups are established, all of the Properties shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been recorded, any and all portions of the Properties which are not assigned to a specific Voting Group shall constitute a single Voting Group.

## **Article VII Association Powers and Responsibilities**

### **7.1. Acceptance and Control of Association Property.**

(a) The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property.

(b) The Declarant and its designees may convey to the Association personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described on Exhibits "A" or "B." The conveyances of real and personal property may include portions of the Storm Water Management and Conservation Areas. Common Area conveyed to the Association may be subject to governmental obligations and other encumbrances. The

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Association shall accept and maintain such property at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request by Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

7.2. Maintenance of Area of Common Responsibility.

(a) The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which may include, but need not be limited to:

(i) all portions of and structures situated upon the Common Area;

(ii) landscaping and buffers within public rights-of-way within or abutting the Properties if and to the extent such obligations are not delegated to a Community Development District(s) or another entity pursuant to a covenant to share costs;

(iii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, The Brooks Covenants to Share Costs, or the Shadow Wood Covenant to Share Costs;

(iv) such portions of the Conservation Areas, Surface Water Management System, signage, landscaping, or other areas assigned to or transferred by agreement between the Association and a Community Development District(s); and

(v) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(b) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless at least 75% of the Class "A" votes in the Association and the Declarant, so long as Declarant

owns any property described on Exhibits "A" or "B," regardless of whether such property is subjected to this Declaration, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

(c) The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, the Covenants to Share Costs, other recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed to the Neighborhood(s) such to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

7.3. Insurance.

(a) Required Coverages. After the termination of the Class "B" membership, the Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect as a Common Expense of the Association the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering the full replacement cost under current building codes and ordinances of all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that the Association has assumed responsibility for repair or replacement in the event of a casualty, regardless of ownership;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its business judgment, determines advisable.

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Neighborhood, obtain and maintain property insurance on the insurable improvements within such Neighborhood. Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (i) premiums for property insurance on Units within a Neighborhood shall be a Neighborhood Expense; (ii) premiums for property insurance on the Joint Property (as that term is defined in The Brooks Covenant to Share Costs) shall be included in the Joint Property Expenses (as that term is defined in The Brooks Covenant to Share Costs); and (iii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Expenses of the Neighborhood(s) to which such Exclusive Common Areas are assigned unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Lee County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Florida which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

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(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;

(vii) provide a waiver of subrogation under the policy against any Owner or household member of a Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which



it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Neighborhood Representatives representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide not to repair or reconstruct. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Neighborhood Representatives, levy Special Assessments to cover the shortfall.

#### 7.4. Compliance and Enforcement.

Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents (including, without limitation, the Design Guidelines, Use Restrictions, and Rules and Regulations) after notice and a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(b) suspending any Person's right to use any portion of the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(c) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(d) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(e) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of Article IV and to restore the Unit to its previous condition. Upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(f) precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in the Properties, without incurring liability to any Person therefor; and

(g) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

(h) Taking the following enforcement sanctions to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking Use Restrictions or Rules and Regulations); and

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may record a notice of violation in the Public Records or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. If a Neighborhood Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Neighborhood Assessment against all Units within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Association reasonable notice and an opportunity to cure the problem prior to entering a dwelling.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. The Association shall also have the authority, but not the obligation, to enforce any provision contained in the governing documents of any Neighborhood Association. The Neighborhood Association shall have the primary responsibility to enforce its governing documents, and the Association's rights hereunder shall be exercised only after the Neighborhood Association has failed or refused to fulfill its obligations. In any action to enforce the Governing Documents or the governing documents of a Neighborhood Association, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

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The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case, (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) that although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources, or (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce applicable city and county ordinances, if applicable, and permit Lee County to enforce ordinances within the Properties for the benefit of the Association and its Members.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

7.6. Indemnification of Officers, Directors and Others.

The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Florida law.

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 or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present 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.

Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in Section 3.25 of the By-Laws.

In addition to any other rights:

(i) Volunteer officers or directors of the Association shall not be personally liable in excess of the coverage of insurance specified in subparagraph (D), below, to any Person who suffers injury, including but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of his or her tortious act or omission as long as the following requirements are met by the volunteer officer, director and Association:

(A) the director's or officer's act or omission was performed within the scope of their duties;

(B) the director's or officer's act or omission was performed in good faith;

(C) the director's or officer's act or omission was not willful, wanton, or grossly negligent; and

(D) the Association maintained and had in effect (at the time the act or omission of the director or officer occurred and at the time a claim was made) one or more insurance policies which included coverage for general liability of the Association and individual liability of officers and directors for negligent acts or omissions in that capacity, both in the amount of at least \$1,000,000.00.

(ii) The payment for actual expenses incurred in the execution of his or her duties shall not affect the status of an officer or director as a volunteer.

7.7. Community Activities.

The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Properties, can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board and committees, and the Declarant are not insurers and that each Person using the

Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

7.8. Powers of the Association Relating to Neighborhoods.

The Association shall have the power, but not the obligation, to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy a Neighborhood Assessment or Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

7.9. Provision of Services.

The Association shall be authorized but not obligated to enter into, in the Board's discretion, contracts or agreements with other entities, including Declarant, to provide services to and facilities for the Members of the Association and their guests, lessees, and invitees and to charge use and service fees for such services and facilities. By way of example, some services and facilities which might be offered include landscape maintenance, pest control service, cable television and communication service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. The cost of such services and facilities may be included as a Common Expense if offered in bulk to all members or as a Neighborhood Assessment or Specific Assessment if offered to Neighborhoods or individuals, as appropriate.

7.10. Cooperation with Community Development District(s).

The Association shall have the power, and is hereby authorized, to contract with and to cooperate with any Community Development District(s) in order to ensure that their respective responsibilities are discharged. The Association is authorized to enter into agreements with any Community Development District(s) to construct, maintain, improve, replace, insure and perform other responsibilities as may be set forth in such agreement(s) with respect to signage, landscaping, or other functions which may be performed, in whole or in part, by such Community Development District(s). The expense of such activities may be allocated pursuant to The Brooks Covenant to Share Costs, or as a Common Expense, as set forth in the agreement with the Community Development District(s). The Association is further authorized to act on behalf of its Members to ensure that the level of services provided by any Community Development District, if created, is consistent with the Community-Wide Standard. Each Owner or Builder, by owning or accepting a deed or recorded contract of sale for any portion of the

Properties, is deemed to covenant and consent to the creation of one or more Community Development District(s) and to the execution of a separate document so consenting to its creation if requested to do so by the Declarant.

7.11. Relationships With Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property, Community Development District(s), or Private Amenity to contribute funds for and maintain, among other things, shared or mutually beneficial property or services and/or provide a higher level of maintenance within The Brooks.

7.12. Relations with Other Entities.

The Association may enter into agreements with tax exempt foundations and other entities for the benefit of the Property and its residents, as well as the larger community surrounding the Properties. Funding for such activities may be supported through the transfer fees collected in accordance with Article VIII. The purposes for such agreements may include, without limitation:

- (a) preservation and maintenance of natural areas, wildlife preserves, or similar Conservation Areas and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation, and preservation of the natural environment within the Properties or the surrounding community;
- (b) programs and activities which serve to promote a sense of community, such as recreational leagues, cultural programs, educational programs, festivals, holiday celebrations and activities, a community computer network, and recycling programs; and
- (c) social services, community outreach programs, and other charitable causes.

**Article VIII Association Finances**

8.1. Budgeting and Allocating Common Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.3 and payments to be made or to be received pursuant to the Covenants to Share Costs. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years or sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 8.6.

The Association is hereby authorized to levy Base Assessments against all Units subject to assessment under Section 8.6 to fund the Common Expenses. The Board, in its discretion,

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may establish the rate of assessment equally against all Units within Shadow Wood, or the Board may establish different rates based on the type of Unit within a Neighborhood (e.g., estate home, single family detached, patio home, condominium unit, etc.), provided that such rate shall be equal for all similar Neighborhoods. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.7(b)), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget. The budget adopted by the Board shall automatically become effective. After the expiration of the Class "B" membership, the budget adopted by the Board shall automatically become effective unless disapproved at a meeting by Neighborhood Representatives representing at least 75% of the total Class "A" votes in the Association. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Neighborhood Representatives as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.2. Budgeting and Allocating Neighborhood Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses, if any, for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year as authorized by this Declaration or any Supplemental Declaration applicable to such Neighborhood. The budget of Neighborhood Expenses shall also include any costs for additional services or a higher level of services which the Association and the Neighborhood have agreed upon pursuant to Section 6.4(a). The budget shall also reflect the sources and estimated amounts of funds to cover such expenses.

The Association is hereby authorized to levy Neighborhood Assessments equally against all Units in the Neighborhood which are subject to assessment under Section 8.6 to fund Neighborhood Expenses incurred by the Association to perform an activity or function which should have, pursuant to the Governing Documents or the governing documents of the Neighborhood Association, been performed by the Neighborhood Association.

The Board shall cause a copy of the Neighborhood budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner in the Neighborhood at least 30 days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Neighborhood by Owners of a majority of the Units in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least 10% of the Units in such Neighborhood. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood and shall not apply to any item which the Governing Documents require to be assessed as a Neighborhood Assessment.

If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to the notice requirements and the right of the Owners of Units in the affected Neighborhood to disapprove the revised budget as set forth above.

#### 8.3. Budgeting for Reserves.

The Board shall periodically prepare a reserve budget for the Area of Common Responsibility. The reserve budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. Funding for reserves shall be funded primarily through the capitalization assessments specified in Section 8.10; provided, however, the Board may, but shall not be obligated to, include a capital contribution in the Common Expense budget adopted pursuant to Section 8.1 to fund reserves.

#### 8.4. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, after the termination of the Class "B" membership any Special Assessment shall require the affirmative vote or written consent of Neighborhood Representatives (if a Common Expense) or Owners (if a Neighborhood Expense) representing more than 50% of the total votes



allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. 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.

8.5. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in Section 7.9). Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives prior written notice to the Owners of Units in, or the Neighborhood Representative representing, the Neighborhood and an opportunity for such Owners or Neighborhood Representative to be heard before levying any such assessment.

8.6. Authority to Assess Owners; Time of Payment.

The Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay Base Assessments, Special Assessments, and Neighborhood Assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board

otherwise provides, assessments 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 Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

The Association may, but shall not be obligated to, provide the Association's budgets and notices of assessment for the Base Assessments, Special Assessments, and any Neighborhood Assessments of all Owners within a Neighborhood to its governing Neighborhood Association. If so directed by the Association, the Neighborhood Association shall be responsible for billing, collecting, and remitting all amounts due from all Owners in such Neighborhood to the Association in accordance with such procedures as may be established by the Board. Notwithstanding the Association's delegation of billing and collection to the Neighborhood Association, in the event of delinquency, the Association shall reserve all rights and powers of collection as set forth in this Article.

8.7. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Florida law), late charges as determined by Board resolution, costs, lien fees, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments, if any, on the same basis as during the last year for which an assessment was made, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment which may be relied upon by any Person other than the Owner of the Unit requesting such certificate. The

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Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Option to Fund Budget Deficits. During the Class "B" membership, Declarant may satisfy its obligation for assessments on Units which it owns and are subject to assessment or for which it is contractually obligated to fund a Builder's assessment obligation either by: (i) paying such assessments in the same manner as any other Owner, or (ii) by paying the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association (excluding any amounts in the budget of Common Expenses for capital and contingency reserves) during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of the Declarant's election, the Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" membership, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

8.8. Lien for Assessments.

The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Florida law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value and recorded prior to the date the Association perfects its lien. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under Florida law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While 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 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. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from

Owners of all Units subject to assessment under Section 8.6, including such acquirer, its successors and assigns.

8.9. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 7.2;

(b) Any property dedicated to and accepted by any governmental authority or public utility; and

(c) Neighborhood Common Area.

In addition, the Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

8.10. Capitalization of Association.

Upon acquisition of record title to a Unit by the first Owner thereof other than a Builder and upon each subsequent transfer or conveyance (of any type whatsoever), a contribution shall be made by or on behalf of the purchaser to the reserves of the Association in an amount established by resolution of the Board of Directors. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be paid to the Association by separate check upon the closing or other settlement of the transfer or conveyance of the Unit. Any unpaid capitalization assessment shall constitute a lien in favor of the Association against the Unit as provided in this Article.

Notwithstanding the foregoing, a capitalization assessment shall not be levied in the following instances:

(a) Conveyance of a Unit by an Owner to a trust, partnership, corporation, or other entity so long as such entity is and remains wholly-owned by the Owner or by such Owner and the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Unit was exempted from payment of the capitalization assessment pursuant to this subsection, then this subsection shall not apply and the Unit shall be subject to the capitalization assessment;

(b) Conveyance of a Unit by an Owner or such Owner's estate to the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Unit

was exempted from payment of the capitalization assessment pursuant to this subsection, then this subsection shall not apply and the Unit shall be subject to the capitalization assessment; and

(c) Conveyance of an undivided interest in a Unit by the Owner thereof to any then existing co-Owner(s) of such Unit.

8.11. Transfer Fees.

(a) Authority. In addition to the assessment obligations set forth in this Article, the Association is hereby authorized to establish and collect a transfer fee from the transferring Owner upon each transfer of title to a Unit, unless exempt, which fee shall be payable to the Association for the purposes set forth herein at the closing of the transfer. Such transfer fee shall constitute an assessment against the Unit secured by the Association's lien as set forth in Section 8.8.

(b) Fee Limit. The Board shall have the sole discretion to determine the amount and method of determining any such transfer fee, which may, but is not required to, be determined based upon a sliding scale which varies in accordance with the "Gross Selling Price" of the property or another factor as determined by the Board; provided, however, any such transfer fee shall be equal to an amount not greater than one percent of the Gross Selling Price of the property. The transfer fee shall be initially set by the Board at one-quarter of one percent of the Gross Selling Price of the property. For the purpose of determining the amount of the transfer fee, the Gross Selling Price shall be the total cost to the purchaser of the property, excluding taxes and title transfer fees as shown by the amount of tax imposed on transfers of real property by the State of Florida and Lee County.

(c) Purpose. All transfer fees which the Association collects shall be deposited in a segregated account to be used for such purposes as the Board deems beneficial to the general good and welfare of The Brooks master planned community and surrounding areas and which are not otherwise addressed under the Governing Documents as a part of the Association's budget of Common Expenses. Notwithstanding the foregoing, the Declarant may unilaterally amend this Declaration to designate that some or all of the transfer fees collected under this Section shall be earmarked to go only to certain purposes or organizations such as a tax-exempt foundation or charitable organization. By way of example and not limitation, such transfer fees may be used to assist the Association or one or more tax-exempt entities in funding:

(i) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation and preservation of the natural environment at The Brooks master planned community and Lee County, Florida;

(ii) programs and activities which serve to promote a sense of community within Lee County, Florida, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs; and

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(iii) social services, community outreach programs, and other charitable causes.

(d) Exempt Transfers. Notwithstanding the above, no transfer fee shall be levied upon transfer of title to a Unit:

(i) by or to Declarant or Builder to the initial Owner;

(ii) by a Builder who held title solely for purposes of development and resale;

(iii) by an Owner to a trust, partnership, corporation, or other entity so long as such entity is and remains wholly-owned by the Owner or by such Owner and the Owner's spouse and/or children; provided, however, if the immediately preceding transfer of the Unit was exempted from payment of the transfer fee pursuant to this subsection, then this subsection shall not apply and the Unit shall be subject to the transfer fee;

(iv) by an Owner or such Owner's estate to the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Unit was exempted from payment of the transfer fee pursuant to this subsection, then this subsection shall not apply and the Unit shall be subject to the transfer fee; and

(v) of an undivided interest in a Unit by the Owner thereof to any then existing co-Owner(s) of such Unit; or

(vi) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

#### **PART FOUR: COMMUNITY DEVELOPMENT**

*The Declaration reserves various rights to the Declarant in order to facilitate the smooth and orderly development of Shadow Wood and to accommodate changes in the master plan which inevitably occur as a community this size grows and matures.*

#### **Article IX Expansion of the Community**

##### **9.1. Expansion by the Declarant.**

Declarant may from time to time subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" by recording a Supplemental Declaration in the Public Records describing the additional property to be subjected. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

The Declarant's right to expand the community pursuant to this Section shall expire when all property described on Exhibit "B" has been subjected to this Declaration or 40 years after the

recording of this Declaration in the Public Records, whichever is earlier. Until then, the Declarant may transfer or assign this right to any Person who is the Builder of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer shall be memorialized in a written, recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require the Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

9.2. Expansion by the Association.

The Association may also subject additional property to the provisions of this Declaration by recording a Supplemental Declaration in the Public Records describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Neighborhood Representatives representing more than 50% of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, the consent of the Declarant shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements.

The Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to provide services and authorizing the Association to recover its costs through Neighborhood Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Filing Supplemental Declaration.

Any Supplemental Declaration recorded pursuant to this Article shall be effective upon recording in the Public Records unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

**Article X Additional Rights Reserved to Declarant**

10.1. Withdrawal of Property.

The Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Section 9.1, for the purpose of removing any portion of the Properties which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not unreasonably violate the overall scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Marketing and Sales Activities.

The Declarant and Builders authorized by Declarant may without fee or charge maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. Such activities may include, without limitation, holding special events and promotional activities on portions at the Common Area. The Declarant and authorized Builders shall have easements for access to and use of the Common Area for such purposes.

