

PREPARED BY AND RETURN TO:  
Gregory D. Lee  
Jordan  
1100 Town Plaza Court, Suite 2010  
Winter Springs, FL 32708

**TWENTY SEVEN**  
**636 N RIO GRAND AVE**  
**ORLANDO, FL 32805**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
POITRAS ESTATES**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR POITRAS ESTATES** is made this 13 day of January, 2005, by **TWENTY SEVEN, LLC**, a Florida limited liability company ("Declarant"), whose address is 1100 Town Plaza Court, Suite 2010, Winter Springs, Florida 32708.

**RECITALS:**

A. Declarant owns the real property described in the plat of **POITRAS ESTATES** as recorded in **Plat Book 00129**, **Page(s) 0021** of the Public Records of **Polk County, Florida**, being more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property").

B. Declarant desires to preserve and enhance the values and quality of life in the Property and the health, safety and welfare of the residents thereof, and to provide for the maintenance of certain areas and improvements for the benefit of the Property.

C. Declarant has incorporated a non-profit corporation to which will be conveyed title to certain property, and to which will be delegated the powers of and responsibility for maintaining and administering certain property and improvements, administering and enforcing this Declaration, and collecting and disbursing the monies derived from the assessments hereafter levied.

**DECLARATIONS:**

NOW, THEREFORE, Declarant declares that the Property is and shall be owned, improved, transferred and occupied subject to the easements, covenants, conditions, restrictions, servitudes, charges and liens created or provided for by this Declaration.

**ARTICLE I**  
**DEFINITIONS**

Section 1. Definitions. When used in this Declaration, the following words shall have the following meanings:

(a) "Area(s) of Common Responsibility" shall mean and refer to any land or improvement located in or near the Property which is intended to be owned by the Association and which is intended to be improved, maintained or operated by the Association in the manner and to the extent determined from time to time by the Board. Areas of Common Responsibility may be designated by this Declaration, any amendment to this Declaration, a contract entered into by the Association, or by a decision of the Board.

(b) "Articles" shall mean and refer to the Articles of Incorporation of the Association. A copy of the initial Articles is attached as **Exhibit "B"** to this Declaration. The Articles may be amended as provided therein and it shall not be necessary to amend this Declaration in order to amend the Articles.

(c) "Association" shall mean and refer to the **POITRAS ESTATES HOMEOWNERS ASSOCIATION, INC.**, a Florida corporation not-for-profit, and its successors and assigns.

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

(e) "Bylaws" shall mean and refer to the Bylaws of the Association. A copy of the initial Bylaws is attached as **Exhibit "C"** to this Declaration. The Bylaws may be amended as provided therein and it shall not be necessary to amend this Declaration in order to amend the Bylaws.

(f) "Common Expense" shall mean and refer to the actual and estimated expense of operating the Association and meeting the costs to be incurred by the Association in performing its duties and in exercising its prerogatives, including without limitation costs incurred for operation, maintenance, insurance and improvement of the Common Property and Areas of Common Responsibility, and for any reserves from time to time established by the Board.

(g) "Common Property" shall mean and refer to the real and personal property from time to time owned by the Association and devoted to the use and enjoyment of all Members of the Association, all at Common Expense. Without limiting the generality of the foregoing, **Tracts A, C, D, E, F, G and H**, all as shown on the Plat, and the entrance wall and the entrance sign located on the Property, shall be Common Property.

(h) "County" shall mean and refer to **Polk County, Florida**.

(i) "Declarant" shall mean and refer to **TWENTY SEVEN, LLC, a Florida limited liability company**, its successors and assigns. No successor or assignee of Declarant shall have any rights or obligations of Declarant hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment, or unless such rights pass by operation of law.

(j) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for **POITRAS ESTATES**, as amended or supplemented.

(k) "District" shall mean and refer to the **Southwest Florida Water Management District**, an agency created pursuant to Chapter 373, *Florida Statutes*.

(l) "Dwelling" shall mean and refer to a single-family residence located on a Lot.

(m) "Lot" shall mean and refer to each residential building site created by any recorded Plat of the Property, including any Dwelling located thereon once constructed.

(n) "Member" shall mean and refer to each Member of the Association as provided in Article III, Section 2.

(o) "Owner" shall mean and refer to the record holder, whether one or more persons or entities, of fee simple title to each Lot in the Property, but, notwithstanding any applicable theory of the law of mortgages, Owner shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title to a Lot pursuant to foreclosure proceeding or a conveyance in lieu of foreclosure. All owners of a single Lot shall be treated for all purposes as a single Owner, irrespective of whether such ownership is joint, in common, or tenancy-by-the-entirety.

(p) "Permit" shall mean Permit No. **44026749.001** issued by the District.

(q) "Plat" shall mean and refer to the plat of **POITRAS ESTATES** as recorded in **Plat Book 00129**, Page(s) 0021 of the Public Records of Polk County, Florida, together with any subsequently recorded plat of the Property.

(r) "Property" shall mean the Property (including all improvements thereon), plus whatever portions of the Property (together with all improvements thereon) as are declared to be property in any supplemental declaration.

(s) "Surface Water or Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges.

## Section 2. Interpretation.

The provisions of this Declaration and the Articles, Bylaws and any rules and regulations of the Association shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of the Association and the Property, the preservation of the value of the Lots and the protection of Declarant's rights, benefits and privileges herein contemplated. Notwithstanding that this Declaration was prepared, initially, at the direction of the Declarant, and notwithstanding any rule of construction to the contrary, this Declaration shall not be more strictly construed against the Declarant and/or any of its affiliates than against any other person or entity.

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION**

Section 1. Property. The Property is and shall be improved, held, transferred and occupied subject to this Declaration.

Section 2. Withdrawal. Declarant reserves the right to amend this Declaration unilaterally at any time for the purpose of removing any portion of the Property (including, without limitation Lots) without notice and without the consent of any person or entity other than the owner of the portion of the Property to be withdrawn; provided, however, no such withdrawal may impair access to any Lot.

**ARTICLE III**  
**THE ASSOCIATION**

Section 1. The Association. The Association is a non-profit corporation. The Association shall have the power to do all lawful things which may be authorized, assigned, required or permitted to be done by this Declaration, the Articles, or the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, administration and improvement of the Property and Areas of Common Responsibility. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The officers and directors of the Association shall be required to be either (1) a Member of the Association, or (2) an agent of Declarant. The Board, and such officers as the Board may appoint, shall conduct the affairs of the Association.

Section 2. Membership. Each Owner (including Declarant) shall be a Member of the Association. The Association membership of each Owner shall be appurtenant to and inseparable from the Lot giving rise to such membership, and any transfer of title to a Lot shall operate automatically to transfer to the new Owner the membership in the Association appurtenant to that Lot.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class "A". Class "A" Members shall be all Owners, with the exception of Declarant for so long as Declarant retains Class "B" voting rights. Each Class "A" Member shall have one (1) vote for each Lot owned by that Member.

(b) Class "B". The sole Class "B" Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Lot in the Property owned by Declarant. Upon the execution of this Declaration, Declarant shall have **four hundred eighty (480)** Class "B" votes representing three (3) votes for each of the **one hundred sixty (160)** Lots in the Property. The Class "B" Member shall be entitled to cast all of its votes in any vote or election held by the Association.

(c) Termination of Class "B" Membership. As each Lot in the Property is conveyed by Declarant to a Class "A" Member, Declarant's votes for that Lot shall lapse. The

Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of the following:

- (i) When the total outstanding Class "A" votes in the Association equals or exceeds the total outstanding Class "B" votes; or
- (ii) Ten (10) years from the date of recording this Declaration; or
- (iii) At such earlier time as Declarant, in its sole discretion, may so elect.

Upon the happening of any one of these events, Declarant shall call a special meeting of the Members to advise of the termination of Class "B" membership.

(d) Transition of Control. Any other provision of this Article III to the contrary notwithstanding, Owners other than Declarant shall be entitled to elect at least a majority of the members of the Board of Directors not later than three (3) months after ninety percent (90%) of the Lots have been conveyed to Owners. Declarant shall be entitled to elect at least one member of the Board of Directors as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots. After Declarant relinquishes control of the Association, Declarant may exercise the right to vote any Declarant-owned voting interests in the same manner as any other Owner, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors.

Section 4. Multiple Owners. Each vote in the Association must be cast as a single vote, and fractional votes shall not be allowed. If joint or multiple Owners are unable to agree among themselves as to how their vote is to be cast, or if more than one (1) Class "A" vote is cast for any Lot, none of the votes for that Lot shall be counted. If any Owner casts a vote on behalf of a Lot, it shall be conclusively presumed that Owner was acting with the authority and consent of all other Owners of that Lot.

Section 5. Duties of Association.

The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance of other surface water or stormwater management capabilities as permitted by the District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or, if modified, as approved by the District.

**ARTICLE IV**  
**COMMON PROPERTY; EASEMENTS**

Section 1. Common Property.

The Common Property is hereby dedicated to the Association and the Association shall be responsible for the maintenance of same.

Section 2. Members Easements. Each Member, and each tenant, agent and invitee of such Member or tenant, shall have a nonexclusive permanent and perpetual easement over and upon the Common Property for the intended use and enjoyment thereof in common with all other such Members, their tenants, agents and invitees, in such manner as may be regulated by the Association.

Without limiting the generality of the foregoing, such rights of use and enjoyment are hereby made subject to the following:

(a) The right and duty of the Association to levy Assessments against each Lot for the purpose of maintaining the Common Property and facilities and providing services to Owners in compliance with the provisions of this Declaration and with the restrictions on the Plat;

(b) The right of the Association to levy fines against the Owner in accordance with **Article VI, Section 1** hereof in response to any infraction of this Declaration, the Articles, the Bylaws or any lawfully adopted and published rules and regulations of the Association;

(c) The right of the Association to adopt at any time and from time to time and enforce rules and regulations governing the use of the Lots and Common Property and all facilities at any time situated thereon, including the right to fine Members as hereinafter provided. Any rule and/or regulation so adopted shall apply until rescinded or modified as if originally set forth at length in this Declaration.

Section 3. Easements Appurtenant. The easements provided in **Section 2 of Article IV** shall be appurtenant to and shall pass with the title to each Lot.

Section 4. Utility Easements. The Association shall have the right to grant permits, licenses, and easements over the Common Property for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property and the provision of services thereto. In addition, easements over, upon, under, through and across the Common Property are reserved to the Association and the Declarant, and may be declared or granted from time to time by the Declarant during any period that the Declarant shall own at least one (1) Lot, for such further utility, egress, ingress, or drainage easements over and across the Property as may be required from time to time.

Section 5. Easements, Generally. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were intended to have been granted the benefit of such easement, and the Owners hereby designate the Declarant and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

Section 6. Ownership. As shown on the Plat, certain of the Common Property is to be owned by the Association for the joint and several use, in common, of the Owners of all Lots that may from time to time constitute part of the Property, and such Owners' tenants, guests and invitees. Prior to conveyance to a Class A Member of any Lot which is financed by a mortgage insured by the U.S. Department of Housing and Urban Development ("HUD"), the FHA and/or the VA, the Common Property shall be conveyed to the Association free of all liens and except taxes for the year of conveyance, matters set forth on the Plat and those exceptions common to the Property, which Association shall accept such conveyance. Beginning on the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Property (whether or not then conveyed or to be conveyed to the Association), such maintenance to be performed in a continuous and satisfactory manner. It is intended that all real estate taxes and assessments, if any, assessed against that portion of the Common Property owned or to be owned by the Association shall be proportionally assessed against and payable as part of the taxes of the Lots within the Property. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Property, the Association shall be responsible for the payment of the same, including taxes on any improvements and any personal property located thereon, which taxes accrue from and after the date this Declaration is recorded.

Section 7. Declarant Offices. Notwithstanding anything herein to the contrary, but subject to approval by the applicable government entities, if required by its laws and ordinances, the Declarant and/or its designated builder shall have the specific right to maintain upon any portion of the Property (exclusive of Lots which have been conveyed to other Owners) sales, administrative, construction or other offices without charge, and appropriate easements of access and use are expressly reserved unto the Declarant and its successors, assigns, employees and contractors, for this purpose.

Section 8. Provision of Services. The Association is authorized, but shall not be required, to enter into agreements with service providers for the furnishing to all Lots and to all other appropriate locations on the Property of cable or similar services for television, radio and other communication services, security systems, fire alarm systems and other similar systems and amenities.

Section 9. Costs of Work and Services. All work performed and services provided pursuant to this Article and all expenses incurred hereunder shall be paid for by the Association through Assessments (either general or special) imposed in accordance herewith. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Property or such Owner's Lot(s), abandonment of the right to use the Common Property, or by declining or refusing to utilize services provided by the Association.

Section 10. Use of Common Property. In order to promote the health, safety and welfare of the Owners and occupants of the Property and to provide for the maintenance and preservation of the Common Property and Property, the Declarant and the Association shall be entitled (but not obligated) to establish and enforce conditions governing the use of the Common Property by third parties, including (without limitation) parties providing utility or other services to the Property (other than within a publicly dedicated easement therefore). Accordingly, all third parties utilizing the Common Property (other than within a publicly dedicated easement) shall be required to comply with such conditions as may be determined by the Association and/or the

Declarant, as applicable, to be reasonable and necessary to maintain, preserve and protect the Common Property and the Property, and to preserve and protect the safety of persons and property from time to time located upon or within the Property. Conditions may be imposed, in particular, on any person or entity utilizing the Common Property (other than within a publicly dedicated easement) for the installation, maintenance, repair or replacement from time to time of utilities or any other improvements or facilities (a "Service Provider") pursuant to any easement, permit, license, right of use or similar right or privilege granted by either the Declarant or the Association (whether by this Declaration, a Plat or any other agreement or instrument) in order to accomplish the foregoing purposes and in order to avoid, if possible, the installation of improvements which interfere with the use of the Common Property and/or detract from the appearance of the Common Property and the Property. Such conditions may include, without limitation, the right of the Association or Declarant to:

- (a) Require that the Service Provider submit a written request for authorization to utilize the Common Property, in form and content (and accompanied by such additional documents and information) as are reasonably required by the Association or the Declarant to adequately review and process same;
- (b) Require the Service Provider to pay a processing fee in an amount reasonably determined by the Association or the Declarant to compensate it for the cost of processing, reviewing and approving such request;
- (c) Require that improvements be installed below ground to the maximum extent practicable;
- (d) Approve the location of any improvements;
- (e) Approve the size and composition of any above-ground improvements;
- (f) Approve the plans and specifications for all improvements;
- (g) Supervise construction, installation, repair and other activities;
- (h) Establish appropriate times for such activities to be conducted;
- (i) Require screening or landscaping around above-ground improvements;
- (j) Minimize interference with other uses of the Common Property and Property;
- (k) Impose safety, security and traffic control requirements;
- (l) Establish and enforce reasonable rules and regulations;
- (m) Require the Service Provider to reimburse the Association or the Declarant for any actual, out-of-pocket expenses incurred or payable by the Association or the Declarant to others in order to perform any activities contemplated in this Section, including, without limitation, costs or fees of consultants, contractors and others



who may be engaged to perform such activities or to monitor or enforce the provisions of this Section with respect to such Service Provider; and

(n) Take such other actions as are reasonable or appropriate in furtherance of the foregoing.

Nothing contained herein, however, shall be construed to impose upon the Declarant or the Association an affirmative obligation to establish such conditions, nor any particular condition listed above, nor shall either the Declarant or the Association be liable to each other or any Owner, Member or other person for failure to establish or enforce any such conditions.

## **ARTICLE V** **INSURANCE**

The Board may obtain fidelity bond coverage in its discretion. In addition, the Board may obtain insurance for insurable improvements on the Common Property, any Area of Common Responsibility, or on any easement benefiting the Owners or the Association, public liability policies covering the Association and Members for damage or injury caused by the negligence of the Association or any of its Members, guests or agents, directors' and officers' liability insurance, and any other types of insurance coverage as the Board may deem appropriate, with such insureds, deductibles, provisions and coverage types and amounts as shall be determined by the Board. Premiums for insurance so obtained shall be a Common Expense. The Association may self-insure against any risk.

## **ARTICLE VI** **COVENANT FOR MAINTENANCE ASSESSMENTS**

### Section 1. Lien and Personal Obligation Nonpayment.

(a) Declarant, for each Lot owned by it in the Property, and each Owner other than Declarant by acceptance of title to any Lot, whether or not it shall be so expressed in any deed or other conveyance, covenants and agrees to pay to the Association: (1) annual assessments or charges, (2) special assessments, (3) individual assessments, (4) a one-time only start-up assessment, (5) assessments related to services provided on behalf of Owner pursuant to bulk service agreements, including, but not limited to, initiation of service fees and monthly fees with respect to each service provided. Assessments, together with such interest and late charges as shall be imposed by the Board at its discretion, and the cost of collection thereof, including without limitation court costs and reasonable attorneys' and paralegals' fees before trial, at trial and on appeal, shall be a charge and a continuing lien upon the Lot against which such assessment is made, and upon any Dwelling located on said Lot, from and after the date on which such assessment is due. Each assessment, together with said interest, late charges, costs and fees, shall also be the personal obligation of each person who was an Owner of the Lot at the time the assessment fell due.

If any assessment or installment thereon is not paid when due, then such assessment shall be delinquent and the delinquent assessment, together with interest, late charges, and collection costs, shall be secured by a continuing lien on the Lot as to which the assessment accrued, and upon any Dwelling located thereon. Such lien shall be prior to all other liens hereinafter created

except taxes or assessments levied by governmental authority, and except as to the lien of any mortgage. The lien shall be prior to and superior in dignity to homestead status. The lien shall bind the Lot and any Dwelling located thereon in the hands of the then Owner and of each subsequent Owner. The personal obligation of the Owner to pay such delinquent assessment shall remain that Owner's personal obligation for the statutory limitations period and personal liability shall not pass to successors in title unless expressly assumed by them.

If the delinquent assessment or installment thereon is not paid within thirty (30) days after the due date, same shall bear interest from the date due at the highest lawful rate in Florida, or at such lesser rate as may be determined by the Board and uniformly applied, and the Association may bring an action for collection against the Owner personally obligated to pay the same and to foreclose the lien against the Lot and any Dwelling located thereon by judicial foreclosure in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment the aforesaid interest, late charges, collection costs and attorneys' and paralegals' fees, and fees and collection costs shall be recoverable whether or not suit be brought. The Owner shall also be required to pay the Association any assessments against the Lot, which become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale and to own sell, lease, encumber, use and otherwise deal with the Lot and any Dwelling thereon as owner thereof.

(b) Exempt Property. The following property shall be exempt from the assessments, charges and liens created herein: (1) lands dedicated to the County or other governmental authority, any utility company or the public; and (2) Lots owned by Declarant during the period of time that Declarant subsidizes the Common Expenses of the Association pursuant to Section 8 of this Article. No other land or improvements in the Property shall be exempt from these assessments, charges or liens. No Owner may avoid assessment obligations by virtue of non-use or abandonment of the Common Property.