10.3. Right to Develop.

The Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

Every Person that acquires any interest in the Properties acknowledges that Shadow Wood is part of a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge or otherwise object to (a) changes in uses or density of property outside the Neighborhood in which such Person holds an interest, or (b) changes in the Master Plan as it relates to property outside the Neighborhood in which such Person holds an interest.

10.4. Right to Approve Additional Covenants.

No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

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10.5. Right to Approve Changes in Community Standards.

No amendment to or modification of any Use Restrictions, Design Guidelines, or Rules and Regulations shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

10.6. Right to Transfer or Assign Declarant Rights.

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.7. Exclusive Rights to Use Name of Development.

No Person shall use the name "The Brooks," "Shadow Wood," or any derivative of such names in any printed or promotional material without the Declarant's prior written consent. However, Owners and Builders may use such names in printed or promotional matter where such term is used solely to specify that particular property is located within The Brooks, or Shadow Wood, and the Association shall be entitled to use the words "Shadow Wood" in its name.

10.8. Changes in Surface Water Management System.

So long as Declarant owns land within the Properties or which may be annexed to become a part of the Properties, Declarant shall have the right and the power, but neither the duty nor the obligation to amend the designation of the Primary Surface Water Management System and Secondary Surface Water Management System, to add or delete features of the Surface Water Management System and to modify any permits issued for the Surface Water Management System as it deems necessary to reflect changes in development plans, changed conditions, governmental requirements or for any other reason it deems appropriate.

The Declarant may transfer all or a portion of the Surface Water Management System to or from one or more Community Development Districts upon written agreement of such districts and acceptance of such districts by the South Florida Water Management District. Additionally, Declarant may transfer all or a portion of the Surface Water Management System to one or more Association Entities and allocate maintenance responsibilities and financial obligations of the Association and other Persons through a covenant to share costs.

10.9. Right to Transfer Developmental Density.

The Declarant reserves the unilateral right to amend Exhibit "B" to this Declaration, for so long as Declarant owns any property described on Exhibits "A" or "B," for the purpose of transferring any of the maximum number of developable Units reserved for the property described on Exhibits "A" and "B" to any other area within The Brooks. In the event that additional property described on Exhibit "B" is not currently zoned for residential use is rezoned for residential use, the maximum number of developable Units reserved to Declarant shall automatically increase by the number of residential Units permitted on such property.

10.10. Easement To Inspect and Right To Correct.

(a) Declarant reserves for itself and such other Persons as it may designate perpetual non-exclusive easements throughout Shadow Wood to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, or correcting any portion of Shadow Wood, including Units and the Area of Common Responsibility. Declarant shall have the right to redesign or correct any part of the Area of Common Responsibility, and the designees of Declarant shall have the right to redesign or correct any Unit or portion of a Neighborhood in which they were the Builder.

(b) Entry onto a Unit shall be after reasonable notice, except in an emergency. Entry into a structure on a Unit shall be only after Declarant notifies the Unit's Owner and agrees with the Owner regarding a reasonable time to enter the structures on such Unit to perform such activities.

(c) Any damage to a Unit or the Area of Common Responsibility resulting from the exercise of the easement or right of entry described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement right. The exercise of these easements shall not unreasonably interfere with the use of any Unit and entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

10.11. Termination of Rights.

The rights contained in this Article shall not terminate until the earlier of (a) 40 years from the date this Declaration is recorded in the Public Records, or (b) recording by Declarant of a written statement that all sales activity has ceased.

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**PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY**

*The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, the Declarant, the Association, and others within or adjacent to the community.*

**Article XI Easements**

11.1. Easements in Common Area.

The Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents, the Covenants to Share Costs, and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt Rules and Regulations governing the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use any recreational areas within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational areas situated upon the Common Area;
- (g) The right of the Board to permit use of any recreational areas situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property, or pledge its stream of income, as security for money borrowed or debts;

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(i) The right of the Board or its designee to establish Rules and Regulations for the use of any recreational areas; and

(j) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as described in Article XII.

11.2. Easements of Encroachment.

The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area, between adjacent Units, or between any Unit and any Private Amenity due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) The Declarant reserves, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the following easements throughout all of the Properties, on behalf of itself, and its nominees, successors and assigns:

(i) installing, operating, maintaining, repairing and replacing infrastructure to serve the Properties, including, without limitation, roads, walkways, pathways and trails, the Surface Water Management System, recreational facilities, areas to comply with Environmental Permit obligations, street lights, and signage, such easements shall be exclusive to the Declarant unless and until granted or conveyed to the Association or third party, which may be perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats;

(ii) installing, operating, maintaining, repairing and replacing utilities to serve the Properties and each Unit, including, without limitation, gas, electricity, security and similar systems, such easements shall be exclusive to the Declarant unless and until granted or conveyed to a third party, which may be perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats;

(iii) installing, operating, maintaining, repairing and replacing pipes and systems to transport and distribute potable water, irrigation water, and treated effluent, to serve the Properties and each Unit, such easements shall be exclusive to the Declarant until granted or conveyed to a third party, which may be exclusive, perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats;

(iv) installing, operating, maintaining, repairing and replacing telephone, cable television, telecommunications, and other systems for sending and receiving data and/or other electronic signals, to serve the Properties and each Unit, such easements shall be exclusive to the Declarant until granted or conveyed to a third party, which may be exclusive, perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats.

(b) Declarant also reserves for itself the exclusive right and power to enter into contracts for the construction, installation, and provision of any of the items addressed in Section 11.3(a) and to grant and record in the Public Records such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" and "B." Any such contract, agreement, or easement may, in the Declarant's sole discretion, grant the exclusive right to access or use of such system, including the portions of the systems installed on or in the Units, dwellings, and other structures constructed on Units and Common Areas within the Properties.

(c) Any such contract, agreement, or easement entered into by Declarant may require that the Board enter into a bulk rate service agreement for the provision of services offered to all Units within the Properties. In such case, the cost shall be a Common Expense of the Association and shall be assessed as a part of the Base Assessment regardless of whether the Owner of a Unit desires or uses such service. If the service provides additional services or benefits to certain Owners or Units at their request, such additional services or benefits shall be paid directly by the Owner to the service provider, or become a Neighborhood Assessment or Specific Assessment, as appropriate and specified in the agreement between the Association and the service provider.

(d) All work associated with the exercise of the easements described in Section 11.3(a) shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

#### 11.4. Easements to Serve Additional Property.

The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, as well as for any private water company or public or private utility company, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, connecting and installing utilities, and connecting and installing cabling and telecommunications systems on such property.

Declarant agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.5. Easements for Maintenance, Emergency and Enforcement.

The Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcement of the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6. Easements for Lake and Pond Maintenance and Flood Water.

The Declarant reserves for itself and its authorized designee, which may be a private water company, their successors, assigns, and designees, the exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps, equipment, and outfall structures to draw upon the surface water and to supply irrigation water both within and outside of the Properties; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. The Declarant, any private water company, public or private utility company, the Association, Community Development District, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section and this Declaration.

The Declarant further reserves for itself, the Association, a Community Development District, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area adjacent to or within 100 feet of bodies of water and wetlands within the Properties, in order, at their option and sole discretion, to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

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11.7. Easements for Golf Course.

(a) Every Unit and the Common Area and the common property of any Neighborhood Association are burdened with an easement permitting golf balls unintentionally to come upon such areas, and, unless restricted by the Association, for golfers at reasonable times and in a reasonable manner to come upon the Common Area, Neighborhood Common Area, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant; the Association or its Members (in their capacities as such); Long Bay Partners, L.L.C., its successors, successors-in-title to the golf course, or assigns; any Builder, or a contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

(b) Any portion of the Properties immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving such golf course. Under no circumstances shall the Association or the owner of such golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(c) Any portion of Shadow Wood immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving such golf course. Under no circumstances shall the Association or the owner of such golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner of any golf course within or adjacent to any portion of Shadow Wood, its successors and assigns, shall have a perpetual, exclusive easement of access over Shadow Wood for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from its golf course.

11.8. Easement for Community Development Districts.

The Declarant hereby grants, and every Unit, the Common Area, and Neighborhood Common Area is hereby burdened with, perpetual, non-exclusive easements to the extent reasonably necessary for ingress, egress, and access to properties and facilities of one or more Community Development Districts which may be created and for the installation, maintenance, repair and replacement thereof. However, this easement shall not include a right to enter any enclosed structure on a Unit or to unreasonably interfere with the use of any Unit. Any damage resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement.

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**Article XII Environmental Areas and Issues**

12.1. Assignment of Responsibilities.

Within and adjacent to Shadow Wood there are various types of property such as wetlands, drainage areas, Conservation Areas, open spaces and buffers upon which restrictions, monitoring requirements, or other obligations may be imposed by local, state, federal or other governmental agencies. The Declarant may from time to time and at any time deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to the Association and/or a Community Development District(s), which shall accept, own, maintain, and preserve the foregoing areas in accordance with the requirements of such agencies. All such areas that are conveyed to the Association shall become a portion of the Common Area, and the ownership, operation, and maintenance thereof shall be a Common Expense. Alternatively, the Declarant may deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to another community association, tax-exempt foundation, or similar type entity with which the Association shall cooperate, perform the responsibilities and obligations as set forth therein, and share in the costs pursuant to a covenant to share costs or contributions from transfer fees collected by the Association as provided in Section 8.11.

Any of the properties and responsibilities within, adjacent to, or benefiting Shadow Wood such as wetlands, drainage areas, Conservation Areas, open spaces, signage, landscaping, and buffers may be included within the jurisdiction of one or more Community Development District(s). If one or more Community Development District(s) are established, the Association shall cooperate with and perform the responsibilities delegated to it by such Community Development District(s).

12.2. Surface Water Management System.

(a) No structure of any kind shall be constructed or erected, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of the Surface Water Management System reserved for, or intended by Declarant to be reserved for, drainage ways, sluiceways or for the accumulation of runoff waters, as reflected in any permits therefor, or plat or instrument of record, without the specific written permission of the Association and the Declarant.

(b) An Owner or Neighborhood Association shall in no way deny or prevent ingress and egress by Declarant, the Association or Community Development Districts to such Surface Water Management System and drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefor are hereby specifically reserved and created in favor of the Declarant, the Association, Community Development Districts, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(c) No Unit shall be increased in size by filling in any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the



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established Surface Water Management System without the prior written consent of the Association and the Declarant.

(d) Water management for any Unit or Neighborhood shall be provided in accordance with the overall Surface Water Management System for the Properties. Surface water drainage and management including but not limited to, storm water treatment and storage capacity, shall conform to the overall Surface Water Management System requirements and permits for the Properties and meet with the approval of the Declarant and the Community Development Districts.

(e) Lakes and spillways in any Neighborhood or Unit are part of a functioning water management system and any use by an Owner or Neighborhood Association shall be on a non-interfering basis only. Additional on-site stormwater treatment areas may be required and constructed in the future.

(f) The use of any lake or wetland within the boundary of a Neighborhood or Unit is managed by the Association. Owners shall cooperate in maintaining the same in a clean, attractive, pristine manner in order to be aesthetically pleasing.

(g) No boats or other watercraft powered by gasoline or diesel fuel shall be permitted on any body of water within Properties except as may be required by the Association, the Community Development Districts, or the Declarant.

(h) The use of pesticides in any lake or wetland is prohibited, excepting only any such use by the Association, the Community Development Districts, and the Declarant.

(i) No wells may be drilled, dug or installed within any Unit or Neighborhood except by the Declarant or with the Declarant's written consent.

12.3. Conservation Areas.

Any portions of the Common Area designated as a Conservation Area shall be maintained and preserved by the Association in accordance with the rules and regulations of Lee County, Florida and the South Florida Water Management District. The Association shall not, and it shall not allow any Person to, undertake or perform any activity or improvements to a Conservation Area, or remove any native vegetation, without the prior approval of the foregoing agencies. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a Conservation Area.

12.4. Open Space and Buffers.

Any property conveyed or dedicated to the Association, which is designated as open space, landscape buffer, preserve area, or Conservation Area on any plat, permit, or other document recorded in the Public Records, shall be owned and maintained by the Association in a natural open condition. The Association or any subsequent owner shall not do anything that

diminishes or destroys the open space, buffers, preserve area or Conservation Areas, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space.

Any landscape buffer installed and maintained in the Common Area under requirements of Lee County, Florida, ordinances or any other governmental entity and which is located in an easement area shall be permanently maintained by the Association. In the event that any portion of the landscaping consisting of trees and shrubs in such easement areas are removed, the Association shall replace the trees and shrubs with like size and species as a Common Expense of the Association and without expense to Lee County, Florida or such other governmental entity with jurisdiction over the buffer.

12.5. Effluent Disposal & Water Supply.

By the act of purchasing or occupying a Unit within the Properties, all Owners understand and irrevocably consent to the possibility of irrigation of the Common Area and other areas within the Properties with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the State of Florida, Department of Environmental Protection, or other such agency with jurisdiction.

All Units and Neighborhoods within the Properties shall be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All underground irrigation systems must be connected to the non-potable water line and all spigots on the exterior portion of a structure shall be connected to the potable water line. Each Owner and Neighborhood Association shall be required to connect the water lines on his Unit or Neighborhood Common Area to the lines of the utility provider(s) providing service within the Properties. The Declarant, its designees, successors or assigns shall have the exclusive right to develop and utilize the ground and surface water resources of the Properties for any legal purpose, including the distribution and use of such water beyond the Properties. The conveyance of any Unit to an Owner or parcel to a Builder by Declarant does not include the right to develop or utilize the ground or surface water resources within such Unit or parcel.

12.6. Environmental Permits and Reporting.

The Association may be responsible for monitoring, maintaining, repairing, reporting and performing obligations arising out of any Environmental Permits as may be designated by Declarant from time to time. Declarant may notify Association in writing of the applicable Environmental Permit along with a copy thereof or summary of the monitoring, maintenance, repair, reporting or other performance obligations. An Owner shall in no way deny or prevent ingress and egress by the Declarant, the Association, or Community Development District(s) to areas necessary for the performance of such obligations arising under such Environmental Permits. The right of ingress and egress, and easements therefor, are hereby specifically reserved and created in favor of the Association, any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress for purposes related to any

Environmental Permits, and Declarant for so long as Declarant owns any property described on Exhibits "A" or "B" for development and sale in the ordinary course of business.

12.7. Disaster Management.

The Properties are located in a hurricane vulnerability zone. The hurricane evacuation time in Lee County, Florida, is high, and hurricane shelter space is limited. The Association shall have the authority to prepare disaster management plans and educational information regarding hurricane threats. The Association may, but shall not be obligated to take reasonable precautions to mitigate the hardship caused by foreseeable natural disasters through development of disaster management plans. The Board may establish preparations for the Association and its Members, budgeting, staffing, and coordination with local authorities and with contractors, suppliers, and insurers. The expense of developing, updating and implementing the disaster management plan, if any, shall be included as a Common Expense in the Association's budget.

**Article XIII Exclusive Common Areas; Party Walls and Other Shared Structures**

13.1. Designation and Use of Exclusive Common Area.

Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Exclusive Common Areas are assigned.

Initially, any Exclusive Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Neighborhood Representatives representing more than 50% of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as the Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, any such assignment or reassignment shall also require the Declarant's written consent.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or board of directors of the Neighborhood Association for the Neighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Area.

13.2. Rules Regarding Party Walls.

Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. If the governing documents for any Neighborhood Association include any provisions regarding party walls or structures which differ or supplement these provisions, the governing documents of the Neighborhood Association shall govern.

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

**PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*The growth and success of Shadow Wood as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.*

**Article XIV Dispute Resolution and Limitation on Litigation**

**14.1. Consensus for Association Litigation.**

Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval at least 75% of the Neighborhood Representatives. A Neighborhood Representative representing Units owned by Persons other than himself shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of 75% of the total number of Units in the Neighborhood represented by the Neighborhood Representative. This Section shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**14.2. Alternative Method for Resolving Disputes.**

The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 14.3 ("Claims") to the procedures set forth in Section 14.4 prior to filing suit in any court.

**14.3. Claims.**

Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Governing Documents, the rights, obligations and duties of any Bound Party under the Governing Documents, or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 14.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 14.4:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);

(b) (any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other equitable remedies as only a court may deem necessary in order to maintain the status quo and to preserve the Association's ability to enforce the provisions of Article III (Use and Conduct), Article IV (Architecture and Landscaping), and Article XII (Environmental Areas and Issues);

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents, or which is between Declarant and a Builder arising out of the purchase and construction of one or more Units pursuant to a contractual agreement;

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.4(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 14.4.

14.4. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i). the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii). the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii). Claimant's proposed remedy; and

(iv). that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i). The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may, but is not obligated to, appoint a representative to assist the Parties in negotiation.

(ii). If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of a mediation agency retained by the Association to provide such services within the community, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Lee County area.

(iii). If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv). Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

5. Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

(i). If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(ii). This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Florida. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Florida.

14.5. Allocation of Costs of Resolving Claims.

(a) Subject to Section 14.5(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

14.6. Enforcement of Resolution.

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 14.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 14.4. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

14.7. Prerequisites to Actions Against Builders.

Prior to filing a civil action against Declarant or any Builder of any portion of Shadow Wood, the Association must notify the Declarant or Builder, participate in alternative dispute resolution, and give the Declarant or Builder an opportunity to inspect and make a settlement offer prior to instituting a suit.

14.8. Retention of Expert For Litigation Purposes.

Prior to the Association's or any Member's retaining an expert for litigation purposes related to the construction or design of any portion of Shadow Wood or any improvements thereon, including Units and Common Area, the Association or Member, as appropriate, shall notify the Declarant and any Builder involved in the design or construction of such portion of Shadow Wood.