Section 2. Purpose. The assessments levied by the Association may be used to promote the recreation, health, safety and welfare of the Owners, to perform the Association's duties and to exercise the powers conferred on it, to improve, operate, insure and maintain the Common Property and the Areas of Common Responsibility, and to pursue any other purpose deemed desirable or appropriate by the Board, including without limitation any one or more of the following: (a) payment of Association operating expenses; (b) lighting, irrigation, maintenance, improvement and beautification of streets and easement areas, and acquisition, maintenance, repair and replacement of community identification signs and traffic control devices, and control and regulation of traffic in the Property; (c) payment, contest or compromise of real and personal property taxes and assessments separately levied upon or assessed against the Association or the Common Property; (d) operation, management, insurance, replacement, maintenance, repair, beautification and improvement of the Common Property, Areas of Common Responsibility, and easement areas benefiting the Association; (e) repayment of any deficits previously incurred by the Association; (f) funding of reserves for future Common Expenses, (g) procurement and maintenance of insurance, (h) employment of accountants, attorneys and other professionals to represent or advise the Association; (i) doing anything necessary or desirable in the judgment of the Board to keep the Property neat and attractive, to preserve or enhance the value thereof, to eliminate fire, health or safety hazards, or otherwise to benefit the Owners.

Section 3. Determination of Annual Assessments.

(a) Operating Budget. At least thirty (30) days prior to the end of the Association's fiscal year, the Board shall prepare a budget of the estimated costs of operating the Association during the coming year, including but not limited to operational items such as overhead and indirect costs, insurance, utilities, taxes, professional fees, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years, and capital improvement budget items approved by the Board under Subsection (b), below.

(b) Capital Budget. Each year, the Board shall approve a capital budget taking into account the number, type, useful life and expected replacement cost of replaceable assets. The Board shall then set the required annual capital contribution in an amount sufficient to meet the projected capital needs of the Association on a timely basis. The annual capital contribution fixed by the Board shall then be included in the annual operating budget and annual assessments described in Subsection (a), above.

(c) Adoption of Operating Budget. The Association shall mail to each Member a copy of the capital budget, operating budget and projected annual assessments approved by the Board to be levied for the next fiscal year at least thirty (30) days prior to the end of the Association's current fiscal year. The operating budget and annual assessments shall become effective unless disapproved at a special meeting of the Members held not later than sixty (60) days after the proposed budget and assessments are mailed to the Members. To be effective, the disapproval must be by a vote of two-thirds (2/3) of the membership of the Association, without regard to class. If the membership so disapproves the operating budget for the succeeding year, or if the Board fails to propose a budget, then the budget and annual assessments for the preceding year shall continue in effect until a new budget is determined.

(d) Allocation of Annual Assessments Among Lots. The operating budget of the Association shall be assessed against all Owners and Lots in the Property in an equal amount per Lot.

Section 4. Special Assessments.

(a) Special Assessments. In addition to annual assessments, the Board may levy at any time a special assessment for the purpose of defraying the cost of any construction, repair or replacement of any improvement on the Common Property or Areas of Common Responsibility, or on any easement benefiting the Association, for the purpose of covering any budget deficits of the Association, or for any other purpose deemed desirable or appropriate by the Board; provided, however, that any such special assessment shall have the approval of a majority of the votes of the Members of each class who are in attendance and voting in person or by proxy at a meeting duly called for said purpose.

(b) Individual Assessment. The Board may levy an individual assessment against any Owner and that Owner's Lot and any Dwelling located thereon in order to cover costs incurred by the Association due to that Owner's failure to maintain its Lot or Dwelling pursuant to the standards set forth in this Declaration, or to reimburse the Association for loss or damage to the Association or to any Common Property, Area of Common Responsibility or

casement area caused by that Owner or his lessee, agent, contractor or guest, and not covered by insurance, or for any other purpose expressly permitted by this Declaration.

**Section 5. Commencement Dates; Start-Up Assessment; Initial Annual Assessment; Due Dates.** Annual assessments on the Lots in the Property shall commence upon the closing of the first Lot in the Property to a bona fide third party purchaser. The annual assessment for the Property for the calendar year 2005 shall be **Three Hundred Fifty and 00/100 Dollars (\$350.00)** per Lot. At the closing of the sale of each Lot in the Property by Declarant to the first purchaser from Declarant, the purchaser shall pay to the Association (i) a one time Start-Up Assessment in the amount of **One Hundred Fifty and 00/100 Dollars (\$150.00)**,<sup>Y</sup> and (ii) the entire annual assessment for the calendar year of closing, prorated on a per diem basis from the date of closing through the end of that calendar year. Thereafter, annual assessments shall be due, in advance, on or before the commencement of the Association fiscal year for which imposed; but the Board may elect to collect annual assessments in monthly, quarterly or semi-annual installments. In the event of such deferred payments, the Board may but shall not be required to charge a uniform, lawful rate of interest on the unpaid balance. The Board may accelerate the balance of any annual assessment upon default in the payment of any installment thereon. Annual assessments that commence to accrue as to any Lot other than on the first day of the year shall be prorated for the balance of that year. After the one time Start-Up Assessment has been paid as to a Lot in the Property, subsequent purchasers of said Lot shall not be required to pay said Start-Up Assessment.

**Section 6. Certificate.** Upon request, the Association shall furnish to any Owner a certificate setting forth whether required assessments have been paid. Such certificate shall be conclusive evidence in favor of third parties relying thereon of the payment of any assessment therein stated to have been paid.

**Section 7. Subordination.** The assessment lien shall be subordinate to the lien of any mortgage. Any mortgagee who obtains title to a Lot by foreclosure of a mortgage, or by voluntary conveyance in lieu of such foreclosure, shall not be liable for the uncollected assessments or interest, late charges or collection costs pertaining to such Lot or chargeable to the former Owner thereof which became due prior to the acquisition of title by said mortgagee. Such unpaid amounts shall be deemed a Common Expense collectible from all Owners, including the acquiring mortgagee, on a pro-rata basis. Any such transfer to or by a mortgagee shall not relieve the transferee of responsibility nor the Lot from the lien for assessments thereafter falling due.

**Section 8. Funding by Declarant.** Notwithstanding anything contained in this Declaration to the contrary, Declarant shall not be obligated to pay any annual or special assessment as to any Lot owned by it during any period of time that Declarant pays the Common Expense actually incurred over and above the income derived from annual, special and individual assessments collectible from the Class "A" Members. For purposes of this subsidy arrangement, Declarant need not subsidize or pay replacement reserves or capital expenditures. Declarant, at its option, may elect by written notice delivered to the Association at any time to abandon the subsidy approach and commence payment of the assessments thereafter falling due for the Lots then owned by Declarant, prorated as of the date of such notice. Until such time as Declarant has provided such notice to the Association, Declarant shall have no obligation to pay assessments on any Lots owned by Declarant.

Section 9. Swale Maintenance. The Developer has constructed a Drainage Swale upon each lot for the purpose of managing and containing the flow of excess surface water, if any, found upon such lot from time to time. Each Owner, including builders, shall be responsible for the maintenance, operation and repair of the swales on the lots. Maintenance, operation and repair shall mean exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the drainage swale shall be authorized and any damage to any drainage swale, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale returned to its former condition as soon as possible by the owner(s) of the lots(s) upon which the drainage swale is located.

Assessments shall also be used for the maintenance and repair of the surface water or stormwater management systems, including, but not limited to work within retention areas and drainage easements.

## **ARTICLE VII** **ARCHITECTURAL CONTROL**

Section 1. Architectural Control; ARB. All Lots and Dwellings in the Property are subject to architectural review in accordance with this Article and the Planning, Construction and Development Criteria ("the Planning Criteria") adopted and revised from time to time by the Architectural Review Board (the "ARB"). The Planning Criteria shall be written and made available to all builders in the Property and to all Owners or prospective Owners. The Planning Criteria may include any matters considered appropriate by the ARB not inconsistent with this Declaration.

No site work, landscaping, utility extension, drainage improvement, paving, driveway, swimming pool, pool enclosure, building, fence, wall, sidewalk, or any other physical or structural improvement, or change or alteration to the exterior of any existing structure or improvement, or to any existing landscaping, shall be commenced, erected or maintained until the plans showing such details as the size, design, shape, finished grade elevation, height, materials and color of the same, together with a landscape plan and a plot plan showing the location relative to boundaries and adjacent improvements of such proposed improvements or changes, have been approved in writing by the ARB. All such improvements must further conform to the Planning Criteria and no plans shall be approved by the ARB if they are not in conformity with same. All improvements, changes and alterations shall also comply with all applicable governmental laws, statutes, ordinances, rules, regulations, orders and decrees. Until such time as any improvements, changes and/or alterations have been submitted to and approved by the ARB, no Owner (and/or designee thereof) shall make application for a building permit from the applicable governmental agency. Nothing herein shall limit the right of an Owner to finish or alter the interior of that Owner's Dwelling as that Owner desires.

Section 2. Membership of ARB. So long as Declarant owns any Lots subject to this Declaration, Declarant shall be entitled to appoint all members of the ARB. Thereafter, the membership of the ARB shall be determined by the Board. The ARB shall consist of no less than three (3) members, none of whom shall be required to be Owners or occupants of the

Property. No member of the ARB shall be entitled to compensation for services performed, but the ARB may employ professional advisors and pay reasonable compensation to such advisors at Common Expense. Members of the ARB (other than those appointed or designated by the Declarant) may be removed by the Board of Directors at any time without cause. Members of the ARB appointed or designated by the Declarant may only be removed by the Declarant.

Section 3. Approvals. Decisions of the ARB shall be by majority action. Unless waived by the ARB, all plans shall be prepared by an architect or engineer, said person to be employed by and at the expense of the Owner. If for any reason, including purely aesthetic reasons, the ARB should determine that a proposed improvement or alteration is not consistent with the Planning Criteria or Declarant's development plan, or in the best interest of the Association and its Members, such improvement or alteration shall not be made. Approval of plans may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by virtue of the dissatisfaction of the ARB with the location of the structure on the Lot, the elevation, color scheme, finish, design, proportions, architecture, drainage plan, shape, height, style and appropriateness of the proposed structures or altered structures, the materials used therein, the planting, landscaping, size, height or location of vegetation on the Lot, or because of its reasonable dissatisfaction with any other matter or thing which, in the judgment of the ARB, will render the proposed improvement or alteration inharmonious with the general development plan or the Planning Criteria. Two (2) sets of plans, specifications and plot plans shall be submitted to the ARB by the Owner prior to applying for a building permit. Submittals and re-submittals of plans shall be approved or disapproved within thirty (30) days after receipt by the ARB. The ARB approval or disapproval shall be written and shall be accompanied by one (1) copy of the plans, etc., to be returned to the Owner. Whenever the ARB disapproves plans, the ARB shall specify the reason or reasons for such disapproval.

Section 4. Violations. The work must be performed strictly in accordance with the plans as approved. If after plans have been approved, the improvements are altered, erected, or maintained upon the Lot other than as approved, same shall be deemed to have been undertaken without ARB approval. After one (1) year from completion of any improvement, addition or alteration, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to comply with the provisions hereof unless a notice of such noncompliance executed by any member of the ARB shall appear in the public records of the County, or legal proceedings shall have been instituted to enjoin the noncompliance or to enforce compliance with these provisions.

Section 5. Variances. The ARB may grant variances from compliance with the architectural provisions of this Declaration or the Planning Criteria, including without limitation restrictions upon height, size or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may reasonably require. The granting of any variance shall not operate to waive any of the terms and provisions of this Declaration or the Planning Criteria for any purpose except as to the particular Lot and the particular provision covered by the variance, nor shall it affect the Owner's obligation to comply with governmental requirements. Such variances may only be granted when unique circumstances dictate and no variance shall (i) be effective unless in writing, (ii) be contrary to the restrictions set forth in this Declaration, or (iii) stop the ARB from denying a variance in other circumstances.

Section 6. Waiver of Liability. None of Declarant, the ARB, the Directors or the Association, or any agent or employee thereof, shall be liable to anyone submitting plans for approval or to any Owner, occupant or guest of the Property by reason of or in connection with approval or disapproval of any plans, or for any defect in any plans submitted, revised or approved in accordance with the requirements of the ARB, or for any structural or other defect in any work done according to such plans. Approval of plans, or any other approvals, variances or consents, are given solely to protect the aesthetics of the Property in the judgment of the ARB and shall not be deemed a warranty, representation or covenant that any action taken in reliance thereon complies with applicable laws, codes, rules or regulations, nor shall ARB approval be deemed approval of any plan or design from the standpoint of structural safety or conformity with building or other codes. Every person who submits plans for approval agrees, by submission of such plans, and every Owner or occupant of any Lot agrees, by acquiring title thereto or an interest therein, that it will not bring any action, proceeding or suit to recover any such damages and shall be deemed to have automatically agreed to hold harmless and indemnify the aforesaid parties from and for any loss, claim or damages connected with the aforesaid aspects of the improvements or alterations.

Section 7. Enforcement. Declarant and the Association shall have standing and authority on behalf of the Association to enforce in courts of competent jurisdiction the Planning Criteria and the decisions of the ARB. Should Declarant or the Association be required to enforce the provisions hereof by legal action, the reasonable attorneys' fees and costs incurred, whether or not judicial proceedings are involved, including the attorneys' fees and costs incurred on appeal from judicial proceedings, shall be collectible from the violating Owner. Should any Owner fail to comply with the requirements hereof after thirty (30) days' written notice, Declarant and the Association shall have the right but not the obligation to enter upon the Owner's property, make such corrections or modifications as are necessary, or remove anything in violation of the provisions hereof or the Planning Criteria, and charge the cost thereof to the Owner as an individual assessment. Declarant and the Association, or their agents or employees, shall not be liable to the Owner or to any occupant or invitee of any Lot for any trespass or damages or injury to property or person for any action taken hereunder unless caused by gross negligence or intentional wrongdoing.

Section 8. Exemption. Declarant shall be exempt from the architectural control provisions of this Article VII. Declarant shall be entitled to construct or install any new improvement, and to alter or change any existing improvement, without submitting plans to or obtaining the approval of the ARB.

Section 9. No Waiver of Future Approvals. The approval of the ARB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 10. ARB Rules. The ARB shall adopt reasonable rules of procedure and standards for the submission and review of any matter to be brought before it and the inspection and final approval of any completed work done pursuant to an approval of the ARB. Such rules

shall be (i) subject to the prior approval of the Board of Directors, (ii) consistent with the covenants and restrictions set forth in this Declaration and (iii) published or otherwise made available to all Owners and their contractors, subcontractors and other appropriate designees. All rules of the ARB shall be adopted and/or amended by a majority vote thereof.

### **ARTICLE VIII** **EXTERIOR MAINTENANCE**

Section 1. Owner's Responsibility. Each Owner shall keep and maintain that Owner's Lot and all building and other improvements and landscaping located on that Owner's Lot in good repair and in a neat and attractive condition. The minimum but not exclusive standard for maintenance of improvements shall be consistency with the approved plans therefore and with the general appearance of the other occupied improvements in the Property as a whole when initially constructed and improved (taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness). The maintenance obligation of each Owner as to building improvements shall include, without limitation, maintenance of all exterior surfaces and roofs, fascias, and soffits, awnings, trellises, decorative facades, screens, windows and doors. Owners shall clean, repaint or re-stain, as appropriate, the exterior portions of the building improvements (with the same colors as initially approved), including exterior surfaces of garage doors, as often as is necessary to comply with the foregoing standards. Each Owner shall also keep, maintain and irrigate the trees, shrubbery, grass and other landscape material located on that Owner's Lot in good repair and in a neat and attractive condition. The minimum but not exclusive standard for maintenance of landscaping shall be consistency with the approved plans therefore and with the general appearance of the other occupied Lots in the Property as a whole when initially landscaped (taking into account, however, the natural and orderly growth and maturation of applicable landscaping, as properly trimmed and maintained). Each property owner shall be responsible for the maintenance of the grass and landscaping located in the road right-of-way abutting his/her property. Landscape maintenance shall include, without limitation, irrigation, fertilization, weeding, mowing, trimming, spraying for insects and disease, and periodic replacement of dead, damaged or diseased plantings. Each Owner shall grass over, mow and keep free of trash and debris, on a routine basis, the unpaved portion of any platted street(s) abutting the Owner's Lot. Each Owner shall be responsible for the maintenance, operation and repair of the swales, if any, on the Owner's Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the swale shall be authorized and any damage to any swale, whether caused by natural or human-induced phenomena, shall be repaired and the swale returned to its proper condition as soon as possible by the Owner(s) of the Lot(s) upon which the swale is located.

The Association shall have the right but not the obligation to provide exterior repair and maintenance on any Lot or any improvement thereon in the event of default by any Owner in the duties hereby imposed. Prior to performing repair or maintenance on any Lot, the Board shall determine that there is need of repair or maintenance and such need detracts from the overall appearance of the Property. Except in emergency situations, prior to commencement of any work, the Board must furnish written notice to the Owner to the effect that, unless specified



repairs or maintenance are commenced within fifteen (15) days after the mailing of the notice, and thereafter diligently pursued to completion, the Association may procure said repairs. Upon the Owner's failure to commence timely and to diligently pursue the repairs or maintenance, the Association and its agents or employees shall have the right to enter in or upon the Lot and the exterior of any improvement thereon to perform the repairs or maintenance specified in the notice. In this regard, the Association shall have the right to do such things as, but limited to, paint, repair, replace and care for pools, pool enclosures, roofs, gutters, down spouts and exterior building surfaces, clean or resurface paved access ways and parking areas, trim and care for trees, shrubs, grass, walks, swales, berms and other landscaping and drainage improvements, as well as to provide general cleanup, shoreline maintenance, and removal of debris which in the opinion of the Board detracts from the overall beauty and setting of the Property. Declarant, the Association, and their respective agents and employees, shall have no liability to the Owner or any occupant or guest for trespass, or damage or injury to property or person as the result of actions taken hereunder unless caused by gross negligence or intentional wrongdoing.

Section 2. Assessment of Cost. The cost of any work performed by or at the request of the Association pursuant to Section 1 shall be assessed as an individual assessment against the Owner of the Lot upon which such work is done.

Section 3. Access. In order to perform the repairs or maintenance authorized by this Article, the agents or employees of the Association may enter upon any Lot and the exterior of any improvement thereon during reasonable hours on any day except Sundays and holidays, except that in an emergency situation, as determined by the Board, entry may be made at any time.

Section 4. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property and the Areas of Common Responsibility and any wall, landscaping, lighting, irrigation, sign, drainage or other improvements from time to time located thereon.

Section 5. Retention Area. The retention area located on Tract A of the Plat (the "Retention Area") is dedicated to the Association. It is the responsibility of the Association, to operate, maintain and repair the Retention Area.

The Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any lot which is a part of the surface water or stormwater management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the District Permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the District. The Association shall restore to the original condition any fencing or landscaping located in the easement area which may be removed as a result of said maintenance

**ARTICLE IX**  
**RESTRICTIVE COVENANTS**

The Property shall be subject to the following covenants and restrictions that shall bind each Owner and Lot:

Section 1. Wells. No individual water supply system shall be permitted on any Lot .

Section 2. Obnoxious or Offensive Activity. No activity or use shall be allowed upon the Property which is a source of annoyance, embarrassment or discomfort to Owners or their tenants or invitees, or which interferes with the peaceful possession and proper use and enjoyment of the Property, nor shall any improper, unsightly, offensive or unlawful use be made of any Lot, Dwelling or the Common Property, and all laws and regulations of applicable governmental bodies shall be observed. The Property shall be used, enjoyed and occupied in such manner as not to cause or produce any of the following effects discernible outside any Dwelling: noise or sound that is objectionable because of its volume, duration, beat, frequency or shrillness; smoke; noxious, toxic or corrosive fumes or gases; obnoxious odors; dust, dirt or fly ash; unusual fire or explosive hazards; vibration; or interference with normal television, radio or other telecommunication reception by other Owners.