**Article XV Private Amenities**

15.1. General.

Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. No Private Amenity is Common Area. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the



Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

15.2. Conveyance of Private Amenities.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. Further, the ownership or operation of the Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one or more of Declarant's affiliates, shareholders, employees, or independent contractors. Consent of the Association, any Neighborhood Association, any Neighborhood Representative, or any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

15.3. View Impairment.

Declarant, the Association, or the owner of any Private Amenity, does not guarantee or represent that any view over and across the Private Amenity from Units adjacent to the Private Amenity will be preserved without impairment. Owners of the Private Amenities, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Private Amenities from time to time. In addition, the owner of any Private Amenity which includes a golf course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees, bunkers, fairways and greens from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

15.4. Rights of Access and Parking.

There is hereby established for the benefit of the Private Amenity and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within Shadow Wood reasonably necessary to travel between the entrance to Shadow Wood and the Private Amenity and over those portions of Shadow Wood (whether

Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenity. Without limiting the generality of the foregoing, members of the Private Amenity and guests and invitees of the Private Amenity shall have the right to park their vehicles on the roadways located within Shadow Wood at reasonable times before, during, and after tournaments and other similar functions held by or at the Private Amenity to the extent that the Private Amenity has insufficient parking to accommodate such vehicles.

15.5. Architectural Control.

Declarant, the Association, any Neighborhood Association, or any committee shall not approve any construction, addition, alteration, change, or installation on or to any portion of Shadow Wood which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private Amenity at least 15 days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have 15 days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Private Amenity to respond to the notice within the 15-day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Area or any common property or common elements of a Neighborhood Association, if any.

15.6. Limitations on Amendments.

In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenity, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Private Amenity, may be made without the written approval of the Private Amenity. The foregoing shall not apply, however, to amendments made by Declarant.

15.7. Jurisdiction and Cooperation.

It is Declarant's intention that the Association and the Private Amenity shall cooperate to the maximum extent possible in the operation of Shadow Wood and the Private Amenity. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Association shall have no power to promulgate Use Restrictions or Rules other than those set forth in Exhibit "C" affecting activities on or use of the Private Amenity without the prior written consent of the owners of the Private Amenity affected thereby.

15.8. Assumption of Risk and Indemnification.

Each Owner, by its purchase of a Unit in the vicinity of any Private Amenity, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of any such Private Amenity, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset), (b) noise caused by golfers, (c) use of pesticides, herbicides and

fertilizers, (d) use of effluent in the irrigation or fertilization of any golf course, (e) reduction in privacy caused by constant golf traffic on the golf course or the removal or pruning of shrubbery or trees on the golf course, (f) errant golf balls and golf clubs, and (g) design of the golf course.

Each such Owner agrees that neither Declarant, the Association nor any of Declarant's affiliates or agents shall be liable to Owner or any other person claiming any loss of damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Unit to any golf course, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents or the Association. The Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents and the Association against any and all claims by Owner's visitors, tenants and others upon such Owner's Unit.

**Article XVI Mortgage Provisions**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

16.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage who 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 Unit 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 Properties or which affects any Unit 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 Unit 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 Unit or the Owner or occupant which is not cured within 60 days;

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

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

16.2. 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 Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.3. 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 such Owner's Unit.

16.4. 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 deemed to have 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 or registered mail, return receipt requested.

16.5. Construction of Article XVI.

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

**PART SEVEN: CHANGES IN THE COMMUNITY**

*Communities such as Shadow Wood are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Shadow Wood and its governing documents must be able to adapt to these changes while protecting the things that make Shadow Wood special.*

**Article XVII Changes in Ownership of Units**

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. Such transfer may be subject to assessment in accordance with Section 8.10.

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**Article XVIII Changes in Common Area**

18.1. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1, and Neighborhood Representatives representing at least 75% of the total Class "A" votes of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

18.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

18.3. Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Lee County, Florida, or to any other local, state, or federal governmental or quasi-governmental entity.

**Article XIX Amendment of Declaration**

19.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose so long as such amendment does not substantially conflict with the Master Plan; provided, however, any amendment which would affect the Surface Water Management System,

including the rights and obligations of the Association to fulfill such rights and obligations, must have the prior approval of the South Florida Water Management District. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

19.2. By 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 Neighborhood Representatives representing 75% of the total Class "A" votes in the Association, and the consent of the Declarant, so long the Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

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.

19.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of the Declarant, the Class "B" Member, or a Builder without the written consent of the Declarant, the Class "B" Member, or the Builder, 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 such 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 recording in the Public Records, unless a later effective date is 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.

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19.4. Exhibits.

Exhibits "A," "B," and "D" are attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "C" is attached for informational purposes and may be amended as provided in Article III. Exhibit "E" may be amended as provided therein.

IN WITNESS WHEREOF, the Declarant, LONG BAY PARTNERS, L.L.C., a Florida limited liability company, through its undersigned managing general partner, has duly executed this Declaration and affixed its corporate seal thereto as of this \_\_\_ day of \_\_\_\_\_, 199\_\_.

**DECLARANT:** **LONG BAY PARTNERS, L.L.C., a Florida limited liability company**

By: Bonita Bay Properties, Inc., a Florida corporation

Beverly M. Street  
WITNESS Beverly M. Street

By: John M. Gleeson  
John M. Gleeson, Vice President and General Manager of The Brooks

Shirley M. Thompson  
WITNESS Shirley M. Thompson

Attest: [Signature]  
Its: Secretary/Treasurer

[CORPORATE SEAL]

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of January, 1998, by John M. Gleeson, as Vice President and General Manager of The Brooks for Bonita Bay Properties, Inc., a Florida corporation, on behalf of such entity. He is personally known to me ~~or has produced~~ \_\_\_\_\_ as identification and did (did not) take an oath.

Given under my hand and official seal this 13<sup>th</sup> day of January, 1998.

My term of office expires on 2/10/98.

Joanne Janes [SEAL]  
NOTARY PUBLIC Joanne Janes

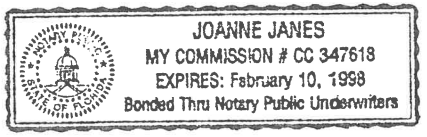


EXHIBIT "A"

Land Initially Submitted

Neighborhood Designation:

OR2909 PG0907



PLANNERS, ENVIRONMENTAL CONSULTANTS, ENGINEERS,  
SURVEYORS, LANDSCAPE ARCHITECTS, CONSTRUCTION MANAGERS

## Description

of The Brooks Parcel A  
Section 3 & 10, Township 47 South, Range 25 East,  
Lee County, Florida

Neighborhood Designation: Morningside

All that part of Sections 3 and 10, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows;

Commencing at the northwest corner of said Section 10;  
thence along the north line of said Section 10, N.88°56'26"E., a distance of 134.38 feet to the east right-of-way of the Seaboard Coast Railroad and the POINT OF BEGINNING of the parcel herein described;  
thence along said east right-of-way line, N.00°59'43"W., a distance of 552.04 feet;  
thence N.89°01'12"E., a distance of 145.76 feet;  
thence S.79°41'36"E., a distance of 69.98 feet;  
thence S.82°24'19"E., a distance of 61.76 feet;  
thence S.00°59'47"E., a distance of 78.75 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 62.23 feet, having a radius of 150.00 feet, through a central angle of 23°46'13", a chord bearing of S.10°53'20"W. and a chord length of 61.79 feet to a point of reverse curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 28.38 feet, having a radius of 150.00 feet, through a central angle of 10°50'31", a chord bearing of S.17°21'11"W. and a chord length of 28.34 feet to a point of tangency of said curve;  
thence S.05°50'39"W., a distance of 189.76 feet to a point of curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 266.24 feet, having a radius of 1082.95 feet, through a central angle of 14°05'09", a chord bearing of S.01°11'55"E. and a chord length of 265.57 feet to a point of compound curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 45.40 feet, having a radius of 80.00 feet, through a central angle of 32°30'49", a chord bearing of S.24°29'54"E. and a chord length of 44.79 feet to the end of said curve;  
thence S.00°59'47"E., a distance of 1151.14 feet;  
thence S.68°14'22"W., a distance of 2.95 feet to a non-tangential point of curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 69.92 feet, having a radius of 50.00 feet, through a central angle of 80°07'08", a chord bearing of S.28°10'47"W. and a chord length of 64.36 feet to a point of tangency of said curve;  
thence S.11°52'47"E., a distance of 282.27 feet to a point of curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 56.35 feet, having a radius of 100.00 feet, through a central angle of 32°17'03", a chord bearing of S.28°01'18"E. and a chord length of 55.60 feet to a point of tangency of said curve;  
  
thence S.44°09'50"E., a distance of 34.49 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 53.40 feet, having a radius of 100.00 feet, through a central angle of 30°35'39", a chord bearing of S.28°52'00"E. and a chord length of 52.76 feet to a point of reverse curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 226.90 feet, having a radius of 300.00 feet, through a central angle of 43°20'07", a chord bearing of S.35°14'14"E. and a chord length of 221.53 feet to a point of compound curvature of a curve to the left;

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E-mail: [fortmyers@wilsonmiller.com](mailto:fortmyers@wilsonmiller.com)

Description of The Brooks Parcel A  
Section 3 & 10, Township 47 South, Range 25 East  
Lee County, Florida

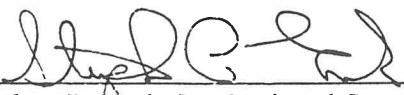
thence along the arc of said curve, an arc length of 143.83 feet, having a radius of 130.00 feet, through a central angle of 63°23'23", a chord bearing of S.88°35'59"E. and a chord length of 136.60 feet to the end of said curve;  
thence S.36°51'35"E., a distance of 8.85 feet;  
thence S.29°23'54"E., a distance of 295.47 feet;  
thence S.01°04'21"W., a distance of 25.00 feet to a point on a non-tangential curve to the left;  
thence along the arc of said curve, an arc length of 444.52 feet, having a radius of 2218.89 feet, through a central angle of 11°28'42", a chord bearing of S.85°20'00"W. and a chord length of 443.78 feet to a point of tangency of said curve;  
thence N.10°24'21"W., a distance of 80.84 feet to a point curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 21.61 feet, having a radius of 30.00 feet, through a central angle of 41°16'42", a chord bearing of N.31°02'41"W. and a chord length of 21.15 feet to a point of reverse curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 290.84 feet, having a radius of 752.06 feet, through a central angle of 22°09'28", a chord bearing of N.40°36'18"W. and a chord length of 289.03 feet to a point of reverse curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 25.75 feet, having a radius of 24.00 feet, through a central angle of 61°28'13", a chord bearing of N.60°15'41"W. and a chord length of 24.53 feet to a point of tangency of said curve;  
thence S.89°00'13"W., a distance of 76.62 feet to the east right-of-way line of the Seaboard Coast Railroad;  
thence along said east right-of-way line, N.00°59'47"W., a distance of 1915.06 feet to the POINT OF BEGINNING of the parcel herein described.

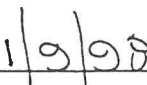
Parcel contains 18.00 acres, more or less.  
Subject to easements, reservations, restrictions and rights-of-way of record.

Bearings are based on the north line of Section 10, Township 47 South, Range 25 East, Lee County, Florida, being N.88°56'26"E.

Prepared by:

WILSON, MILLER, BARTON & PEEK, INC.

  
\_\_\_\_\_  
Stephen P. Erik, Professional Surveyor & Mapper  
Florida Registration No. 3273

  
\_\_\_\_\_  
Date

Not valid unless embossed with the Professional's seal.

P.I.N.: N0774-201-A10 SSSLD  
Ref: D-0774-33  
Date: October 30, 1997  
Rev. Date: January 8, 1998

OR2909 P60909

PLANNERS, ENVIRONMENTAL CONSULTANTS, ENGINEERS,  
SURVEYORS, LANDSCAPE ARCHITECTS, CONSTRUCTION MANAGERS

## Description

of The Brooks Tract B  
Section 10, Township 47 South, Range 25 East,  
Lee County, Florida

**Neighborhood Designation: Laurel Meadow**

All that part of Section 10, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows;

Commencing at the northwest corner of said Section 10;  
thence along the north line of said Section 10, N.88°56'26"E., a distance of 134.38 feet to the east right-of-way line of the Seaboard Coast Railroad;  
thence along said east line, S.00°59'47"E., a distance of 817.10';  
thence N.89°00'13"E., a distance of 556.09 feet to a non-tangential point on a curve to the right and the POINT OF BEGINNING of the parcel of land herein described;  
thence along the arc of said curve, an arc length of 438.20 feet, having a radius of 183.00 feet, through a central angle of 137°11'52", a chord bearing of N.36°41'00"E. and a chord length of 340.76 feet to a point of tangency of said curve;  
thence S.74°43'04"E., a distance of 372.12 feet;  
thence S.02°09'40"E., a distance of 227.14 feet;  
thence S.56°40'23"W., a distance of 128.90 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 39.47 feet, having a radius of 183.00 feet, through a central angle of 12°21'26", a chord bearing of S.62°51'06"W. and a chord length of 39.39 feet to a point of reverse curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 80.29 feet, having a radius of 72.00 feet, through a central angle of 63°53'29", a chord bearing of S.37°05'04"W. and a chord length of 76.19 feet to a point of compound curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 303.86 feet, having a radius of 327.00 feet, through a central angle of 53°14'27", a chord bearing of S.21°28'54"E. and a chord length of 293.04 feet to a point of compound curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 88.96 feet, having a radius of 50.00 feet, through a central angle of 101°56'10", a chord bearing of N.80°55'48"E. and a chord length of 77.68 feet to a point of tangency of said curve;  
thence N.29°57'43"E., a distance of 14.91 feet to a point of curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 91.46 feet, having a radius of 150.00 feet, through a central angle of 34°56'00", a chord bearing of N.12°29'43"E. and a chord length of 90.05 feet to a point of reverse curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 167.24 feet, having a radius of 183.00 feet, through a central angle of 52°21'36", a chord bearing of N.21°12'31"E. and a chord length of 161.48 feet to the end of said curve;  
thence S.26°57'07"E., a distance of 83.46 feet;  
thence S.86°32'57"E., a distance of 321.48 feet;  
thence S.29°57'43"W., a distance of 407.40 feet to a point of curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 388.85 feet, having a radius of 400.00 feet, through a central angle of 55°41'54", a chord bearing of S.02°06'45"W. and a chord length of 373.72 feet to a point of compound curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 45.48 feet, having a radius of 250.00 feet, through a central angle of 10°25'24", a chord bearing of S.30°56'54"E. and a chord length of 45.42 feet to a point of reverse curvature of a curve to the right;

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Description of The Brooks Tract B  
Section 10, Township 47 South, Range 25 East  
Lee County, Florida

thence along the arc of said curve, an arc length of 89.19 feet, having a radius of 233.00 feet, through a central angle of 21°55'56", a chord bearing of S.25°11'38"E. and a chord length of 88.65 feet to a point of compound curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 41.43 feet, having a radius of 361.00 feet, through a central angle of 06°34'34", a chord bearing of S.10°56'23"E. and a chord length of 41.41 feet to the end of said curve;  
thence S.82°20'54"W., a distance of 133.00 feet;  
thence S.78°55'18"W., a distance of 58.22 feet;  
thence S.83°31'18"W., a distance of 152.94 feet;  
thence N.24°34'19"W., a distance of 219.37 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 99.25 feet, having a radius of 403.00 feet, through a central angle of 14°06'39", a chord bearing of N.17°30'59"W. and a chord length of 99.00 feet to a point of reverse curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 302.44 feet, having a radius of 500.00 feet, through a central angle of 34°39'24", a chord bearing of N.27°47'21"W. and a chord length of 297.85 feet to a point of reverse curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 479.63 feet, having a radius of 633.00 feet, through a central angle of 43°24'49", a chord bearing of N.23°24'39"W. and a chord length of 468.24 feet to a point of reverse curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 263.65 feet, having a radius of 500.00 feet, through a central angle of 30°12'42", a chord bearing of N.16°48'35"W. and a chord length of 260.60 feet to the POINT OF BEGINNING of the parcel of land herein described;

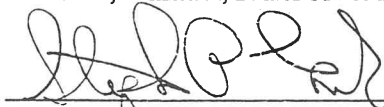
Parcel contains 16.84 acres, more or less.

Subject to easements, reservations, restrictions and rights-of-way of record.

Bearings are based on the north line of Section 10, Township 47 South, Range 25 East, Lee County, Florida, being N.88°56'26"E.

Prepared by:

WILSON, MILLER, BARTON & PEEK, INC.



Stephen P. Erek, Professional Surveyor & Mapper  
Florida Registration No. 3273

1/30/98  
Date

Not valid unless embossed with the Professional's seal.