Section 3. Rules and Regulations. Reasonable rules and regulations may be promulgated by the Board, after notice and hearing, as to the use and enjoyment of the Property and shall be observed by the Owners and occupants thereof. Such rules and regulations may involve such matters as air conditioning units, signs, mailboxes, temporary structures, noisy mufflers or other nuisances, garbage and trash disposal, parking, traffic, state of repair of vehicles, tree removal, pets, game and play structures and devices, swimming pools, television and telecommunications devices and antennae, driveways, walkways, sight distances at intersections, garages, and fences. These matters are set out by way of illustration only and shall not be construed to limit the authority of the Board to promulgate and enforce reasonable rules and regulations. Such rules and regulations may augment or clarify the terms of this Declaration or any term, covenant or restriction herein contained.

Section 4. Animals. Birds, fish, dogs, cats, reptiles, insects and all other non-human, non-plant living organisms (collectively, "Animals") may be kept as pets only, and shall not be held or offered for sale or maintained or bred for any commercial use. Animals shall be sheltered inside Dwellings. No separate or exterior shelter for Animals shall be permitted. All Animals must be kept in a fully fenced area or leashed when outside and shall not be permitted to run loose. No Animals shall be permitted to remain on the Property if it or they disturb the tranquility of the Property or the Owners or tenants thereof, if it or they are unlawful, dangerous, annoying, or a nuisance to or destructive of wildlife, or if it or they are specifically excluded from the Property by the Board after notice and hearing.

Section 5. Garbage and Trash. No trash, garbage or other waste material or refuse shall be placed or stored on any part of the Property except in covered or sealed sanitary containers. All such sanitary containers must be stored within each Dwelling, buried underground, or placed within an enclosure or concealed by means of a screening wall approved by the ARB.

Section 6. Storage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and same may be installed only within an approved accessory building, within a screened area, or buried underground, and shall otherwise comply with standards established from time to time by the ARB or applicable law.

Section 7. Vehicles. No vehicle may be parked on the Property except on paved driveways. No inoperative vehicles shall be allowed to remain on the Property in excess of forty-eight (48) hours unless kept in a garage and not visible from the street or any other Lot. No trailers, boats, campers, trucks, mobile homes, or motorized recreational vehicles may be parked in the Property unless parked inside a garage. Trucks and vans, whether commercial or non-commercial, will be permitted provided that they comply with the foregoing and, unless on the Property solely for business or parked within a garage, further provided that they comply with the following:

1. they may not exceed one (1) ton carrying capacity;
2. they may not have camper shells extending more than twelve inches (12") over the cab roof;
3. any signboard or lettering is professionally applied to fenders, doors, tailgates, and panels of the vehicle;
4. the frame to ground clearance may not exceed twenty four inches (24"); and
5. they may not have added frames, racks, wooden shells or boxes.

Section 8. Visibility of Intersections. No obstruction to visibility at street intersections shall be permitted; provided that the Association shall not be liable in any manner to any person or entity, including Owners, their guests, tenants and invitees, for any damages, injuries or deaths arising from any violation of this Section.

Section 9. Temporary Structures. No building or structure of a temporary or portable character such as trailers, tents or shacks shall be permitted in the Property, except as approved by the ARB, and except for temporary improvements used solely in connection with the construction of approved permanent improvements and removed immediately upon completion of such construction. Neither Declarant nor any residential builder doing business in the Property shall be prohibited from erecting or maintaining temporary dwellings, model homes and other structures for development and marketing purposes, provided such are in compliance with the appropriate governmental requirements, and further provided that any builder first obtains Declarant's written approval of such temporary dwelling, home or structure prior to installing or constructing same, such approval to be granted or denied by Declarant in Declarant's sole discretion.

Section 10. Signs. No signs, advertisements, billboards, solicitation or advertising structures or materials of any kind shall be displayed or placed upon any Lot without the prior written approval of the ARB; provided, however, street numbers and name signs on Lots and one sign containing not more than eight (8) square feet of surface area per side (2 sides maximum) and used solely in connection with the marketing of the affected Lot for sale or lease shall be permitted without prior approval. Declarant or the Association may enter upon any Lot and

remove and destroy any sign that violates this section. This section shall not apply to Declarant or to any residential builder doing business in the Property provided that any such builder first obtains Declarant's written approval of any such structures or materials prior to installing same, such approval to be granted or denied by Declarant in Declarant's sole discretion.

Section 11. Air Conditioning Equipment. No air conditioning equipment other than compressor units may be visible on the exterior of any Dwelling unless previously approved by the ARB, which approval may be based on the adequacy of screening of such equipment. The ARB may prohibit window or wall air conditioning units altogether.

Section 12. Drainage Structures. Unless first approved by the ARB and the District, no Owner including Declarant may obstruct, alter or in any way modify the method and/or structures of drainage utilized or installed by Declarant or the Association from, on or across any Lot, Common Property or easement area; nor shall any structure or material be erected, placed or maintained which shall in any way obstruct such drainage devices or facilities or impede their efficient operation. No elevation changes shall be permitted on any Lot that materially adversely affects the drainage of or to neighboring Lots or the Common Property.

Section 13. Exterior Electronic or Electric Devices. Except to the extent required to be permitted under applicable law, no exterior telecommunications, radio, microwave or television mast, tower, pole, wire, aerial, satellite receiving stations or dish, antenna or appurtenances thereto, nor any other exterior electronic or electric equipment, structures or devices of any kind may be installed or maintained in the Property without the prior written approval of the ARB.

Section 14. Subdivision. No part of the Property shall be further subdivided without the prior written consent of Declarant for so long as Declarant owns any Lot, and thereafter by the Board.

Section 15. Completion. Upon commencement of construction of improvements on any Lot, the Owner shall diligently prosecute the work to the end that the improvements shall be completed as expeditiously as is reasonable. The Owner of the Lot on which improvements are being built shall keep the streets and areas adjacent to the Lot free from dirt, mud, garbage, trash or other debris occasioned by construction.

Section 16. Excavation. No clearing or excavation shall be made except incident to construction, maintenance or repair of an improvement and must be in accordance with the Permit; and upon completion thereof exposed openings shall be back-filled, and disturbed ground shall be leveled, graded and covered with sod or seeded in accordance with the approved landscape plan.

Section 17. Sidewalks. If permitted by the County, then the Owner of each Lot shall construct, prior to occupancy of the Dwelling on that Lot, a sidewalk along each boundary line of the Lot which abuts a platted street.

Section 18. Fences and Walls. Except for walls constructed by Declarant, there shall be no fence or wall permitted on any Lot unless it meets the requirements below and has been approved by the ARB as to size, material, color, location, etc. Landscape buffers may be required by the ARB on the outside of any fences and walls. All fences must be wood or other

material as approved by the ARB and installed with the posts and supports on the inside. No fence or wall may be constructed: (a) closer to the street along the front of the Dwelling than the front side of the Dwelling; (b) closer to any street facing side of the Dwelling than the side of the Dwelling; (c) on any landscape easement area shown on any Plat. Additionally, fences may only be permitted within drainage easements so long as the fence does not block the flow of water through the drainage easement. Notwithstanding anything herein to the contrary, so long as Declarant or builders designated by Declarant maintain any model homes within the Property, they shall have the right to fence all or any part of any Lots being used for parking for the term of such use.

All fences shall be erected in accordance with the **County's** building code. Fences greater than **four (4) feet in height shall be set back fifteen (15) feet on corner lot sides**, subject to the **County's** Requirements.

Section 19. Yard Accessories and Play Structures.

All yard accessories and play structures, including basketball hoops or backboards and any other fixed games, shall be located at the side or rear of the Dwelling, except that, in the case of Dwelling(s) on corner Lots, such accessories and structures shall be restricted to the side yard furthest from the side street and to that portion of the rear yard which is no closer to the side street than a fence would be permitted to be located under Subsection 18(b), above. Basketball structures, either permanently mounted to Dwelling above the garage or mounted to a permanent pole, will be allowed only under the following conditions:

- (i) limit of two colors of trim;
- (ii) basketball hoops and structures must be well-maintained;
- (iii) backboards must be transparent or white, NBA approved, with nets limited to white nylon; and
- (iv) the location of the basketball hoop and structure must first be approved by the ARB.

If pole-mounted, the pole must be metal, either black or galvanized and permanently mounted into the ground with a concrete base. No permanent basketball structures may be placed in any side yard.

Section 20. Use: Rentals. Lots shall be used for single family residential purposes only; provided, however, there shall be no prohibition, or minimum time period, imposed on the lease or rental of any Lot or Dwelling. Lots and Dwellings may be rented for any length of time without restriction, including by way of example short term rental one month or less.

Section 21. Pools. Only in-ground swimming pools are permitted, and may not be located in the front or side yard of any Lot, nor nearer than the Dwelling to any side street lot line. Pools on corner Lots shall not project beyond the established **fifteen (15) foot corner side setback** in accordance with **County** requirements.

Section 22. Dwellings.

(a) No Dwelling shall contain less than **thirteen hundred (1,300)** square feet of air conditioned area under roof, exclusive of screened area, open porches, terraces, patios and garage.

(b) Each Dwelling shall have an attached fully enclosed garage capable of housing not less than two (2) standard sized automobiles, which shall not be enclosed for use as a living area.

(c) Setbacks for Dwellings shall be as follows:

(i) **For Lots 52 feet by 100 feet:**

<b>Front</b>	<b>15 feet</b>
<b>Rear</b>	<b>10 feet</b>
<b>Side Yard</b>	<b>5 feet</b>
<b>Corner Side Yard</b>	<b>15 feet</b>

(d) No Dwelling shall exceed two (2) stories in height.

(e) Except as permitted pursuant to Section 13 or by the ARB, no projections of any type other than chimneys, skylights and vent stacks shall be placed or permitted to remain above any roof of the Dwelling.

(f) All driveways shall be constructed of solid concrete or decorative pavers approved by the ARB. All driveway approaches located in the right-of-way shall be constructed of solid concrete only.

(g) No Dwelling shall have exposed structural block on any elevation.

(h) All oil tanks, soft water tanks, wood piles, water softeners, well pumps, sprinkler pumps, pool and spa equipment and heaters, and other or similar mechanical fixtures and equipment, shall be screened or located so as not to be visible from a street or other Lot. This provision shall not apply to central air conditioning compressor units (see Section 11).

Section 23. Tree Removal and Landscaping. Except by Declarant, trees measuring six inches (6") or more in diameter at three feet (3') or more above ground level shall not be cut or removed without the prior written consent of the ARB; provided, however, trees located within six feet (6') of the location of the Dwelling as approved by the ARB may be removed without prior approval. More restrictive arbor ordinances or environmental laws shall control in the event of conflict herewith. There shall be no removal of trees or Lot clearing, other than clearing of underbrush, until the ARB has approved in writing a general, conceptual landscape plan that designates those existing trees to be retained and preserved on the Lot. All Lots shall have fully sodded front and side lawns except in approved landscape or retained natural areas. All areas of each Lot not covered by building improvements or included within approved gardens and natural areas shall be sodded prior to occupancy of the Dwelling on that Lot.

Section 24. Collection. All garbage and refuse shall be placed for pickup not earlier than the evening preceding pickup, and all containers for garbage and refuse shall be returned no

later than the evening of pickup to their normal, hidden location. Except for normal construction debris on any Lot during the course of construction of the Dwelling, no weeds, garbage, refuse or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property.

Section 25. Pumping or Draining. The Owner of any Lot that includes or is adjacent to any pond, creek, bay head, or other body of water shall not reduce the depth or size of said body of water by pumping or draining therefrom.

Section 26. Ramps. No skateboard or bicycle ramp or similar structure shall be permanently installed or maintained overnight on any portion of any Lot located forward of the rear wall of the Dwelling or adjacent to any side street.

Section 27. Declarant Reservation. Any provision of this Declaration to the contrary notwithstanding, until Declarant has completed all of the contemplated improvements and closed the sales of all of the Lots, neither the Owners nor the Association shall interfere with the completion of Declarant's planned improvements and the sale of the Lots. Declarant may make such lawful use of the unsold Lots and the Common Property, without charge, as may facilitate such completion and sale, including, but not limited to, maintenance of sales and construction trailers and offices, the showing of the Lots and the display of signs and the use of Lots for vehicular parking. Without limiting the generality of the foregoing, except only when the express provisions of this Declaration prohibit the Declarant from taking a particular action, nothing in this Declaration shall be understood or construed to prevent or prohibit Declarant from any of the following:

a) Doing on any property owned by it whatever it determines to be necessary or advisable in connection with the completion of the development of the Property, including without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development (all models or sketches showing plans for future development of the Property, as same may be expanded, may be modified by the Declarant at any time and from time to time, without notice); or

b) Erecting, constructing and maintaining on any property owned or controlled by Declarant such structures as may be reasonably necessary for the conduct of its business of completing said development and establishing the Property as a community and disposing of the same by sale, lease or otherwise; or

c) Conducting on any property owned or controlled by Declarant, its business of developing, subdividing, grading and constructing improvements in the Property and of disposing of Lots therein by sale, lease or otherwise; or

(d) Determining in its sole discretion the nature of any type of improvements to be initially constructed as part of the Property; or

(e) Maintaining such sign or signs on any property owned or controlled by Declarant as may be necessary or desired in connection with the operation of any Lots owned by Declarant or the sale, lease, marketing or operation of Lots; or

(f) Filing amendments which modify or amend this Declaration or otherwise limit or impair the Declarant from effecting any action which may be required of Declarant by

the County or any other federal, state or local governmental or quasi-governmental agency in connection with the development and continuing operation of the Property; or

(g) Modifying, changing, re-configuring, removing or otherwise altering any improvements located on the Common Property or utilizing all or portions of the Common Property for construction access or staging (provided that same does not impair existing access or utility services to the Lots); or

(h) Causing utilities to be available to all portions of the Property, including, but not limited, to the granting of easements and rights of way as may be necessary to locate, install and maintain facilities and connections.

Section 28. Mailboxes. Community mailboxes may be provided by the U.S. Post Office and individual mailboxes on each Lot shall be prohibited while community mailboxes are utilized by the U.S. Post Office. If community mailboxes are not provided, each Owner shall install a U.S. Postal Service-approved mailbox meeting the requirements of this section. The mailbox shall be mounted on a 4" x 4" vertical post with a supporting bracket installed at a 45 degree angle to the post. Except for identifying numbers and letters, the mailbox shall be painted solid black and the post and support shall be painted solid white.

Section 29. Security Bars. No security bar system may be installed on any window or door of any Dwelling in the Property.

Section 30. Variances.

The Board of Directors of the Association shall have the right and power to grant variances from the provisions of this Article IX and from the Association's rules and regulations for good cause shown, as determined in the reasonable discretion of the Board. No variance granted as aforesaid shall alter, waive or impair the operation or effect of the provisions of this Article IX in any instance in which such variance is not granted.

## **ARTICLE X ADDITIONAL COVENANTS AND RESTRICTIONS**

No Owner may impose any additional covenants or restrictions on any part of the Property without the prior written approval of Declarant, for so long as Declarant owns any Lots, and thereafter without the prior written approval of the Board.

## **ARTICLE XI AMENDMENT**

The holders of at least two-thirds (2/3) of the votes in the Association (without regard to class) may change or amend any provision hereof either (1) by executing a written instrument in recordable form setting forth such amendment, or (2) by causing a certified copy of a duly adopted resolution of the Owners to be prepared, and having the same recorded in the Public Records of Lake County. Any proposed amendment may be initiated by Declarant, the Association, or petition signed by ten percent (10%) of the Owners. If a proposed amendment is to be adopted by vote, a written copy of the proposed amendment shall be furnished to each



Owner at least thirty (30) days but not more than ninety (90) days prior to the meeting to discuss the proposed amendment. If adopted by vote, the affirmative vote required for adoption shall be two-thirds (2/3) of the votes of the Members (without regard to class) cast in person or by proxy at a meeting duly called, and the recorded certificate shall contain a recitation that notice was given as above set forth and said recitation shall be conclusive as to all parties, and all parties of any nature whatsoever shall have full right to rely upon said recitation in such recorded certificate. The amendment shall be effective upon recordation of the executed amendment, or the certified copy of the duly adopted resolution, among the Public Records of Polk County.

Notwithstanding anything herein to the contrary, until such time as the Developer owns less than 10% of the Lots, the Developer shall have the right to amend this Declaration without any approval or consent of the Association or any other Owners, provided that such amendment does not materially and adversely affect the rights of any owner at the time of such amendment.

Any Amendment to the Covenants and Restrictions which alters any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the Common Property, must have the prior approval of the District.

#### **ARTICLE XII** **HUD/FHA/VA APPROVAL RIGHTS**

Notwithstanding anything in this Declaration to the contrary, as long as there exists a Class "B" membership, if any one or more of HUD, FHA or VA requires approval or consent by it or them to any merger or consolidation involving the Association, the placing of any mortgage lien on the Common Property, dedication to the public of any Common Property, any amendment of this Declaration, or dissolution of the Association, by any one or more of said agencies as a condition of making, insuring or purchasing loans on Dwellings in the Property, and any such loan has been approved, insured or purchased by the applicable agency at the time of the proposed merger, consolidation, mortgaging, dedication, amendment or dissolution, then the required consent or approval shall be obtained.

#### **ARTICLE XIII** **DURATION AND TERMINATION**

This Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Declarant, the Association and any Owner, and their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded in the public records, after which time this Declaration and each Amendment shall be automatically extended for successive periods of ten (10) years unless prior to the commencement of any 10-year extension period an instrument signed by the Owners of eighty percent (80%) of the Lots and agreeing to terminate this Declaration is recorded in the Public Records of Polk County.

#### **ARTICLE XIV** **ENFORCEMENT**

Section 1. Compliance by Owners. Every Owner and all guests, tenants and invitees of any Member, shall comply with the restrictions and covenants set forth herein and any and all

rules and regulations, which from time to time may be adopted by the Board of Directors of the Association.

Section 2. Enforcement. Failure of an Owner or that Owner's tenants, licensees, invitees and guests to comply with such restrictions, covenants or rules and regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The offending Owner shall be responsible for all costs of enforcement including attorneys' fees actually incurred and court costs. If any person shall violate or attempt to violate this Declaration, it shall be lawful for Declarant, any Owner, or the Association: (a) to prosecute proceedings for the recovery of damages against those so violating or attempting to violate this Declaration; (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting to violate this Declaration, for the purpose of preventing or enjoining all or any such violations or attempted violations; or (c) to maintain a proceeding for any other equitable or legal recourse or remedy available at law or in equity. In addition, whenever there shall have been built or there shall exist on any Lot any structure, thing or condition which violates this Declaration, Declarant or the Association (but not any Owner) shall have the right, but not the obligation, to enter upon the Lot where such violation exists and summarily to abate and remove the same, all at the expense of the Owner of such Lot, which expense shall constitute an individual assessment to be treated and collected as set forth in Article VI, and such entry and abatement or removal shall not be deemed a trespass or make Declarant or Association, or the agents or employees of either, liable for any damages on account thereof. The remedies contained in this provision shall be cumulative of all other remedies now or hereafter provided by law or this Declaration. The failure of Declarant, the Association, or an Owner to enforce any covenant, restriction, obligation, right, power, privilege or reservation herein contained, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior or subsequent thereto.

The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Covenants and Restrictions which relate to the maintenance, operation and repair of the surface water or stormwater management system.