P.I.N.: N0774-201-A10 SSSLD

Ref: D-0774-33

Date: October 30, 1997

DR2909 PG0911

PLANNERS, ENVIRONMENTAL CONSULTANTS, ENGINEERS,  
SURVEYORS, LANDSCAPE ARCHITECTS, CONSTRUCTION MANAGERS

**Description**  
of The Brooks Tract C  
Sections 3 and 10, Township 47 South, Range 25 East,  
Lee County, Florida  
Neighborhood Designation: Cedar Glen

All that part of Sections 3 and 10, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows;

COMMENCING at the northwest corner of Section 10;

thence along the north line of said Section 10, N.88°56'26"E., a distance of 134.38 feet to the east right-of-way line of the Seaboard Coast Railroad;

thence along said east right-of-way line, N.00°59'43"W., a distance of 552.04 feet;

thence N.89°01'12"E., a distance of 145.76 feet;

thence S.79°41'36"E., a distance of 69.98 feet;

thence S.82°24'19"E., a distance of 61.76 feet;

thence S.68°54'40"E., a distance of 183.85 feet to the POINT OF BEGINNING of the parcel of land herein described;

thence S.69°08'57"E., a distance of 28.32 feet;

thence S.66°33'10"E., a distance of 145.26 feet;

thence S.76°13'55"E., a distance of 100.81 feet;

thence S.82°32'06"E., a distance of 84.61 feet;

thence N.84°32'27"E., a distance of 68.72 feet;

thence S.41°52'17"E., a distance of 91.96 feet;

thence S.07°44'36"E., a distance of 55.44 feet;

thence S.10°00'50"E., a distance of 94.24 feet;

thence S.61°02'17"E., a distance of 33.63 feet;

thence S.63°50'07"E., a distance of 67.33 feet;

thence S.74°18'43"E., a distance of 53.51 feet;

thence N.89°26'55"E., a distance of 587.73 feet;

thence S.73°34'20"E., a distance of 21.53 feet;

thence S.41°19'12"E., a distance of 12.39 feet;

thence S.28°27'10"E., a distance of 13.07 feet;

thence S.27°25'07"E., a distance of 31.83 feet to a non-tangential point on a curve to the right;

thence along the arc of said curve, an arc length of 172.58 feet, having a radius of 289.00 feet, through a central angle of 34°12'54", a chord bearing of N.76°35'41"E. and a chord length of 170.03 feet to a point of reverse curvature of a curve to the left;

thence along the arc of said curve, an arc length of 80.77 feet, having a radius of 400.00 feet, through a central angle of 11°34'12", a chord bearing of N.87°55'02"E. and a chord length of 80.64 feet to a point of tangency of said curve;

thence N.82°07'56"E., a distance of 17.36 feet to a point of curvature of a curve to the left;

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Description of The Brooks Tract C

Sections 3 & 10, Township 47 South, Range 25 East

Lee County, Florida

thence along the arc of said curve, an arc length of 67.06 feet, having a radius of 975.00 feet, through a central angle of  $03^{\circ}56'27''$ , a chord bearing of  $N.80^{\circ}09'43''E.$  and a chord length of 67.05 feet to a point of tangency of said curve;

thence  $N.78^{\circ}11'29''E.$ , a distance of 174.83 feet to a point of curvature of a curve to the left;

thence along the arc of said curve, an arc length of 78.54 feet, having a radius of 50.00 feet, through a central angle of  $90^{\circ}00'00''$ , a chord bearing of  $N.33^{\circ}11'29''E.$  and a chord length of 70.71 feet to a point of tangency of said curve;

thence  $N.11^{\circ}48'31''W.$ , a distance of 19.54 feet to a point of curvature of a curve to the left;

thence along the arc of said curve, an arc length of 53.96 feet, having a radius of 90.00 feet, through a central angle of  $34^{\circ}21'00''$ , a chord bearing of  $N.28^{\circ}59'01''W.$  and a chord length of 53.15 feet to a point of tangency of said curve;

thence  $N.46^{\circ}09'31''W.$ , a distance of 29.63 feet to a point of curvature of a curve to the left;

thence along the arc of said curve, an arc length of 57.76 feet, having a radius of 90.00 feet, through a central angle of  $36^{\circ}46'13''$ , a chord bearing of  $N.64^{\circ}32'37''W.$  and a chord length of 56.77 feet to a point of reverse curvature of a curve to the right;

thence along the arc of said curve, an arc length of 18.75 feet, having a radius of 55.00 feet, through a central angle of  $19^{\circ}31'53''$ , a chord bearing of  $N.73^{\circ}09'47''W.$  and a chord length of 18.66 feet to a point of tangency of said curve;

thence  $N.63^{\circ}23'50''W.$ , a distance of 104.72 feet;

thence  $N.67^{\circ}15'57''W.$ , a distance of 103.91 feet;

thence  $N.20^{\circ}29'48''E.$ , a distance of 77.98 feet;

thence  $N.27^{\circ}39'03''E.$ , a distance of 117.62 feet;

thence  $N.37^{\circ}04'23''E.$ , a distance of 98.67 feet;

thence  $N.88^{\circ}03'05''E.$ , a distance of 71.85 feet;

thence  $S.25^{\circ}50'19''E.$ , a distance of 67.89 feet;

thence  $S.55^{\circ}05'47''E.$ , a distance of 200.11 feet;

thence  $S.59^{\circ}18'47''E.$ , a distance of 189.68 feet;

thence  $N.84^{\circ}51'40''E.$ , a distance of 157.47 feet;

thence  $N.83^{\circ}06'27''E.$ , a distance of 113.82 feet;

thence  $S.55^{\circ}08'45''E.$ , a distance of 96.53 feet;

thence  $S.78^{\circ}58'22''E.$ , a distance of 163.50 feet;

thence  $S.88^{\circ}53'51''E.$ , a distance of 93.44 feet;

thence  $S.45^{\circ}39'46''E.$ , a distance of 86.58 feet;

thence  $S.37^{\circ}00'45''W.$ , a distance of 28.30 feet to a non-tangential point of curvature of a curve to the right;

thence along the arc of said curve, an arc length of 154.15 feet, having a radius of 982.00 feet, through a central angle of  $08^{\circ}59'40''$ , a chord bearing of  $S.41^{\circ}30'35''W.$  and a chord length of 154.00 feet to a point of compound curvature of a curve to the right;

thence along the arc of said curve, an arc length of 205.49 feet, having a radius of 2470.00 feet, through a central angle of  $04^{\circ}46'00''$ , a chord bearing of  $S.48^{\circ}23'25''W.$  and a chord length of 205.43 feet to a point of tangency of said curve;

Description of The Brooks Tract C  
 Sections 3 & 10, Township 47 South, Range 25 East  
 Lee County, Florida

thence S.50°46'25"W., a distance of 172.60 feet;  
 thence N.39°13'35"W., a distance of 50.00 feet to a point on a curve to the left;  
 thence along the arc of said curve, an arc length of 100.18 feet, having a radius of 50.00 feet,  
 through a central angle of 114°48'11", a chord bearing of N.06°37'40"W. and a chord length of  
 84.25 feet to a point of compound curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 115.39 feet, having a radius of 175.00 feet,  
 through a central angle of 37°46'45", a chord bearing of N.82°55'08"W. and a chord length of  
 113.31 feet to a point of tangency of said curve;  
 thence S.78°11'29"W., a distance of 320.49 feet;  
 thence S.89°02'08"W., a distance of 18.60 feet;  
 thence N.29°17'21"W., a distance of 153.59 feet;  
 thence S.78°11'29"W., a distance of 160.54 feet to a point of curvature of a curve to the right;  
 thence along the arc of said curve, an arc length of 70.50 feet, having a radius of 1025.00 feet,  
 through a central angle of 03°56'27", a chord bearing of S.80°09'43"W. and a chord length of  
 70.49 feet to a point of tangency of said curve;  
 thence S.82°07'56"W., a distance of 155.54 feet to a point of curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 94.15 feet, having a radius of 225.00 feet,  
 through a central angle of 23°58'32", a chord bearing of S.70°08'40"W. and a chord length of  
 93.47 feet to the end of said curve;  
 thence S.32°44'51"W., a distance of 282.68 feet;  
 thence S.89°26'55"W., a distance of 482.16 feet to a point of curvature of a curve to the right;  
 thence along the arc of said curve, an arc length of 424.16 feet, having a radius of 600.00 feet,  
 through a central angle of 40°30'16", a chord bearing of N.70°17'57"W. and a chord length of  
 415.38 feet to a point of tangency of said curve;  
 thence N.50°02'49"W., a distance of 210.16 feet to a point of curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 96.55 feet, having a radius of 325.00 feet,  
 through a central angle of 17°01'18", a chord bearing of N.58°33'28"W. and a chord length of  
 96.20 feet to a point of tangency of said curve;  
 thence N.67°04'06"W., a distance of 14.54 feet to a point of curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 46.23 feet, having a radius of 100.00 feet,  
 through a central angle of 26°29'26", a chord bearing of N.80°18'50"W. and a chord length of  
 45.82 feet to a point of reverse curvature of a curve to the right;  
 thence along the arc of said curve, an arc length of 200.72 feet, having a radius of 90.00 feet,  
 through a central angle of 127°47'00", a chord bearing of N.29°40'03"W. and a chord length of  
 161.63 feet to a point of reverse curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 64.25 feet, having a radius of 200.00 feet,  
 through a central angle of 18°24'26", a chord bearing of N.25°01'14"E. and a chord length of  
 63.98 feet to a point of tangency of said curve;  
 thence N.15°49'01"E., a distance of 114.34 feet;  
 thence S.74°10'59"E., a distance of 14.01 feet to a point on a curve to the right;

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Description of The Brooks Tract C

Sections 3 & 10, Township 47 South, Range 25 East

Lee County, Florida

thence along the arc of said curve, an arc length of 60.44 feet, having a radius of 55.00 feet, through a central angle of 62°57'49", a chord bearing of N.47°17'55"E. and a chord length of 57.45 feet; to the end of said curve; thence N.11°13'10"W., a distance of 41.39 feet to the POINT OF BEGINNING of the parcel of land herein described.

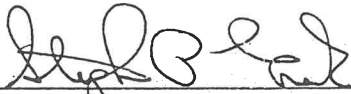
Parcel contains 22.49 acres, more or less.

Subject to easements, reservations, restrictions and rights-of-way of record.

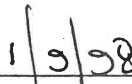
Bearings are based on the north line of Section 10, Township 47 South, Range 25 East, Lee County, Florida, being N.88°56'26"E.

Prepared by:

WILSON, MILLER, BARTON & PEEK, INC.



Stephen P. Erek, Professional Surveyor & Mapper  
Florida Registration No. 3273



Date

Not valid unless embossed with the Professional's seal.

P.I.N.: N0774-201-A10 SSSLD

Ref: D-0774-33

Date: October 30, 1997

Revised: January 8, 1998

OR2909 PG0915



PLANNERS, ENVIRONMENTAL CONSULTANTS, ENGINEERS,  
SURVEYORS, LANDSCAPE ARCHITECTS, CONSTRUCTION MANAGERS

**Description**  
of The Brooks Tract D  
Section 10, Township 47 South, Range 25 East,  
Lee County, Florida

Neighborhood Designation: Cypress Hammock

All that part of Section 10, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows;

COMMENCING at the northwest corner of said Section 10,  
thence along the north line of said Section 10, N.88°56'26"E., a distance of 134.38 feet to the east right-of-way line of the Seaboard Coast Railroad;  
thence along said right-of-way, S.00°59'47"E., a distance of 2299.00 feet;  
thence N.79°35'39"E., a distance of 309.95 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 2004.97 feet, having a radius of 2218.89 feet, through a central angle of 51°46'19", a chord bearing of S.74°31'11"E. and a chord length of 1937.45 feet to a point of tangency of said curve;  
thence S.48°38'02"E., a distance of 26.14 feet to the POINT OF BEGINNING of the parcel of land herein described;  
thence N.41°21'58"E., a distance of 208.14 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 81.57 feet, having a radius of 100.00 feet, through a central angle of 46°44'12", a chord bearing of N.64°44'04"E. and a chord length of 79.33 feet to a point of tangency of said curve;  
thence N.88°06'11"E., a distance of 380.73 feet;  
thence N.79°05'59"E., a distance of 210.01 feet;  
thence N.54°11'26"E., a distance of 370.11 feet;  
thence S.20°11'27"E., a distance of 111.79 feet;  
thence S.21°07'01"E., a distance of 224.06 feet;  
thence S.05°43'58"E., a distance of 224.22 feet;  
thence S.07°02'02"W., a distance of 144.61 feet;  
thence S.23°53'12"W., a distance of 199.09 feet;  
thence S.09°44'11"W., a distance of 202.27 feet;  
thence S.03°11'54"E., a distance of 184.71 feet;  
thence S.23°48'45"W., a distance of 108.31 feet to a non-tangential point on a curve to the right;  
thence along the arc of said curve, an arc length of 283.39 feet, having a radius of 925.00 feet, through a central angle of 17°33'13", a chord bearing of N.57°24'38"W. and a chord length of 282.28 feet to a point of tangency of said curve;  
thence N.48°38'02"W., a distance of 1111.37 feet to the POINT OF BEGINNING of the parcel of land herein described;

Parcel contains 19.78 acres, more or less.

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Description of The Brooks Parcel D  
Section 10, Township 47 South, Range 25 East,  
Lee County, Florida

LESS AND EXCEPT Tract "L-19"

COMMENCING at the northwest corner of said Section 10,  
thence along the north line of said Section 10, N.88°56'26"E., a distance of 134.38 feet to the  
east right-of-way line of the Seaboard Coast Railroad;  
thence along said right-of-way, S.00°59'47"E., a distance of 2299.00 feet;  
thence N.79°35'39"E., a distance of 309.95 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 2004.97 feet, having a radius of 2218.89 feet,  
through a central angle of 51°46'19", a chord bearing of S.74°31'11"E. and a chord length of  
1937.45 feet to a point of tangency of said curve;  
thence S.48°38'02"E., a distance of 26.14 feet;  
thence continue, S.48°38'02"E., a distance of 327.85 feet;  
thence N.41°21'58"E., a distance of 89.53 feet to the POINT OF BEGINNING of the parcel of  
land herein described;  
thence along the arc of a curve to the right, an arc length of 68.50 feet, having a radius of 50.00  
feet, through a central angle of 78°29'41", a chord bearing of N.22°25'21"W. and a chord length  
of 63.27 feet to the point of tangency of said curve;  
thence N.16°49'30"E., a distance of 29.33 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 40.00 feet, having a radius of 30.00 feet,  
through a central angle of 76°24'13", a chord bearing of N.55°01'36"E. and a chord length of  
37.11 feet to the point of tangency of said curve;  
thence S.86°46'18"E., a distance of 274.86 feet to a point of curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 210.91 feet, having a radius of 500.00 feet,  
through a central angle of 24°10'07", a chord bearing of N.81°08'39"E. and a chord length of  
209.35 feet to the point of tangency of said curve;  
thence N.69°03'36"E., a distance of 122.03 feet to the point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 133.09 feet, having a radius of 60.00 feet,  
through a central angle of 127°05'40", a chord bearing of S.47°23'34"E. and a chord length of  
107.44 feet to the point of tangency of said curve;  
thence S.16°09'16"W., a distance of 356.58 feet to the point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 200.46 feet, having a radius of 85.00 feet,  
through a central angle of 135°07'21", a chord bearing of S.83°42'56"W. and a chord length of  
157.13 feet to the point of tangency of said curve;  
thence N.28°43'24"W., a distance of 126.51 feet to the point of curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 166.92 feet, having a radius of 250.00 feet,  
through a central angle of 38°15'21", a chord bearing of N.47°51'04"W. and a chord length of  
163.84 feet to the point of tangency of said curve;  
thence N.66°58'45"W., a distance of 126.97 feet to the point of curvature of a curve to the left;

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Description of The Brooks Parcel D

Section 10, Township 47 South, Range 25 East,  
Lee County, Florida

thence along the arc of said curve, an arc length of 69.07 feet, having a radius of 50.00 feet,  
through a central angle of 79°08'46", a chord bearing of S.73°26'52"W. and a chord length of  
63.71 feet to the point of tangency of said curve;

thence S.33°52'29"W., a distance of 7.91 feet to the point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 59.80 feet, having a radius of 30.00 feet,  
through a central angle of 114°12'01", a chord bearing of N. 89°01'31"W. and a chord length of  
50.38 feet to the point of reverse curvature of a curve to the left;

thence along the arc of said curve, an arc length of 25.96 feet, having a radius of 50.00 feet,  
through a central angle of 29°44'41", a chord bearing of N.46°47'51"W. and a chord length of  
25.67 feet to the POINT OF BEGINNING of the parcel herein described;

Parcel contains 3.71 acres, more or less.

Tract D Net 16.07 acres, more or less.

Subject to easements, reservations, restrictions and rights-of-way of record.

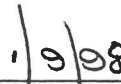
Bearings are based on the north line of Section 10, Township 47 South, Range 25 East, Lee  
County, Florida, being N.88°56'26"E.

Prepared by:

WILSON, MILLER, BARTON & PEEK, INC.



Stephen R. Erek, Professional Surveyor & Mapper  
Florida Registration No. 3273



Date

Not valid unless embossed with the Professional's seal.