Section 3. Fines. In addition to all other remedies, and to the maximum extent lawful, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner or that Owner's tenants, licensees, invitees and guests to comply with any covenant, restriction, rule or regulation, provided the following procedures are adhered to:

(a) Notice. The Association shall notify the Owner of the alleged infraction or infractions. Included in the notice shall be the date and time of a special meeting of the Board of Directors at which time the Owner shall present reasons why a fine(s) should not be imposed. At least six (6) days' notice of such meeting shall be given.

(b) Hearing. The alleged non-compliance shall be presented to the Board of Directors after which the Board of Directors shall hear reasons why a fine(s) should not be imposed. A written decision of the Board of Directors shall be submitted to the Owner by not later than twenty-one (21) days after the Board of Director's meeting. The Owner shall have a right to be represented by counsel and to cross examine witnesses.

(c) Amounts. The Board of Directors (if its or such panel's findings are made against the Owner) may impose special assessments against the Lot owned by the Owner as follows:

(i) For each violation, a fine not exceeding One Hundred Dollars (\$100.00).

(ii) For a violation or violations that are of a continuing nature after notice thereof (even if in the first instance), a fine not exceeding One Thousand Dollars (\$1,000.00).

(d) Payment and Collection of Fines. Fines shall be treated as an individual assessment subject to the provisions for the collection of individual assessments, and the lien securing same, as set forth elsewhere in this Declaration.

(e) Application of Proceeds. All moneys received from fines shall be allocated as directed by the Board of Directors.

(f) Non-exclusive Remedy. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, any fines paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

(g) CPI. Unless limited by law, specific dollar amounts stated in this Section shall increase from time to time by application of a nationally recognized consumer price index chosen by the Board of Directors, using the date this Declaration is recorded as the base year. In the event no such consumer price index is available, the Board shall choose a reasonable alternative to compute such increases.

## **ARTICLE XV**

### **DAMAGE OR DESTRUCTION TO COMMON PROPERTY**

Damage to or destruction of all or any portion of the Common Property shall be addressed in the following manner, notwithstanding any provision in this Declaration to the contrary:

Section 1. Sufficient Insurance Proceeds. In the event of damage to or destruction of the Common Property, if the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such portions of the Common Property to be repaired and reconstructed substantially as it previously existed.

Section 2. Insufficient Insurance Proceeds. If the insurance proceeds are not sufficient to effect total restoration of the Common Property, then the Association shall cause such portions for the Common Property to be repaired and reconstructed substantially as they previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a special assessment against each of the Owners in accordance with the provisions of Article VI of this Declaration.

Section 3. Negligence or Willful Misconduct. Each Owner shall be liable to the Association for the cost to repair any damage to the Common Property not fully covered by collected insurance which may be sustained by reason of the negligence or willful misconduct of any Owner or that Owner's tenants, guests or invitees. In addition, the Association shall have the right to charge any Owner for the increase, if any, in the insurance premium attributable to damage caused by such Owner or that Owner's tenants, guests or invitees. The sums due from an Owner hereunder shall be an individual assessment against the Owner and that Owner's Lot and may be collected as provided elsewhere in this Declaration for the collection of individual assessments.

## **ARTICLE XVI**

### **MORTGAGEE PROTECTION**

Section 1. Records and Notices. The Association shall make available to all Owners and to all holders of mortgages on Lots, and to insurers and guarantors of any first mortgage, for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of this Declaration (with all amendments) and the Articles, Bylaws, rules and regulations, and the books and records of the Association (including the budget). Such persons shall be entitled, upon prior written request, (i) to receive a copy of the Association's financial statement for the immediately preceding fiscal year, (ii) to receive notices of and attend Association meetings, (iii) to receive notice from the Association of an alleged default by any Owner in the performance of such Owner's obligations under this Declaration, the Articles or Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default and to the extent that the mortgagee, insurer and/or guarantor has an interest, by virtue of the mortgage, in the Lot owned by the defaulting Owner, and (iv) to receive notice of any substantial damage or loss to the Common Property.

Section 2. Adverse Events. Any holder, insurer or guarantor of a mortgage on a Lot shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Common Property, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Lot, and (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

Section 3. Taxes and Other Charges. After thirty (30) days written notice to the Association, any holder, insurer or guarantor of a mortgage on a Lot shall have the right to pay, singly or jointly, taxes or other charges that are delinquent and have resulted or may result in a lien against or loss of the Association's title to any portion of the Common Property, and to receive prompt reimbursement from the Association.

Section 4. Insurance Premiums. After thirty (30) days written notice to the Association, any holder, insurer or guarantor of a mortgage on a Lot shall have the right to pay, singly or jointly, any overdue premiums on any hazard insurance policy covering the Common Property or obtain, singly or jointly, new hazard insurance coverage on the Common Property upon the lapse of a policy and, in either case, receive prompt reimbursement from the Association.

**ARTICLE XVII**  
**GENERAL PROVISIONS**

Section 1. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 2. Enforcement. Without limiting the generality of Article XIII, enforcement of these covenants and restrictions shall be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Interpretation. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions and interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter genders shall each include the others.

Section 4. Severability. Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

Section 5. Effective Date. This Declaration shall become effective upon its recordation in the Public Records of the County.

Section 6. Conflict. This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and By-Laws of the Association and said Articles shall take precedence over the By-Laws and any rules hereinafter promulgated.

Section 7. Cooperation. Each Owner, by acceptance of a deed therefore or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to cooperate in, and support, any and all zoning, administrative, governmental and/or quasi-governmental filings, applications, requests, submissions and other actions necessary or desired for development and/or improvement of the Property, including, without limitation, signing any required applications, plats, etc. as the owner of any portion of the Property owned or controlled thereby when necessary or requested.

Section 8. Easements. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners hereby designate the Declarant and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners'

behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. All parties using easements granted in this Declaration shall use reasonable efforts to minimize interference with all other permitted uses of the easements and the property subject thereto and shall restore any damage to such property caused in the exercise of any rights granted in any such easement.

Section 9. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Property to the public, or for any public use.

Section 10. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot, shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition, lien and covenant contained herein, whether or not any reference hereto is contained in the instrument by which such person acquired an interest in such Lot.

Section 11. Execution of Documents Required by the County. The Declarant's plan for the development of **POITRAS ESTATES** may require from time to time the execution of certain documents required by the County. To the extent that said documents require the joinder of any or all Owners in the Property, each of said Owners, by virtue of his acceptance of a deed to his Lot, does irrevocably give and grant to the Declarant, or any of its officers individually, full power of attorney to execute said documents as his agent and in his place and stead.

## **ARTICLE XVIII** **DISCLAIMERS**

Section 1. Disclaimer of Representations or Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF. IF ANY SUCH WARRANTY CANNOT BE DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

Section 2. General. Notwithstanding anything contained herein or in the Articles, bylaws and rules and regulations of the Association or any other document governing or binding the Association, Declarant or the Property (collectively, the "constituent documents"), neither the Association nor the Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Property including, without limitation, residents and their families, agents, employees, contractors, guests or invitees, or for any property of any such persons. Without limiting the generality of the foregoing:

(a) it is the express intent of the constituent documents that the various provisions thereof which are enforceable by the Association or Declarant or which govern the uses of the Property, have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof;

(b) the Association is not empowered, nor has been created, to act as an entity which enforces or ensures compliance with the laws of the United States, State of Florida, the County or any other jurisdiction, or prevents tortious activities; and

(c) any provisions of the constituent documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for such reason.

Each Owner (by virtue of its, his or her acceptance of title to its, his or her Lot) and each other person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such uses) shall be bound by this Article XVIII and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association or Declarant and arising from or connected with any matter for which the liability of the Association or Declarant has been disclaimed in this Article or in this Declaration generally.

As used in this Article XVIII, the words "Association" and "Declarant" shall each include within their meanings all of the respective directors, officers, committees and board members, employees, agents, contractors (including without limitation management companies), and successors and assigns of each.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year first above written.

DECLARANT:

Signed, sealed and delivered in the presence of:

Julie L. Fisher  
Print: Julie L. Fisher

Holly Bartley  
Print: Holly Bartley

TWENTY SEVEN, LLC, a Florida limited liability company  
By: [Signature]  
Larry W. Williams, Manager

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 13 day of January, 2005 by Larry W. Williams, as Manager of **TWENTY SEVEN, LLC**, a Florida limited liability company, on behalf of the company. He is personally known to me.

Julie L. Fisher  
NOTARY PUBLIC

(NOTARY STAMP)



Julie L. Fisher  
My Commission D0123295  
Expires July 16, 2008



**EXHIBIT "A"**

**PROPERTY**

A portion of Section 11, Township 25 South, Range 26 East, Polk County, Florida, being more particularly described as follows:

Commence at the southeast corner of the northeast 1/4 of the southwest 1/4 of said Section 11; thence run North 88 degrees 50 minutes 27 seconds East, along the north right of way line of Poitras Road One, as recorded in Official Records Book 5536, Page 1642 of the public records of Polk County, Florida, a distance of 70.54 feet; thence run North 00 degrees 16 minutes 07 seconds East, along said north right of way line, a distance of 39.38 feet; thence run North 88 degrees 47 minutes 73 seconds East, along said north right of way line, a distance of 1250.24 feet to the Point of Beginning; thence run North 00 degrees 07 minutes 51 seconds East, a distance of 1251.15 feet; thence run South 89 degrees 50 minutes 41 seconds East, a distance of 1320.34 feet; thence run South 00 degrees 07 minutes 23 seconds West, a distance of 1256.95 feet to said north right of way line of Poitras Road One; thence run North 89 degrees 35 minutes 35 seconds West along said north right of line a distance of 1320.52 feet to the Point of Beginning.