P.I.N.: N0774-201-A10 SSSLD

Ref: C-0774-65

Date: October 30, 1997

Rev. Date: January 8, 1998

DR2909 PG0918

PLANNERS, ENVIRONMENTAL CONSULTANTS, ENGINEERS,  
SURVEYORS, LANDSCAPE ARCHITECTS, CONSTRUCTION MANAGERS

**DESCRIPTION**

of The Brooks Tract "E"

Section 10, Township 47 South, Range 25 East,

Lee County, Florida

Neighborhood Designation: Tamarind Trace

All that part of Section 10, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

COMMENCING at the northwest corner of said Section 10;  
thence along the north line of said Section 10, N.88°56'26"E., a distance of 2651.35 feet;  
thence S.01°03'33"E., a distance of 911.00 feet to the POINT OF BEGINNING of the parcel herein described;  
thence S.39°11'49"E., a distance of 75.96 feet;  
thence S.35°15'40"E., a distance of 94.33 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 319.17 feet, having a radius of 370.00 feet, through a central angle of 49°25'27", a chord bearing of S.10°32'57"E. and a chord length of 309.36 feet to the end of said curve;  
thence N.78°15'03"E., a distance of 110.03 feet;  
thence S.27°26'47"E., a distance of 12.16 feet;  
thence S.26°55'32"E., a distance of 146.99 feet;  
thence S.30°10'21"E., a distance of 129.78 feet;  
thence S.35°39'52"E., a distance of 181.27 feet;  
thence S.36°49'11"E., a distance of 172.91 feet;  
thence S.20°02'08"E., a distance of 144.85 feet;  
thence S.51°57'16"W., a distance of 203.09 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 42.00 feet, having a radius of 240.00 feet, through a central angle of 10°01'35", a chord bearing of S.56°58'04"W. and a chord length of 41.95 feet to the point of tangency of said curve;  
thence S.61°58'51"W., a distance of 194.17 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 66.77 feet, having a radius of 330.00 feet, through a central angle of 11°35'36", a chord bearing of S.67°46'39"W. and a chord length of 66.66 feet to the point of tangency of said curve;  
thence S.73°34'27"W., a distance of 84.07 feet to a point of curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 191.75 feet, having a radius of 2680.00 feet, through a central angle of 04°05'58", a chord bearing of S.71°31'28"W. and a chord length of 191.71 feet to the point of reverse curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 39.95 feet, having a radius of 200.00 feet, through a central angle of 11°26'43", a chord bearing of S.75°11'51"W. and a chord length of 39.89 feet to the point of reverse curvature of a curve to the left;

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thence along the arc of said curve, an arc length of 85.60 feet, having a radius of 1632.30 feet, through a central angle of  $03^{\circ}00'16''$ , a chord bearing of  $S.79^{\circ}25'04''W.$  and a chord length of 85.59 feet to the point of reverse curvature of a curve to the right;

thence along the arc of said curve, an arc length of 160.89 feet, having a radius of 584.74 feet, through a central angle of  $15^{\circ}45'54''$ , a chord bearing of  $S.85^{\circ}47'53''W.$  and a chord length of 160.38 feet to the end of said curve;

thence  $N.09^{\circ}25'08''E.$ , a distance of 220.23 feet to a point on a curve to the left;

thence along the arc of said curve, an arc length of 14.15 feet, having a radius of 50.00 feet, through a central angle of  $16^{\circ}12'42''$ , a chord bearing of  $S.84^{\circ}50'45''E.$  and a chord length of 14.10 feet to the end of said curve;

thence  $N.86^{\circ}45'14''E.$ , a distance of 50.88 feet to a point of curvature of a curve to the left;

thence along the arc of said curve, an arc length of 76.36 feet, having a radius of 400.00 feet, through a central angle of  $10^{\circ}56'14''$ , a chord bearing of  $N.81^{\circ}17'07''E.$  and a chord length of 76.24 feet to the point of tangency of said curve;

thence  $N.75^{\circ}48'59''E.$ , a distance of 156.71 feet;

thence  $N.13^{\circ}09'10''W.$ , a distance of 160.03 feet;

thence  $N.75^{\circ}48'59''E.$ , a distance of 61.73 feet to a point of curvature of a curve to the left;

thence along the arc of said curve, an arc length of 138.99 feet, having a radius of 75.00 feet, through a central angle of  $106^{\circ}11'02''$ , a chord bearing of  $N.22^{\circ}43'28''E.$  and a chord length of 119.94 feet to the point of tangency of said curve;

thence  $N.30^{\circ}22'03''W.$ , a distance of 192.15 feet to a point of curvature of a curve to the right;

thence along the arc of said curve, an arc length of 354.26 feet, having a radius of 425.00 feet, through a central angle of  $47^{\circ}45'32''$ , a chord bearing of  $N.06^{\circ}29'16''W.$  and a chord length of 344.09 feet to a point on a curve to the left;

thence along the arc of said curve, an arc length of 130.51 feet, having a radius of 162.00 feet, through a central angle of  $46^{\circ}09'33''$ , a chord bearing of  $N.05^{\circ}46'17''W.$  and a chord length of 127.01 feet to the point of tangency of said curve;

thence  $N.28^{\circ}50'55''W.$ , a distance of 87.08 feet to a point of curvature of a curve to the right;

thence along the arc of said curve, an arc length of 40.42 feet, having a radius of 50.00 feet, through a central angle of  $46^{\circ}19'11''$ , a chord bearing of  $N.05^{\circ}41'19''W.$  and a chord length of 39.33 feet to the point of tangency of said curve;

thence  $N.17^{\circ}28'16''E.$ , a distance of 46.39 feet;

thence  $N.61^{\circ}58'54''E.$ , a distance of 52.81 feet to a point on a curve to the right;

thence along the arc of said curve, an arc length of 95.41 feet, having a radius of 55.00 feet, through a central angle of  $99^{\circ}23'52''$ , a chord bearing of  $N.05^{\circ}02'24''E.$  and a chord length of 83.89 feet to the point of tangency of said curve;

thence  $N.54^{\circ}44'20''E.$ , a distance of 47.78 feet to the POINT OF BEGINNING of the parcel herein described.

Parcel contains 13.62 acres, more or less.

Subject to easements, reservations, restrictions and rights-of-way of record.

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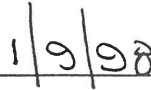
Bearings are based on the north line of Section 10 Township 47 South, Range 25 East, Lee County, Florida, being N.88°56'26"E.

Prepared by:

WILSON, MILLER, BARTON & PEEK, INC.



Stephen P. Erek, Professional Surveyor & Mapper  
Florida Registration No. 3273



Date

Not valid unless embossed with the Professional's seal.

P.I.N.: F-0774-201-A15 FSSLD

Ref: C-0774-59

Date: January 8, 1998

DR2909 PG09211



# WILSON, MILLER, BARTON & PEEK, INC.

ENGINEERS • SURVEYORS • PLANNERS • ENVIRONMENTAL CONSULTANTS • LANDSCAPE ARCHITECTS • CONSTRUCTION MANAGERS  
4571 Colonial Boulevard Fort Myers, Florida 33912 (941) 939-1020 Fax (941) 939-7479

DESCRIPTION OF THE BROOKS TRACT "F": Neighborhood Designation: Summerfield  
BEING A PART OF SECTIONS 3 AND 10, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY  
FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 10, TOWNSHIP 47 SOUTH, RANGE 25 EAST,  
LEE COUNTY, FLORIDA; THENCE CONTINUE ALONG NORTH SECTION LINE SOUTH 88°56'27" WEST  
1233.74 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL:  
THENCE SOUTH 25°02'08" WEST, 223.09 FEET;  
THENCE SOUTHERLY, 413.82 FEET ALONG THE ARC OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO  
THE NORTHWEST HAVING A RADIUS OF 1175.00 FEET, THROUGH A CENTRAL ANGLE OF 20°10'44"  
AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 35°07'30" WEST FOR 411.69 FEET;  
THENCE SOUTH 45°12'52" WEST FOR 220.28 FEET;  
THENCE WEST, SOUTHWESTERLY AND SOUTH, 143.28 FEET ALONG THE ARC OF A TANGENTIAL CIRCULAR  
CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF  
82°05'26" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 04°10'09" WEST, 131.33  
FEET; THENCE SOUTH 36°52'34" EAST FOR 188.43 FEET;  
THENCE SOUTHERLY AND SOUTHEASTERLY, 119.02 FEET ALONG THE ARC OF A TANGENTIAL CIRCULAR  
CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE  
OF 68°11'44" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 70°58'26" EAST, 112.12  
FEET TO A POINT OF REVERSE CURVE; THENCE SOUTHEASTERLY AND SOUTHERLY, 123.53 FEET ALONG  
THE ARC OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF  
205.00 FEET, THROUGH A CENTRAL ANGLE OF 34°31'37" AND BEING SUBTENDED BY A CHORD WHICH  
BEARS SOUTH 87°48'29" EAST, 121.67 FEET; THENCE SOUTH 07°00'05" WEST FOR 167.46 FEET;  
THENCE SOUTHERLY AND SOUTHWESTERLY, 53.15 FEET ALONG THE ARC OF A NON-TANGENTIAL CIRCULAR  
CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 55.000 FEET, THROUGH A CENTRAL ANGLE OF  
55°22'03" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 01°49'14" EAST, 51.11 FEET;  
THENCE SOUTH 25°51'48" WEST FOR 124.96 FEET; THENCE SOUTH 47°00'57" WEST FOR 95.88 FEET;  
THENCE NORTHERLY AND NORTHWESTERLY, 41.88 FEET ALONG THE ARC OF A NON-TANGENTIAL CIRCULAR CURVE  
CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 175.00 FEET, THROUGH A CENTRAL ANGLE OF 13°42'40"  
AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 49°50'23" WEST, 41.78 FEET TO A POINT OF  
A COMPOUND CURVE; THENCE NORTHWESTERLY, 83.68 FEET ALONG THE ARC OF A TANGENTIAL  
CIRCULAR CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 100.00 FEET, THROUGH A CENTRAL  
ANGLE OF 47°56'45" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 80°40'06" WEST,  
81.26 FEET; THENCE NORTH 75°21'32" EAST FOR 161.66 FEET; THENCE NORTH 26°15'02" WEST,  
144.39 FEET; THENCE NORTH 30°32'31" WEST FOR 159.19 FEET; THENCE NORTH 32°05'02" WEST FOR  
136.89 FEET; THENCE NORTH 37°58'40" WEST FOR 67.53; THENCE NORTH 25°18'49" WEST FOR 65.10 FEET;  
THENCE NORTHERLY AND NORTHEASTERLY, 461.61 FEET ALONG THE ARC OF A TANGENTIAL  
CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 375.00 FEET, THROUGH A CENTRAL  
ANGLE OF 70°31'42" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 09°57'02" EAST,  
433.01 FEET; THENCE NORTH 45°12'52" EAST FOR 191.79 FEET; THENCE NORTH 37°35'31" EAST  
FOR 381.75 FEET; THENCE NORTH 25°02'08" EAST FOR 523.51 FEET; THENCE NORTHERLY AND  
NORTHWESTERLY, 106.04 FEET ALONG THE ARC OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE  
WEST, HAVING A RADIUS OF 150.00 FEET, THROUGH A CENTRAL ANGLE OF 40°30'18" AND BEING  
SUBTENDED BY A CHORD WHICH BEARS NORTH 04°46'59" EAST, 103.85 FEET TO A POINT  
OF COMPOUND CURVE; THENCE NORTHWESTERLY AND WESTERLY, 60.66 FEET ALONG THE ARC OF  
A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 100.00 FEET,  
THROUGH A CENTRAL ANGLE OF 34°45'17" AND BEING SUBTENDED BY A CHORD WHICH BEARS  
NORTH 32°50'48" WEST, 59.73 FEET TO A POINT OF REVERSE CURVE;  
THENCE NORTHWESTERLY 19.36 FEET ALONG THE ARC OF A TANGENTIAL CIRCULAR CURVE CONCAVE  
TO THE NORTHEAST, HAVING A RADIUS OF 300.00 FEET, THROUGH A CENTRAL ANGLE OF 03°41'51"  
AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 48°22'32" WEST, 19.36 FEET;  
THENCE NORTH 46°31'36" WEST FOR 51.09 FEET; THENCE NORTH 42°01'03" EAST FOR 143.21 FEET;  
THENCE NORTH 52°24'59" EAST FOR 75.79 FEET; THENCE NORTHEASTERLY, 149.26 FEET ALONG THE  
ARC OF A NON-TANGENTIAL CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 895.00  
FEET, THROUGH A CENTRAL ANGLE OF 09°33'19" AND BEING SUBTENDED BY A CHORD WHICH BEARS  
NORTH 50°29'39" EAST, 149.09 FEET; THENCE SOUTH 46°31'36" EAST FOR 24.73 FEET;  
THENCE SOUTHEASTERLY, 96.74 FEET ALONG THE ARC OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE  
SOUTHWEST, HAVING A RADIUS OF 300.00 FEET, THROUGH A CENTRAL ANGLE OF 18°28'30" AND  
BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 37°17'21" EAST, 96.32 FEET TO A POINT OF  
REVERSE CURVE; THENCE SOUTHERLY, 24.75 FEET ALONG THE ARC OF A TANGENTIAL CIRCULAR CURVE  
CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 300.00 FEET, THROUGH A CENTRAL ANGLE OF 04°43'34"  
AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 30°24'53" EAST, 24.74 FEET TO A POINT  
OF REVERSE CURVE; THENCE SOUTHEASTERLY, SOUTHERLY AND SOUTHWESTERLY, 504.52 FEET ALONG THE  
ARC OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 500.00 FEET,  
THROUGH A CENTRAL ANGLE OF 57°48'48" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH  
03°52'16" EAST, 483.38 FEET; THENCE SOUTH 25°02'08" WEST FOR 300.42 FEET TO THE  
POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL.

CONTAINING 21.10 ACRES MORE OR LESS.

BEARINGS WERE BASED ON THE NORTH SECTION LINE  
OF SECTION 10 AS BEING SOUTH 88°56'27" WEST.

WILSON, MILLER, BARTON & PEEK, INC.  
Registered Engineers and Land Surveyors

By: Stephen P. Ereš  
Stephen P. Ereš, Professional Surveyor and Mapper  
Licensed No. #3273

Date: 1/9/98

NOT VALID UNLESS EMBOSSED WITH THE PROFESSIONAL'S SEAL.

Pin No. N0774-201-A16-FSSLD  
Ref. C-0774-60 (07746001.DWG)  
Date: January 8, 1998

OR2909 Pg0922

DESCRIPTION  
of The Brooks Tract "G"  
Sections 2, 3 and 11, Township 47 South, Range 25 East,  
Lee County, Florida  
Neighborhood Designation: Orchid Ridge

All that part of Sections 2, 3 and 11, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows;

COMMENCING at the southwest corner of said Section 2;  
thence along the west line of said Section 2, N.01°13'28"W., a distance of 786.05 feet to the POINT OF BEGINNING of the parcel herein described;  
thence N.20°12'15"W., a distance of 15.64 feet;  
thence N.20°29'10"W., a distance of 140.13 feet to a point on a non-tangential curve to the right;  
thence along the arc of said curve, an arc length of 50.45 feet, having a radius of 300.00 feet, through a central angle of 09°38'04", a chord bearing of N.60°23'24"E. and a chord length of 50.39 feet to the point of reverse curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 49.04 feet, having a radius of 300.00 feet, through a central angle of 09°22'00", a chord bearing of N.60°31'26"E. and a chord length of 48.99 feet to the point of tangency of said curve;  
thence N.55°50'26"E., a distance of 70.81 feet to a point of curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 202.18 feet, having a radius of 493.06 feet, through a central angle of 23°29'37", a chord bearing of N.44°05'37"E. and a chord length of 200.76 feet to the point of tangency of said curve;  
thence N.32°20'49"E., a distance of 402.90 feet;  
thence N.22°33'52"E., a distance of 338.20 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 494.58 feet, having a radius of 250.00 feet, through a central angle of 113°20'56", a chord bearing of N.79°14'20"E. and a chord length of 417.78 feet to the point of tangency of said curve;  
thence S.44°05'12"E., a distance of 348.60 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 157.11 feet, having a radius of 475.00 feet, through a central angle of 18°57'06", a chord bearing of S.34°36'39"E. and a chord length of 156.40 feet to the point of compound curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 882.37 feet, having a radius of 2450.00 feet, through a central angle of 20°38'06", a chord bearing of S.14°49'03"E. and a chord length of 877.61 feet to the point of tangency of said curve;  
thence S.04°30'00"E., a distance of 497.29 feet to a point of curvature of a curve to the right;  
thence along the arc of said curve, an arc length of 750.50 feet, having a radius of 205.00 feet, through a central angle of 209°45'28", a chord bearing of N.79°37'16"W. and a chord length of 396.25 feet to the point of compound curvature of a curve to the left;  
thence along the arc of said curve, an arc length of 129.84 feet, having a radius of 250.00 feet, through a central angle of 29°45'28", a chord bearing of N.10°22'44"E. and a chord length of 128.39 feet to the point of tangency of said curve;

WILSON, MILLER, BARTON & PEEK, INC.

4571 Colonial Boulevard, Suite 100, Fort Myers, Florida 33912-1062 • Ph 941-939-1020 Fx 941-939-7479

Web Site: [www.wilsonmiller.com](http://www.wilsonmiller.com)

E-mail: [fortmyers@wilsonmiller.com](mailto:fortmyers@wilsonmiller.com)

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thence N.04°30'00"W., a distance of 271.46 feet to a point of curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 756.32 feet, having a radius of 2100.00 feet,  
 through a central angle of 20°38'06", a chord bearing of N.14°49'03"W. and a chord length of  
 752.23 feet to the point of compound curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 267.29 feet, having a radius of 125.00 feet,  
 through a central angle of 122°31'05", a chord bearing of N.86°23'39"W. and a chord length of  
 219.20 feet to the point of tangency of said curve;  
 thence S.32°20'49"W., a distance of 240.25 feet to a point of curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 141.94 feet, having a radius of 100.00 feet,  
 through a central angle of 81°19'38", a chord bearing of S.08°19'00"E. and a chord length of  
 130.32 feet to the point of reverse curvature of a curve to the right;  
 thence along the arc of said curve, an arc length of 179.52 feet, having a radius of 3675.00 feet,  
 through a central angle of 02°47'56", a chord bearing of S.47°34'51"E. and a chord length of  
 179.50 feet to the point of tangency of said curve;  
 thence S.46°10'53"E., a distance of 121.06 feet to a point of curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 91.29 feet, having a radius of 250.00 feet,  
 through a central angle of 20°55'20", a chord bearing of S.56°38'33"E. and a chord length of  
 90.78 feet to the point of compound curvature of a curve to the right;  
 thence along the arc of said curve, an arc length of 793.74 feet, having a radius of 205.00 feet,  
 through a central angle of 221°50'40", a chord bearing of S.43°49'07"W. and a chord length of  
 382.97 feet to the point of compound curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 91.29 feet, having a radius of 250.00 feet,  
 through a central angle of 20°55'20", a chord bearing of N.35°43'13"W. and a chord length of  
 90.78 feet to the point of tangency of said curve;  
 thence N.46°10'53"W., a distance of 121.06 feet to a point of curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 130.77 feet, having a radius of 3325.00 feet,  
 through a central angle of 02°15'12", a chord bearing of N.47°18'29"W. and a chord length of  
 130.76 feet to the point of compound curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 139.61 feet, having a radius of 100.00 feet,  
 through a central angle of 79°59'25", a chord bearing of N.88°25'48"W. and a chord length of  
 128.54 feet to the point of reverse curvature of a curve to the right;  
 thence along the arc of said curve, an arc length of 62.77 feet, having a radius of 843.06 feet,  
 through a central angle of 04°15'56", a chord bearing of S.53°42'28"W. and a chord length of  
 62.75 feet to the point of tangency of said curve;  
 thence S.55°50'26"W., a distance of 70.81 feet to a point of curvature of a curve to the left;  
 thence along the arc of said curve, an arc length of 49.04 feet, having a radius of 300.00 feet,  
 through a central angle of 09°22'00", a chord bearing of S.51°09'26"W. and a chord length of  
 48.99 feet to the point of reverse curvature of a curve to the right;  
 thence along the arc of said curve, an arc length of 49.04 feet, having a radius of 300.00 feet,  
 through a central angle of 09°22'00", a chord bearing of S.51°09'26"W. and a chord length of  
 48.99 feet to the point of tangency of said curve;

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thence S.55°50'26"W., a distance of 107.59 feet to a point on a non-tangential curve to the left;  
thence along the arc of said curve, an arc length of 157.88 feet, having a radius of 1050.00 feet,  
through a central angle of 08°36'55", a chord bearing of N.14°34'24"W. and a chord length of  
157.74 feet to the end of said curve;  
thence N.20°12'15"W., a distance of 68.06 feet to the POINT OF BEGINNING of the parcel  
herein described.

Parcel contains 27.10 acres, more or less.

Subject to easements, reservations, restrictions and rights-of-way of record.

Bearings are based on the west line of Section 2 Township 47 South, Range 25 East, Lee County,  
Florida, being N.01°13'28"W.

Prepared by:

WILSON, MILLER, BARTON & PEEK, INC.



Stephen R. Erek, Professional Surveyor & Mapper  
Florida Registration No. 3273

1/5/98  
Date

Not valid unless embossed with the Professional's seal.

P.I.N.: F0774-201-A17 FSSLD

Ref: C-0774-61

Date: January 8, 1998

1/8/98-07740020.dks

Fl.Lic.#LC-0000170

076091606740

EXHIBIT "B"

Land Subject to Annexation

ALL OF SECTIONS 2,3,4,9,10 AND 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, LYING WEST OF THE WESTERLY RIGHT-OF-WAY LINE OF I-75 AND LYING EAST OF EASTERLY RIGHT-OF-WAY LINE OF US HIGHWAY 41 (S.R. NO. 45, A 200 FOOT RIGHT-OF-WAY), LESS THE SEABOARD COAST LINE RAILROAD RIGHT-OF-WAY AND LESS:

ALL THAT PART OF THE NORTH HALF OF THE NORTH HALF OF SECTIONS 3 AND 4, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA LYING WITHIN 50 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

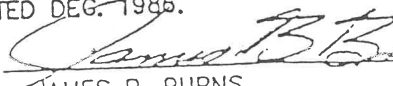
FROM THE QUARTER CORNER ON THE NORTH LINE OF SAID SECTION 4, RUN N. 88°19'42" E. ALONG THE NORTH LINE OF SAID SECTION 4 AND THE CENTERLINE OF WILLIAMS ROAD (60 FEET WIDE) AND AN EASTERLY PROLONGATION THEREOF FOR 366.72 FEET TO AN INTERSECTION WITH THE CENTERLINE OF THE TAMiami TRAIL (STATE ROAD NO. 45) (200 FEET WIDE); THENCE RUN S. 88°40'18" E. FOR 100.19 FEET TO THE EASTERLY LINE OF STATE ROAD NO. 45 AND THE POINT OF BEGINNING. FROM SAID POINT OF BEGINNING CONTINUE S. 88°40'18" E. FOR 671.88 FEET TO A POINT OF CURVATURE; THENCE RUN EASTERLY ALONG THE ARC OF A CURVE TO THE LEFT OF RADIUS 7,000 FEET (CHORD BEARING N. 89°49'42" E.) (CHORD 366.48 FEET) (DELTA 03°00'00") FOR 366.52 FEET TO A POINT OF TANGENCY ON A LINE 50 FEET SOUTHERLY FROM (AS MEASURED ON A PERPENDICULAR) AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 4; THENCE RUN N. 88°19'42" E. ALONG SAID PARALLEL LINE FOR 1138.66 FEET (INTERSECTING THE WESTERLY LINE OF THE SEABOARD SYSTEMS RAILROAD RIGHT-OF-WAY (130 FEET WIDE) AT 1020.70 FEET); THENCE RUN N 89°50'15" E. 50 FEET SOUTHERLY FROM (AS MEASURED ON A PERPENDICULAR) AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 3 FOR 2647.45 FEET, INTERSECTING THE EASTERLY LINE OF SAID RAILROAD RIGHT-OF-WAY AT 13.66 FEET; THENCE RUN N. 89°50'43" E. ALONG SAID PARALLEL LINE FOR 975.30 FEET TO THE END OF THE HEREIN DESCRIBED CENTERLINE, THE SOUTHERLY LINE OF THE HEREIN DESCRIBED RIGHT-OF-WAY EXTENDING WESTERLY TO SAID EASTERLY LINE OF THE TAMiami TRAIL (BEARING BASIS FOR THE AFOREMENTIONED CENTERLINE BEING THE NORTH LINE OF SECTION 4 AT N. 89°19'42" E.)

PROPERTY AREA: 3014.141 ACRES, MORE OR LESS

SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS BASED ON THE NORTH LINE OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 47 SOUTH, RANGE 25 EAST AS BEING N. 89°51'03" E.

LEGAL DESCRIPTION COMPILED FROM SURVEYS PREPARED BY DENI AND ASSOCIATES ON 9/14/95 AND 12/24/86 AND FROM THE RIGHT-OF-WAY MAP FOR WILLIAMS ROAD PREPARED BY JOHNSON ENGINEERING'S INC. DATED DEC. 1988.

BY  P.E. #5090  
JAMES B. BURNS STATE OF FLORIDA

The maximum number of Units reserved by Declarant shall be 4244.

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## EXHIBIT "C"

### Initial Use Restrictions

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by Use Restrictions of the Association adopted pursuant to Article III of the Declaration.

1. General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Declarant and/or Builder to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association, and business offices and construction areas for the Declarant, Builder, or the Association) consistent with this Declaration and any Supplemental Declaration.

2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of any vehicles is;

(i) prohibited on public or private streets or thoroughfares within the Properties except for construction vehicles of the Declarant or Builders which may be parked in the streets of a construction area until 100% property described on Exhibits "A" and "B" of the Declaration has been developed and conveyed to Owners other than the Declarant or Builders,

(ii) parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles anywhere within the Properties other than in enclosed garages is prohibited; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area, and recreational vehicles and boats may be parked in driveways for not more than 24 hours while loading and unloading, which shall not occur more than twice per month,

(b) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;

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(c) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris or other materials, except by the Declarant or a Builder;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be an unreasonable annoyance or nuisance to occupants of other Units in the Board's judgment, except alarm devices used exclusively for security purposes;

(i) Posting or maintaining any sign, banner or advertisement, unless approved by the Reviewer under Article IV and maintained in a manner consistent with the Design Guidelines and any applicable governmental regulations;

(j) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(l) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Public Records, except that the Declarant shall be permitted to subdivide or replat Units which it owns;

(m) Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams or other bodies of water within the Properties, except that fishing from the shore shall be permitted with appropriate licenses and the Private Amenity, its successors and assigns, shall be permitted and shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas and the Declarant may draw water from lakes, ponds and streams within the Properties for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to

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any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams or other bodies of water within or adjacent to the Properties;

(n) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns;

(o) Use and discharge of firecrackers and other fireworks, or discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(p) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank pursuant to Article IV;

(q) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program;

(r) Capturing, trapping, or killing of wildlife within the Properties, unless authorized by the Declarant or the Association;

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(s) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(t) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article IV, provided that use of such areas shall be permitted by a Builder during the construction and marketing of any portion of the Properties;

(u) Operation of motorized vehicles, golf carts, or similar items on public or private roads, streets, pathways, bike trails, or trails maintained by the Association, except that golf carts may be operated on cart paths intended for such purposes;

(v) Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind. To the extent that the reviewer of a request for any of the foregoing permits antennas or satellite dishes within the Properties, such shall be restricted to a size of 40 inches or less and be located or screened from view from the streets, adjacent Units, or Common Area;

(u) Placement of antennas, satellite dishes, or other apparatus for the transmission, reception, or communication of television, radio, satellite, or other signals except for one small receiver which may be located in the side or rear yard, installed adjacent to the residence, and integrated with the residential structure and landscaping. Unless otherwise provided by law, dishes shall not exceed 40 inches in diameter. Any such devices shall be screened or landscaped from view from the street and adjacent Units; and

(v) Changing, altering, impeding, dumping, or otherwise interfering with the flow and volume of water in any portion of the Surface Water Management System.

3. Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties;

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair; and

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties, except that Declarant, its designees, and Resource Conservation Systems, Inc.,





shall have the exclusive right to draw water from such sources and to reduce the level of such bodies of water, if and to the extent of such permits granted by the South Florida Water Management District.

4. Leasing of Units. "Leasing," for purposes of this paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term, which requirements may vary from Neighborhood to Neighborhood. Notice of any lease, together with such additional information, payment of fees, or other matters as may be required by the Board, shall be given to the Board by the Owner within 10 days of execution of the lease or prior to occupancy, whichever shall occur first. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Use Restrictions.

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## EXHIBIT "D"

### Rules of Arbitration

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1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("Arbitration Notice").

2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all the Claimants shall agree upon one (1) Party Appointed Arbitrator, and all the Respondents shall agree upon one (1) Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three (3) arbitrators.

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, any party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Governing Documents, or the American Arbitration Association, or such other independent body providing arbitration services, for any dispute relating to the design or construction of improvements on the Properties, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.

5. The Appointed Neutral or Neutral, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.

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7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine any relevant legal issues, including whether all indispensable parties are Bound Parties or whether the claim is barred by the statute of limitations.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

10. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator.

11. No formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

12. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

13. There will be no posthearing briefs.

14. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

15. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

16. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

UK2909 RB0934



December 10, 2010

Dear Shadow Wood Resident,

Notice is hereby given the Shadow Wood Community Association has amended the Declaration of Covenants, Conditions and Restrictions for Shadow Wood, EXHIBIT "C" Initial Use Restrictions as follows (underlined portion indicates addition to paragraph):

2. *RESTRICTED ACTIVITIES. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:*

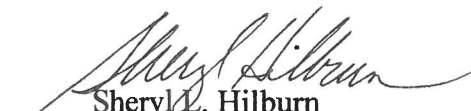
*(a) Parking of any vehicles is:*

*(i) prohibited on public or private streets or thoroughfares within the Properties except for construction vehicles of the Declarant or Builders which may be parked in the streets of a construction area until 100% property described on Exhibits "A" and "B" of the Declaration has been developed and conveyed to owners other than the Declarant or Builders,*

*(ii) parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles anywhere within the Properties other than in enclosed garages is prohibited; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area, a portable on demand storage unit parked in a Unit's driveway shall be exempt from this provision for 48 hours following delivery of the storage unit, and recreational vehicles and boats may be parked in driveways for not more than 24 hours while loading and unloading, which shall not occur more than twice per month.*

The Board considered this action upon the formal request of several neighborhood associations in the community. After a complete review the Board adopted this Amendment at a duly called meeting on November 16, 2010. This action was in full compliance with the Declaration as it relates to the Board's authority to enact Use Restrictions and will become effective on January 10, 2010.

Sincerely,

  
Sheryl L. Hilburn  
SWCA General Manager



December 10, 2010

Dear Shadow Wood Resident,

Notice is hereby given the Shadow Wood Community Association has amended the Declaration of Covenants, Conditions and Restrictions for Shadow Wood, EXHIBIT "C" Initial Use Restrictions as follows (underlined portion indicates addition to paragraph):

2. *RESTRICTED ACTIVITIES. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:*

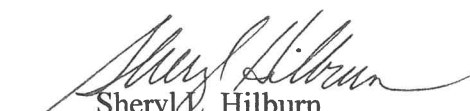
- (a) *Parking of any vehicles is:*

- (i) *prohibited on public or private streets or thoroughfares within the Properties except for construction vehicles of the Declarant or Builders which may be parked in the streets of a construction area until 100% property described on Exhibits "A" and "B" of the Declaration has been developed and conveyed to owners other than the Declarant or Builders,*

- (ii) *parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles anywhere within the Properties other than in enclosed garages is prohibited; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area, a portable on demand storage unit parked in a Unit's driveway shall be exempt from this provision for 48 hours following delivery of the storage unit, and recreational vehicles and boats may be parked in driveways for not more than 24 hours while loading and unloading, which shall not occur more than twice per month.*

The Board considered this action upon the formal request of several neighborhood associations in the community. After a complete review the Board adopted this Amendment at a duly called meeting on November 16, 2010. This action was in full compliance with the Declaration as it relates to the Board's authority to enact Use Restrictions and will become effective on January 10, 2010.

Sincerely,

  
Sheryl L. Hilburn  
SWCA General Manager

10.50



When Recorded, Return To:  
Joanne Janes  
Bonita Bay Properties, Inc.  
9990 Coconut Rd., Suite 200  
Bonita Springs, FL 34135

INSTR # 5672127  
OR BK 03814 PG 1545  
RECORDED 01/04/2003 12:04:08 PM  
CHARLIE GREEN, CLERK OF COURT  
LEE COUNTY  
RECORDING FEE 10.50  
DEPUTY CLERK C Keller

STATE OF FLORIDA

Cross Reference: Book 2909  
Page 838

COUNTY OF LEE

2

AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
SHADOW WOOD

THIS AMENDMENT to the Declaration of Covenants, Conditions, and Restrictions for Shadow Wood is made this 16<sup>th</sup> day of December, 2002, by Long Bay Partners LLC ("Declarant").

WITNESSETH:

WHEREAS, on January 14, 1998, Declarant filed that certain Declaration of Covenants, Conditions, and Restrictions for Shadow Wood, recorded in Book 2909, Page 838, *et seq.*, of the Public Records of Lee County, Florida (as amended and supplemented from time to time, the "Declaration"); and

WHEREAS, Declarant desires to amend the provisions of the Declaration as they apply to the "Private Amenities" (as that term is defined in the Declaration); and

WHEREAS, pursuant to the terms of Section 19.1 of the Declaration, Declarant may unilaterally amend the Declaration for any purpose until termination of the Class "B" membership, so long as such amendment does not substantially conflict with the Master Plan; and

WHEREAS, the Class "B" membership has not terminated and this amendment does not substantially conflict with the Master Plan;

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration to include a new section identified as Section 15.9 and which shall state as follows:

15.9. Subjecting Private Amenities to the Declaration.

All or any portion of the Private Amenities may be subjected to this Declaration for the limited purpose of requiring that all provisions of this Declaration relating to the maintenance and operation of the Surface Water Management System shall apply to such Private Amenities. Private Amenities may be submitted to the Declaration for such limited purpose by the filing of a Supplemental Declaration in the Public Records. Except as otherwise specifically provided in this Article XV or in a Supplemental Declaration submitting such property to this Declaration, the submitted Private Amenities shall be exempt from the application of all provisions of the Declaration, including, but not limited to, Articles III, IV, VI, VIII, and XIV, with the exception of any provisions that address the Private Amenities' obligations with regard to the Surface Water Management System.

IN WITNESS WHEREOF, Long Bay Partners LLC, a Florida limited liability company, through its undersigned managing general partner, has duly executed this Declaration and affixed its corporate seal thereto as of this 16<sup>th</sup> day of Dec, 2002.

**DECLARANT: LONG BAY PARTNERS LLC, a Florida limited liability company**

By: Bonita Bay Properties, Inc., a Florida corporation

Bonnie Thines  
WITNESS Bonnie Thines

By: John M. Gleeson  
W3 John M. Gleeson, Vice President

Michael A. Jones  
WITNESS Michael A. Jones

[CORPORATE SEAL]

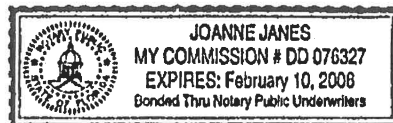
STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of December, 2002, by John M. Gleeson, as Vice President for Bonita Bay Properties, Inc., a Florida corporation, on behalf of such entity. He is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

Given under my hand and official seal this 16<sup>th</sup> day of December, 2002.

My term of office expires on 2/10/06.

Joanne Janes [SEAL]  
NOTARY PUBLIC  
Joanne Janes





5117  
2008 SD



Prepared by and Return To:  
Joanne Janes  
Bonita Bay Properties, Inc.  
9990 Coconut Rd., Suite 200  
Bonita Springs, FL 34135

INSTR # 5672129  
OR BK 03814 PG 1549  
RECORDED 01/04/2003 12:04:00 PM  
CHARLIE GREEN, CLERK OF COURT  
LEE COUNTY  
RECORDING FEE 28.50  
DEPUTY CLERK C Keller

Cross-References: Declaration: Book 2909  
Page 838

**SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR SHADOW WOOD**

(6)

THIS SUPPLEMENTAL DECLARATION is made this 16<sup>th</sup> day of Dec.,  
2002, by Long Bay Partners LLC, a Florida limited liability company ("Declarant");

**WITNESSETH**

WHEREAS, on January 14, 1989, Declarant filed that certain Declaration of Covenants, Conditions, and Restrictions for Shadow Wood, recorded in Book 2909, Page 383, *et seq.*, of the Public Records of Lee County, Florida ("Declaration"); and

WHEREAS, pursuant to the terms of Section 9.1 of the Declaration, the Declarant may unilaterally subject additional property to the terms of the Declaration by recording a Supplemental Declaration describing the property to be subjected; and

WHEREAS, Declarant is the owner of the real property described in Exhibit "A," attached hereto ("Property"); and

WHEREAS, the Declarant desires to submit the Property to the Declaration and the jurisdiction of the Shadow Wood Community Association, Inc. ("Association");

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby subjects the real property described on Exhibit "A" hereof to the provisions of the Declaration. Such property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of the Declaration, which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplemental Declaration shall be binding upon Shadow Wood Community Association, Inc., in accordance with the terms of the Declaration.

**Article I  
Definitions**

Except as otherwise provided herein, all capitalized terms shall be defined as provided in the Declaration.

**Article II**  
**Duration**

This Supplemental Declaration shall be enforceable by the Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 25 years from the date this Supplemental Declaration is recorded in the Public Records. After such time, this Supplemental Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by not less than 75% of the then Owners of Units in the Neighborhood has been recorded in the Public Records within the year preceding any extension, agreeing to terminate this Supplemental Declaration, in which case this Supplemental Declaration shall be terminated as specified in such instrument. Notwithstanding this, if any provision of this Supplemental Declaration would be unlawful, void, or voidable by reason of applicability of the rule against perpetuities, such provision shall expire 90 years after the date this Supplemental Declaration is recorded in the Public Records. Nothing in this Article shall be construed to permit termination of any easement created in this Supplemental Declaration without the consent of the holder of such easement.

**Article III**  
**Amendment**

A. By Declarant. Declarant shall have the unilateral right to amend this Supplemental Declaration so long as it has the unilateral right to amend the Declaration. Provided, if such amendment would be materially adverse to the substantive rights of the Builder pursuant to or under the contractual agreement between Builder and Declarant for purchase and development of residential Units within the Property, Declarant shall obtain Builder's written approval prior to amending this Supplemental Declaration.

B. Joinder of the Association. The Association shall, not more than ten days after the request of the Declarant, join in any amendment to this Supplemental Declaration and execute such instruments to evidence such joinder and consent as Declarant shall, from time to time request. Failure to so join and consent to an amendment, if any, by the Association shall not be cause to prevent such amendment from being made by Declarant or to affect the validity thereof.

C. Consent for Amendment. Notwithstanding anything to the contrary herein contained, no amendment to this Supplemental Declaration shall be effective which shall remove, revoke, impair, or prejudice the rights, priorities, or obligations of Declarant, the Association, any Community Development District(s), or any Mortgagee under the Declaration or the Bylaws without the specific written approval of such Declarant, Association, Community Development District(s), or Mortgagee affected thereby.

D. FNMA/FHLMC Provision. Declarant may, in its sole discretion, with the approval of no other Person, including, without limitation, any Mortgagees being required, amend this Supplemental Declaration if necessary to do so for purposes of fulfilling the requirements of any governmental entity or quasi-governmental entity, including, but not limited to, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA), and the

Federal Housing Administration (FHA). Nothing contained herein shall require Declarant to make an amendment to the Declaration or this Supplemental Declaration for any purpose whatsoever.

**Article IV**  
**Conflict**

In the event of a conflict between the provisions of this Supplemental Declaration and the provisions of the Declaration, this Supplemental Declaration shall control.

IN WITNESS WHEREOF, Long Bay Partners LLC, as the Declarant, hereby executes this Supplemental Declaration by and through its authorized representatives on the date and year first above written.

**DECLARANT: LONG BAY PARTNERS LLC, a Florida limited liability company**

By: Bonita Bay Properties, Inc., a Florida corporation, its managing member

*Michael A. Jones*  
WITNESS Michael A. Jones

*Joanne Janes*  
WITNESS Joanne Janes

By: *John M. Gleeson*  
John M. Gleeson, Vice President

[CORPORATE SEAL]

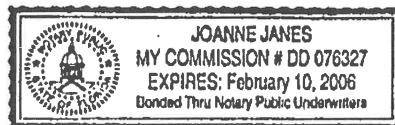
STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of Dec., 2002, by John M. Gleeson, as Vice President for Bonita Bay Properties, Inc., a Florida corporation, on behalf of such entity, as the managing member of Long Bay Partners LLC, a Florida limited liability company. He is personally known to me and did not take an oath.

Given under my hand and official seal this 16<sup>th</sup> day of Dec., 2002.

My term of office expires on 2/10/06.

*Joanne Janes* [SEAL]  
NOTARY PUBLIC Joanne Janes



## EXHIBIT "A"

### Property Subjected to the Declaration

ALL THOSE LOTS, TRACTS AND PARCELS OF LAND, being a part of:

Section 3, Township 47 South, Range 25 East, and Section 10, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit One, as recorded in Plat Book 61 Pages 21 through 39 (inclusive) of the Public Records of Lee County, Florida, on May 22, 1998, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 3, Township 47 South, Range 25 East, and Section 10, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Two-B, as recorded in Plat Book 61 Pages 53 through 54 (inclusive) of the Public Records of Lee County, Florida, on June 22, 1998, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 3, Township 47 South, Range 25 East, Section 2, Township 47 South, Range 25 East, and Section 11, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Two-A, as recorded in Plat Book 62 Pages 31 through 33 (inclusive) of the Public Records of Lee County, Florida, on October 21, 1998, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 3, Township 47 South, Range 25 East, Section 2, Township 47 South, Range 25 East, and Section 11, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Three, as recorded in Plat Book 63 Pages 89 through 94 (inclusive) of the Public Records of Lee County, Florida, on May 10, 1999, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 3, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Four, as recorded in Plat Book 65 Pages 3 through 8 (inclusive) of the Public Records of Lee County, Florida, on October 27, 1999, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 10, Township 47 South, Range 25 East and Section 11, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Five, as recorded in Plat Book 65 Pages 23

through 28 (inclusive) of the Public Records of Lee County, Florida, on December 13, 1999, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 3, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Six, as recorded in Plat Book 66 Pages 66 through 70 (inclusive) of the Public Records of Lee County, Florida, on June 25, 2000, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 3, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Seven, as recorded in Plat Book 66 Pages 90 through 93 (inclusive) of the Public Records of Lee County, Florida, on August 4, 2000, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 2, Township 47 South, Range 25 East and Section 3, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Eight, as recorded in Plat Book 67 Pages 74 through 83 (inclusive) of the Public Records of Lee County, Florida, on December 22, 2000, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 3, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Nine, as recorded in Plat Book 67 Pages 84 through 86 (inclusive) of the Public Records of Lee County, Florida, on January 12, 2001, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 3, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Eleven, as recorded in Plat Book 68 Pages 56 through 58 (inclusive) of the Public Records of Lee County, Florida, on April 12, 2001, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 3, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Ten, as recorded in Plat Book 68 Pages 86 through 87 (inclusive) of the Public Records of Lee County, Florida, on May 3, 2001, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 3, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Thirteen, as recorded in Plat Book 69 Pages 27 through 30 (inclusive) of the Public Records of Lee County, Florida, on July 5, 2001, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 3, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Twelve, as recorded in Plat Book 69 Pages 48 through 53 (inclusive) of the Public Records of Lee County, Florida, on August 31, 2001, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 2, Township 47 South, Range 25 East and Section 3, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Fourteen, as recorded in Plat Book 69 Pages 93 through 96 (inclusive) of the Public Records of Lee County, Florida, on November 16, 2001, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 2, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Sixteen, as recorded in Plat Book 71 Pages 23 through 27 (inclusive) of the Public Records of Lee County, Florida, on June 12, 2002, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

Section 2, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Eighteen, as recorded in Plat Book 71 Pages 38 through 39 (inclusive) of the Public Records of Lee County, Florida, on June 18, 2002, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference; and

Section 2, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described on the Final Plat of Shadow Wood at the Brooks Unit Seventeen, as recorded in Plat Book 72 Pages 15 through 17 (inclusive) of the Public Records of Lee County, Florida, on September 18, 2002, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference;

**LESS AND EXCEPT:**

That tract being a part of Section 10, Township 47 South, Range 25 East of Lee County, Florida, and being more particularly shown and described as Tract M on the Final Plat of Shadow Wood at the Brooks Unit One, as recorded in Plat Book 61 Pages 21 through 39 (inclusive) of the Public Records of Lee County, Florida, on May 22, 1998, as such Final Plat sets forth the metes and bounds description thereof which is incorporated herein by this reference; and

All lots, tracts, and parcels of land previously subjected to the Declaration by a recorded Supplemental Declaration. Such lots, tracts, and parcels of land shall remain subject to, and bound by, the provisions of the Declaration.

①



Prepared by and Return To:  
Joanne Janes  
Bonita Bay Properties, Inc.  
3451 Bonita Bay Blvd., Suite 202  
Bonita Springs, FL 34134-4395

INSTR # 5612243  
OR BK 03764 PG 4609  
RECORDED 10/31/2002 02:49:09 PM  
CHARLIE GREEN, CLERK OF COURT  
LEE COUNTY  
RECORDING FEE 19.50  
DECLERK: S Jenson

Cross-References: Declaration: Book 2909  
Page 838

**SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SHADOW WOOD**

THIS SUPPLEMENTAL DECLARATION is made this 25<sup>th</sup> day of Oct., 2002, by Long Bay Partners LLC, a Florida limited liability company ("Declarant");

**WITNESSETH**

WHEREAS, on January 14, 1989, Declarant filed that certain Declaration of Covenants, Conditions, and Restrictions for Shadow Wood, recorded in Book 2909, Page 383, *et seq.*, of the Public Records of Lee County, Florida ("Declaration"); and

WHEREAS, pursuant to the terms of Section 9.1 of the Declaration, the Declarant may unilaterally subject additional property to the terms of the Declaration by recording a Supplemental Declaration describing the property to be subjected; and

WHEREAS, Declarant is the owner of the real property described in Exhibit "A," attached hereto ("Property"); and

WHEREAS, the Declarant desires to submit the Property to the Declaration and the jurisdiction of the Shadow Wood Community Association, Inc. ("Association");

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby subjects the real property described on Exhibit "A" hereof to the provisions of the Declaration. Such property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of the Declaration, which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplemental Declaration shall be binding upon Shadow Wood Community Association, Inc., in accordance with the terms of the Declaration.

**Article I**  
**Definitions**

Except as otherwise provided herein, all capitalized terms shall be defined as provided in the Declaration.

RECEIVED  
NOV 05 2002

BONITA BAY  
PROPERTIES, INC.

**Article II**  
**Duration**

This Supplemental Declaration shall be enforceable by the Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 25 years from the date this Supplemental Declaration is recorded in the Public Records. After such time, this Supplemental Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by not less than 75% of the then Owners of Units subject to this Supplemental Declaration has been recorded in the Public Records within the year preceding any extension, agreeing to terminate this Supplemental Declaration, in which case this Supplemental Declaration shall be terminated as specified in such instrument. Notwithstanding this, if any provision of this Supplemental Declaration would be unlawful, void, or voidable by reason of applicability of the rule against perpetuities, such provision shall expire 90 years after the date this Supplemental Declaration is recorded in the Public Records. Nothing in this Article shall be construed to permit termination of any easement created in this Supplemental Declaration without the consent of the holder of such easement.

**Article III**  
**Amendment**

A. By Declarant. Declarant shall have the unilateral right to amend this Supplemental Declaration so long as it has the unilateral right to amend the Declaration. Provided, if such amendment would be materially adverse to the substantive rights of the Builder pursuant to or under the contractual agreement between Builder and Declarant for purchase and development of residential Units within the Property, Declarant shall obtain Builder's written approval prior to amending this Supplemental Declaration.

B. Joinder of the Association. The Association shall, not more than ten days after the request of the Declarant, join in any amendment to this Supplemental Declaration and execute such instruments to evidence such joinder and consent as Declarant shall, from time to time request. Failure to so join and consent to an amendment, if any, by the Association shall not be cause to prevent such amendment from being made by Declarant or to affect the validity thereof.

C. Consent for Amendment. Notwithstanding anything to the contrary herein contained, no amendment to this Supplemental Declaration shall be effective which shall remove, revoke, impair, or prejudice the rights, priorities, or obligations of Declarant, the Association, any Community Development District(s), or any Mortgagee under the Declaration or the Bylaws without the specific written approval of such Declarant, Association, Community Development District(s), or Mortgagee affected thereby.

D. FNMA/FHLMC Provision. Declarant may, in its sole discretion, with the approval of no other Person, including, without limitation, any Mortgagees being required, amend this Supplemental Declaration if necessary to do so for purposes of fulfilling the requirements of any governmental entity or quasi-governmental entity, including, but not limited to, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA), and the



Federal Housing Administration (FHA). Nothing contained herein shall require Declarant to make an amendment to the Declaration or this Supplemental Declaration for any purpose whatsoever.

**Article IV**  
**Conflict**

In the event of a conflict between the provisions of this Supplemental Declaration and the provisions of the Declaration, this Supplemental Declaration shall control.

IN WITNESS WHEREOF, Long Bay Partners LLC, as the Declarant, hereby executes this Supplemental Declaration by and through its authorized representatives on the date and year first above written.

**DECLARANT:**

**LONG BAY PARTNERS LLC, a Florida limited liability company**

By: Bonita Bay Properties, Inc., a Florida corporation, its managing member

Bonnie Thinnnes  
WITNESS Bonnie Thinnnes

By: John M. Gleeson  
W3 John M. Gleeson, Vice President

Michael A. Jones  
WITNESS Michael A. Jones

[CORPORATE SEAL]

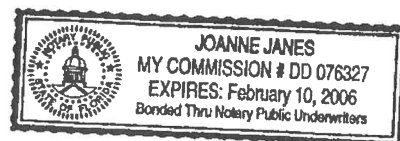
STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of October, 2002, by John M. Gleeson, as Vice President for Bonita Bay Properties, Inc., a Florida corporation, on behalf of such entity, as the managing member of Long Bay Partners LLC, a Florida limited liability company. He is personally known to me and did not take an oath.

Given under my hand and official seal this 25<sup>th</sup> day of October, 2002

My term of office expires on 2/10/06.

Joanne Jones [SEAL]  
NOTARY PUBLIC Joanne Jones





19.50

INSTR # 5065591  
OR BK 03364 PG 4851  
RECORDED 02/16/01 08:43 AM  
CHARLIE GREEN CLERK OF COURT  
LEE COUNTY  
RECORDING FEE 19.50  
DEPUTY CLERK B Cruz

When Recorded, Return To:  
Joanne Janes  
Bonita Bay Properties, Inc.  
3451 Bonita Bay Blvd., Suite 202  
Bonita Springs, FL 34134-4395

STATE OF FLORIDA

Cross Reference: Book 2909  
Page 838

COUNTY OF LEE

**SECOND AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
SHADOW WOOD**

THIS AMENDMENT to the Declaration of Covenants, Conditions, and Restrictions for Shadow Wood is made this 14<sup>th</sup> day of February, 2001, by Long Bay Partners LLC, a Florida limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, on January 14, 1998, Declarant filed that certain Declaration of Covenants, Conditions, and Restrictions for Shadow Wood, recorded in Book 2909, Page 838, *et seq.*, of the Public Records of Lee County, Florida (as amended, the "Declaration"); and

WHEREAS, pursuant to Section 19.1 of the Declaration, Declarant may unilaterally amend the Declaration for any purpose until termination of the Class "B" membership (as that term is defined in the Declaration), so long as such amendment does not substantially conflict with the Master Plan (as that term is defined in the Declaration); and

WHEREAS, the Class "B" membership has not terminated; and

WHEREAS, Declarant desires to amend the Declaration as set forth herein to clarify issues relating to Community Development Districts (as that term is defined in the Declaration); and

WHEREAS, such amendments do not substantially conflict with the Master Plan;

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration as follows:

1. Section 4.1 of the Declaration is hereby amended, replaced, and superseded in its entirety and the following is substituted in its place:

4.1. General.

No structure or thing shall be placed, erected, installed, or posted on the Properties and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Properties, except in compliance with this Article and the Design Guidelines. No signage shall be placed, erected, installed, or displayed on any portion of the Properties except for signage installed by the Declarant or a Builder unless such signage has been approved in writing by the Reviewer.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer unless otherwise approved by the Declarant or its designee in its sole discretion.

This Article shall not apply to the activities of the Declarant, or to the activities of the Association during the Class "B" membership. Subject to Section 4.8, this Article shall apply to the activities of any Community Development District(s).

2. Article IV of the Declaration is hereby amended to add a new Section designated Section 4.8 which shall read as follows:

4.8. Activities of Community Development District(s).

Any Community Development District(s) shall not be required to obtain approval to (a) rebuild, repair, or maintain any existing structure, building, equipment, fixture, or other improvement (including, but not limited to, earthwork) in a manner which is in compliance with the original plans and specifications for such improvements; or (b) to erect, install, or construct improvements that are reasonably necessary to comply with the provisions of the Environmental Permits, any bond indenture, state law, or any contract, covenant or other agreement.

3. Section 7.10 of the Declaration is hereby amended, replaced, and superseded in its entirety and the following is substituted in its place:

7.10. Cooperation with Community Development District(s).

The Association shall have the power, and is hereby authorized, to contract with and to cooperate with any Community Development District(s) in order to ensure that their respective responsibilities are discharged. The Association is authorized to enter into agreements with any Community Development District(s) to construct, maintain, improve, replace, insure, and perform other responsibilities as may be set forth in such agreement(s) with respect to signage, landscaping, or other functions which may be performed, in whole or in part, by such Community Development District(s). The expense of such activities may be allocated pursuant to The Brooks Covenant to Share Costs, or as a Common Expense, as set forth in the agreement with the Community Development District(s). Each Owner or Builder, by owning or accepting a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and consent to the creation of one or more Community Development District(s) and to the execution of a separate document so consenting to its creation if requested to do so by the Declarant. Notwithstanding any provision of the Governing Documents, neither the Declarant, the Association, any Neighborhood Association, nor any Member shall take any action, including but not limited to the amendment of the Governing Documents, that would in any manner interfere, impede, or restrict any Community Development District(s) from complying with its obligations pursuant to the Environmental Permits, state law, any bond indenture, any contract, or other covenant or agreement, without the consent of such Community Development District(s).

4. Article XIX of the Declaration is hereby amended to add a new Section designated Section 19.5 which shall read as follows:

19.5. Consent for Amendments.

Notwithstanding anything to the contrary herein contained, no amendment to this Declaration, whether by Declarant or otherwise, may remove, revoke, impair, or prejudice the rights, priorities, or obligations of any Community Development District(s) under the Declaration or the By-Laws without the specific written approval of such Community Development District(s) affected thereby.

IN WITNESS WHEREOF, Long Bay Partners LLC, a Florida limited liability company, through its undersigned managing member, has duly executed this Declaration and affixed its corporate seal thereto as of this 14<sup>th</sup> day of Feb., 2001.

**DECLARANT: LONG BAY PARTNERS LLC, a Florida limited liability company**

By: Bonita Bay Group, Inc., a Florida corporation, its managing member

Bonnie Thinner  
WITNESS Bonnie Thinner

Nancy A. Eckert  
WITNESS Nancy A. Eckert

By: John M. Gleeson W3  
John M. Gleeson, Vice President

Attest: Harvey R. Schestag

Its: Secretary/Treasurer  
[CORPORATE SEAL]

STATE OF FLORIDA  
COUNTY OF LEE

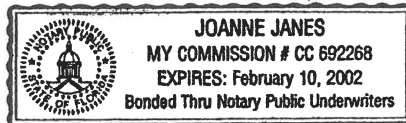
The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of February, 2001, by John M. Gleeson, as Vice President for Bonita Bay Group, Inc., a Florida corporation, on behalf of such entity. He is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

Given under my hand and official seal this 14<sup>th</sup> day of February, 2001.

My term of office expires on 2/10/02.

Joanne Janes [SEAL]  
NOTARY PUBLIC  
Joanne Janes

516701/Shadow Wood/CADocs/2ND amend to ccr re CDD-120800-ard



Upon recording, please return to:  
Shadow Wood Community Association, Inc  
9990 Coconut Road, Suite 102  
Bonita Springs, FL 34135

INSTR # 2005000190897, Pages 15  
Doc Type DOC, Recorded 12/29/2005 at 04:46 PM,  
Charlie Green, Lee County Clerk of Circuit Court  
Rec. Fee \$129.00  
Deputy Clerk MISTENES  
#2

Declaration: Book: 2909 Page: 838

**AMENDMENT TO THE**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR SHADOW WOOD**

THIS AMENDMENT ("Amendment") to the Declaration of Covenants, Conditions and Restrictions for Shadow Wood is made by Long Bay Partners LLC ("Declarant").

**W I T N E S S E T H:**

WHEREAS, on January 14, 1998, Declarant filed that certain Declaration of Covenants, Conditions and Restrictions for Shadow Wood, recorded in Book 2909, Page 838, *et seq.*, of the Official Records of Lee County, Florida (as amended and supplemented from time to time, the "Declaration");

WHEREAS, pursuant to the terms of Section 19.1 of the Declaration, Declarant may unilaterally amend the Declaration for any purpose until termination of the Class "B" membership, so long as such amendment does not substantially conflict with the "Master Plan" (as defined in the Declaration); and

WHEREAS, the Class "B" membership has not terminated and this Amendment does not substantially conflict with the Master Plan.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration as follows:

1.

All capitalized terms used herein, but not defined, shall have the meanings set forth in the Declaration.

2.

Section 3.2 of the Declaration is hereby amended by deleting subsection 3.2(a) in its entirety and replacing it with the following:

3.2. Authority to Enact Use Restrictions.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Use Restrictions. The Board shall send notice to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Such notice shall be sent (i) by United States mail; (ii) by electronic mail; or (iii) by broadcast or publication via a medium readily available throughout the Properties. Neighborhood Representatives shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective, after compliance with subsection (c) below, unless disapproved at a meeting by Neighborhood Representatives representing at least two-thirds (2/3) of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Neighborhood Representatives to consider disapproval except upon receipt of a petition of the Neighborhood Representatives as required for special meetings in the By-Laws. Upon such petition of the Neighborhood Representatives prior to the effective date of any Board action under this Section 3.2(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

3.

Section 3.2 of the Declaration is hereby further amended by deleting subsection 3.2(b) in its entirety and replacing it with the following:

3.2. Authority to Enact Use Restrictions.

(b) Alternatively, the Neighborhood Representatives, at an Association meeting duly called for such purpose, may adopt Use Restrictions which modify, cancel, limit, create exceptions to, or expand the Use Restrictions by a vote of Neighborhood Representatives representing at least two-thirds (2/3) of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

4.

Section 6.4 of the Declaration is hereby amended by deleting Subsection 6.4(c) in its entirety.



Section 7.3 of the Declaration is hereby amended by deleting Subsection 7.3(b) in its entirety and replacing it with the following:

7.3. Insurance.

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Lee County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Florida which satisfies the requirements of the Federal National Mortgage Association, if applicable, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;

(vii) provide a waiver of subrogation under the policy against any Owner or household member of a Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

6.

Section 7.3 of the Declaration is hereby amended by deleting Subsection 7.3(c) in its entirety and replacing it with the following:

7.3. Insurance.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Neighborhood Representatives representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide not to repair or reconstruct. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Neighborhood Representatives, levy Special Assessments to cover the shortfall.

7.

Section 7.5 of the Declaration is hereby amended by deleting Section 7.5 in its entirety and replacing it with the following:

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly or by reasonable implication by the Governing Documents, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all of the Association's rights and powers may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation on behalf of or in the name of the Association or the Members. In exercising the Association's rights and powers, making decisions on the Association's behalf, including, without limitation, deciding whether to file a lawsuit under any circumstances, and conducting the Association's affairs, Board members and the Association's officers are subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

8.

Section 8.4 of the Declaration is hereby amended by deleting such Section in its entirety and replacing it with the following:

8.4. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, after the termination of the Class "B" membership any Special Assessment shall require the affirmative vote or written consent of Neighborhood Representatives (if a Common Expense) or Owners (if a Neighborhood Expense) representing at least two-thirds (2/3) of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. 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.

9.

Section 8.11 of the Declaration is hereby amended by deleting subsections 8.11(b) and (c) in their entirety and replacing such subsections with the following:

8.11 Transfer Fees.

(b) Fee Limit. The Board shall have the sole discretion to determine whether a transfer fee shall be charged and, if so, the amount and

method of determining any such transfer fee, which may, but is not required to, be determined based upon a sliding scale which varies in accordance with the "Gross Selling Price" of the property or another factor as determined by the Board; provided, however, any such transfer fee shall be equal to an amount not greater than one percent of the Gross Selling Price of the property. For the purpose of determining the amount of the transfer fee, the Gross Selling Price shall be the total cost to the purchaser of the property, excluding taxes and title transfer fees as shown by the amount of tax imposed on transfers of real property by the State of Florida and Lee County.

(c) Purpose. All transfer fees that the Association collects shall be deposited in a segregated account to be used for such purposes as the Board deems beneficial to the general good and welfare of Shadow Wood. By way of example and not limitation, such transfer fees may be used to assist the Association in funding:

(i) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation and preservation of the natural environment at The Brooks master planned community and Lee County, Florida;

(ii) programs and activities which serve to promote a sense of community within Lee County, Florida, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs; and

(iii) social services, community outreach programs, and other charitable causes.

10.

Section 9.2 of the Declaration is hereby amended by deleting Section 9.2 in its entirety and replacing it with the following:

9.2. Expansion by the Association.

The Association may also subject additional property to the provisions of this Declaration by recording a Supplemental Declaration in the Public Records describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Neighborhood Representatives representing at least two-thirds (2/3) of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may

become subject to this Declaration in accordance with Section 9.1, the consent of the Declarant shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is necessary.

11.

Section 10.7 of the Declaration is hereby amended by deleting Section 10.7 in its entirety and replacing it with the following:

10.7. Exclusive Rights to Use Name of Development.

No Person shall use the name "The Brooks" or any derivative thereof in any printed or promotional material without Declarant's prior written consent. However, Owners and Builders may use such name in printed or promotional matter where such term is used solely to specify that particular property is located within The Brooks. Declarant acknowledges and agrees that it shall assign to the Association, by separate agreement, the right to use the name "Shadow Wood" and all logos associated with the Shadow Wood community in southwest Florida. The scope and terms of such assignment shall be governed by the assignment agreement.

12.

Section 11.1 of the Declaration is hereby amended by deleting Subsection 11.1(j) in its entirety and replacing it with the following:

11.1. Easements in Common Area.

(j) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as described in Article XIII.

13.

Section 11.5 of the Declaration is hereby amended by deleting such section in its entirety and replacing it with the following:

11.5. Easements for Maintenance, Emergency and Enforcement.

The Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its obligations and responsibilities under the Governing Documents, including its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for

emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcement of the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

14.

Section 13.1 of the Declaration is hereby amended by deleting the third paragraph of such section in its entirety. The revised Section 13.1 shall read as follows:

13.1. Designation and Use of Exclusive Common Area.

Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Exclusive Common Areas are assigned.

Initially, any Exclusive Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Neighborhood Representatives representing at least two thirds (2/3) of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as the Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, any such assignment or reassignment shall also require the Declarant's written consent.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or board of directors of the Neighborhood Association for the Neighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Area.

15.

Article XIV of the Declaration is hereby amended by deleting Article XIV in its entirety and replacing it with the following:

**Article XIV Dispute Resolution**

14.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, any Builder, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree to attempt to resolve disputes involving Declarant and/or the Association without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to, directly or indirectly, file a law suit for a Claim described in subsection (b), without first submitting the Claim to the alternative dispute resolution procedures described in Section 14.2.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents;

(iii) the design or construction of improvements within the Properties, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

(iv) trespass, nuisance, property damage, or enforcement of laws, codes, or ordinances relating to or otherwise involving the Association;

(v) the use of or changes to any Unit or Common Area;



- (vi) amendments to the Governing Documents;
  - (vii) meetings of the Board or committees of the Board, except for election disputes; or
  - (viii) access to official records of the Association,
- (c) Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

(i) any Association action to collect assessments or other amounts due from any Owner;

(ii) any Association action to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Florida Laws and the Governing Documents, including the creation and maintenance of the Community-Wide Standard;

(iii) any suit which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 14.2;

(iv) any suit as to which the applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article; and

(v) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents, or which is between Declarant and a Builder arising out of the purchase and construction of one or more Units pursuant to a contractual agreement.

Additionally, any election dispute or recall dispute may not be mediated, in accordance with Florida law, and shall be submitted to arbitration in accordance with Section 14.2(e) without first following the procedures set forth in Sections 14.2(b) and 14.2(c).

#### 14.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice")

by mail or personal delivery to each Respondent, and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the Bound Parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation in accordance with Chapter 720, Florida Statutes.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within 30 days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

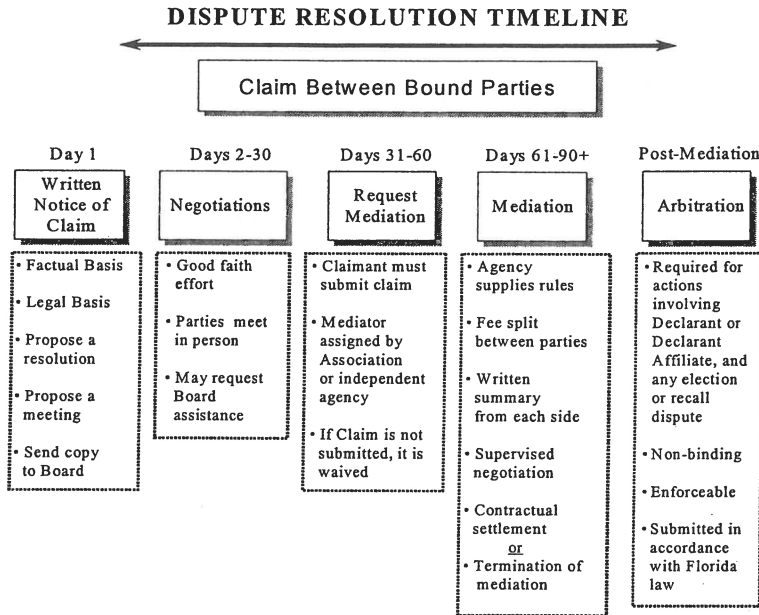
(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Bound

Parties. If any Bound Party thereafter fails to abide by the terms of such agreement, then any other Bound Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Party (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

(e) Arbitration. Any dispute between an Owner or the Association and Declarant or any affiliate of Declarant, including Claims which remain after conclusion of the dispute resolution procedures described in Section 14.2, and any election disputes or recall disputes shall be submitted to non-binding arbitration in accordance with Florida law and this subsection (e). Such disputes shall not be submitted as a lawsuit or other proceeding in any Florida state court or federal court until they are first submitted to arbitration. Notwithstanding the above, disputes affecting the material rights or obligations of a third party who is not a party to or bound by such arbitration shall not be subject to this subsection.

This subsection (e) is an agreement to arbitrate and is specifically enforceable under Florida law. Judgment may be entered upon the arbitration award in any court of competent jurisdiction to the fullest extent permitted under Florida law. Any Claim or issue which is submitted to arbitration under this Section 14.2(e) shall proceed in accordance with procedures set forth in Chapter 720, Florida Statutes.

If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and the Respondent shall be released and discharged from any and all liability to the Claimant arising out of the dispute. The parties shall share equally the costs of conducting the arbitration until a prevailing party is determined; provided, the prevailing party shall be entitled to recover all of its costs incurred in the action, including, without limitation, reasonable attorneys' fees.



**14.3. Initiation of Litigation by Association.**

After the termination of the Class "B" membership, the Association shall not initiate any judicial or administrative proceeding which is reasonably expected to cost at least \$100,000.00 in legal fees to prosecute to completion unless first approved by Neighborhood Representatives representing at least two-thirds (2/3) of the Class "A" votes in the Association. Any such recommendation to the Class "A" Members must be in writing and must be accompanied by a feasibility analysis including an explanation of the issues, a budget for legal and related expenses, the amount in controversy, the expectation of success, and a copy of bids from a minimum of three qualified law firms.

16.

Exhibit "D" to the Declaration is hereby amended by deleting such Exhibit in its entirety.

[Signatures set forth on the following page]

IN WITNESS WHEREOF, Long Bay Partners LLC, a Florida limited liability company, through its undersigned managing general partner, has duly executed this amendment and affixed its corporate seal thereto as of this 29 day of Dec, 2005.

**DECLARANT: LONG BAY PARTNERS LLC, a Florida limited liability company**

By: Bonita Bay Properties, Inc., a Florida corporation

Patricia Roma  
WITNESS

By: John M. Gleeson  
John M. Gleeson

Mussen  
WITNESS

Attest: \_\_\_\_\_

Its: V.P.  
[CORPORATE SEAL]

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 29 day of Dec, 2005, by John Gleeson, as V.P. for Bonita Bay Properties, Inc., a Florida corporation, on behalf of such entity. He is personally known to me or has produced \_\_\_\_\_ as identification.

Given under my hand and official seal this 29 day of Dec, 2005

My term of office expires on \_\_\_\_\_



Diane Mussen [SEAL]  
NOTARY PUBLIC

Diane M. Russell  
Printed Name

Commission No. \_\_\_\_\_