**EXHIBIT "B"**

**ARTICLES**

[Insert Articles of Incorporation of Association]

ARTICLES OF INCORPORATION  
OF  
**POITRAS ESTATES HOMEOWNERS ASSOCIATION, INC.**

In compliance with the requirements of *Florida Statutes*, Chapter 617, the undersigned incorporator has executed, adopted and caused to be delivered for filing these Articles of Incorporation for the purpose of forming a corporation not for profit and does hereby certify:

ARTICLE I  
NAME OF CORPORATION

The name of the corporation is **POITRAS ESTATES HOMEOWNERS ASSOCIATION, INC.** (hereinafter called the "Association").

ARTICLE II  
PRINCIPAL OFFICE OF THE ASSOCIATION

The principal place of business and the mailing address of the Association is located at 1100 Town Plaza Court, Suite 2010, Winter Springs, Florida 32708.

ARTICLE III  
REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Association is 1100 Town Plaza Court, Suite 2010, Winter Springs, Florida 32708, and the name of the initial registered agent to accept service of process within the State of Florida at that address is Gregory D. Lee.

ARTICLE IV  
DEFINITIONS

Unless otherwise provided herein to the contrary, all terms used in these Articles shall have the same definitions and meanings as those set forth in that certain **Declaration of Covenants, Conditions and Restrictions for Poitras Estates** to be recorded in the Public Records of **Polk County**, Florida, as it may from time to time be amended (hereinafter called the "Declaration").

ARTICLE V  
PURPOSE AND POWERS OF THE ASSOCIATION

The Association does not contemplate pecuniary gain or profit to the Members thereof. The Association shall not pay dividends and no part of any income of the Association shall be distributed to its Members, directors or officers. The Association shall have all the powers of a non-profit corporation organized under the laws of the State of Florida, subject only to such limitations upon the exercise of such powers as are expressly set forth in these Articles, the Bylaws, or the Declaration. The Association shall have the power and duty to do any and all lawful things which may be authorized, assigned, required or permitted to be done by the

Declaration, these Articles or the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, operation and improvement of the Property and Areas of Common Responsibility.

The Association shall operate, maintain and manage the surface water or stormwater management system(s) in a manner consistent with **Southwest Florida Water Management District Permit No. 44026749.001** requirements and applicable District rules, and shall assist in the enforcement of the Declaration of Covenants and Restrictions which relate to the surface water or stormwater management system.

The Association shall levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the surface water or stormwater management system.

## ARTICLE VI MEMBERSHIP

**Section 1. Members.** Every person or entity who is a record Owner of a fee interest in any Lot in the Property shall be a Member of the Association. Declarant shall also be a Member for so long as Declarant owns any portion of the Property. Notwithstanding anything else to the contrary set forth in this Article, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association. The Association membership of each Owner (other than Declarant) shall be appurtenant to and may not be separated from the Lot giving rise to such membership, and shall not be transferred except upon the transfer of title to said Lot and then only to the transferee of title thereto. Any prohibited separate transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

**Section 2. Classes.** The Association shall have two (2) classes of voting membership:

- (a) **Class "A".** Class "A" Members shall be all Owners, with the exception of Declarant for so long as Declarant retains Class "B" voting rights. Each Class "A" Member shall have one (1) vote for each Lot owned by that Member.
- (b) **Class "B".** The sole Class "B" Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Lot in the Property owned by Declarant. Upon the execution of these Articles of Incorporation, Declarant shall have **four hundred eighty (480)** Class "B" votes representing three (3) votes for each of the **one hundred sixty (160)** Lots in the Property.
- (c) **Termination of Class "B" Membership.** As each Lot in the Property is conveyed by Declarant to a Class "A" Member, Declarant's votes for that Lot shall lapse. The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of the following:

- (i) When the total outstanding Class "A" votes in the Association equals or exceeds the total outstanding Class "B" votes; or
- (ii) Ten (10) years from the date of recording the Declaration; or
- (iii) At such earlier time as Declarant, in its discretion, may so elect.

Upon the happening of any one of these events, Declarant shall call a special meeting of the Members to advise of the termination of Class "B" membership.

**Section 3. Multiple Owners.** Each vote in the Association must be cast as a single vote, and fractional votes shall not be allowed. If joint or multiple Owners are unable to agree among themselves as to how their vote is to be cast, or if more than one (1) Class "A" vote is cast for any Lot, none of the votes for that Lot shall be counted. If any Owner casts a vote on behalf of a Lot, it shall be conclusively presumed that Owner was acting with the authority and consent of all other Owners of that Lot. If more than one Class "A" vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

**ARTICLE VII  
BOARD OF DIRECTORS**

The affairs of this Association shall be managed and administered by a Board of Directors consisting of three (3), five (5), or seven (7) members. Initially, the Board shall consist of three (3) members, with the number in subsequent years to be determined by the members of the Board; provided that there shall always be an odd number of directorships created. The number of directors may be changed by amendment to the Bylaws of the Association. The names and addresses of persons who are to act in the capacity of director until appointment or election of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
<b>Larry W. Williams</b>	<b>1100 Town Plaza Court, Suite 2010 Winter Springs, FL 32708</b>
<b>Gregory D. Lee</b>	<b>1100 Town Plaza Court, Suite 2010 Winter Springs, FL 32708</b>
<b>Greg Wybo</b>	<b>1100 Town Plaza Court, Suite 2010 Winter Springs, FL 32708</b>

Any other provision of this Article VII to the contrary notwithstanding, Owners other than Declarant shall be entitled to elect at least a majority of the members of the Board of Directors not later than three (3) months after ninety percent (90%) of the Lots that will be operated by the Association have been conveyed to Owners. Until then, Declarant shall be entitled to appoint all members of the Board of Directors. Thereafter, Declarant shall be entitled to elect at least one member of the Board of Directors as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots of **Poitras Estates**. After Declarant relinquishes control of the Association, Declarant may exercise the right to vote any

Declarant-owned voting interests in the same manner as any other Owner, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors. Interim vacancies in the Board of Directors shall be filled by Declarant until Declarant has no authority to appoint Directors and thereafter by the majority of the remaining Directors, and any such appointed Director shall serve for the remaining term of his predecessor. After Declarant relinquishes its right to appoint the Board of Directors, the Members shall elect the directors by majority vote, for staggered terms of three (3) years each. To create the staggered terms, one post shall become vacant in one (1) year and a successor director shall be elected. The second post shall be deemed vacant at the end of the second year, and a successor director shall be elected. The third post shall be deemed vacant at the end of the third year, and a successor director shall be elected. All successor directors shall serve for terms of three (3) years each. In the event that the number of people comprising the Board of Directors is changed, such change in number shall be implemented in such a manner as to have as nearly equal in number as possible the number of directors whose terms expire in any given year.

**ARTICLE VIII**  
**OFFICERS**

The day-to-day affairs of the Association shall be administered, subject to the direction and authority of the Board of Directors, by the officers of the Association, which may include a President, Vice President, Secretary and Treasurer and such other officers as permitted by the Bylaws. The officers shall be appointed by the Board of Directors and they shall serve at the pleasure of the Board of Directors. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

<u>OFFICE</u>	<u>NAME</u>	<u>ADDRESS</u>
<b>President:</b>	<b>Larry W. Williams</b>	<b>1100 Town Plaza Court, Suite 2010 Winter Springs, FL 32708</b>
<b>Vice President:</b>	<b>Gregory D. Lee</b>	<b>1100 Town Plaza Court, Suite 2010 Winter Springs, FL 32708</b>
<b>Secretary and Treasurer:</b>	<b>Evelyn West</b>	<b>411 Central Park Drive Sanford, FL 32771</b>

**ARTICLE IX**  
**DURATION**

The Association shall commence to exist upon the filing of these Articles with the Florida Department of State, and the Association shall thereafter exist in perpetuity.

ARTICLE X  
AMENDMENTS

Amendments to these Articles shall be proposed and adopted in the following manner:

Section 1. Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, *Florida Statutes*. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.

Section 2. Adoption. Amendments shall be proposed and adopted in the manner provided in Chapter 617, *Florida Statutes*. Subject to the terms of Articles XIV, any amendment to these Articles of Incorporation shall require the assent of two thirds (2/3) of the votes of the entire membership without regard to class.

Section 3. Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of **Polk County**, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration was recorded.

Section 4. Limitations. No amendment shall be made that is in conflict with the Declaration.

ARTICLE XI  
BYLAWS

The Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided in the Bylaws.

ARTICLE XII  
INDEMNIFICATION OF OFFICERS AND DIRECTORS

Section 1. The Association shall defend, indemnify and hold harmless any person of the Association who is made a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceedings, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director, officer, committee member, employee or agent of the Association:

- (a) From and against expenses (including reasonable attorneys' fees for pretrial, trial, or appellate proceedings), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with an action, suit, or proceeding (other than one by or in the right of the Association), if he acted in good faith, and, with respect to any criminal action or proceedings, he had no reasonable cause to believe his conduct was unlawful; and
- (b) From and against expenses (including reasonable attorneys' fees for pretrial, trial, or appellate proceedings) actually and reasonably incurred by him in connection

with the defense or settlement of an action or suit by or in the right of the Association, if he acted in good faith.

**Section 2.** The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, or, with respect to any criminal action or proceeding, that such person had reasonable cause to believe that his conduct was unlawful.

**Section 3.** Notwithstanding any other provision hereof to the contrary, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or misconduct in the performance of his duty to the Association.

**Section 4.** Any indemnification under Section 1 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director or officer, committee member, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit, or proceeding, or (b) if such quorum is not obtainable, or even if obtainable and a quorum of disinterested Directors so directs, by a majority vote of Members of the Association.

**Section 5.** Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association from time to time as incurred rather than only after the final disposition of such action, suit, or proceeding. Payment of such expenses shall be authorized by the Board of Directors in each specific case only after receipt by the Association of an undertaking by or on behalf of the director or officer to repay such amounts if it shall later develop that he is not entitled to be indemnified by the Association.

**Section 6.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which the Association's directors, officers, committee members, employees or agents may be entitled under the Association's bylaws, agreement, vote of Members or disinterested directors, or otherwise, both as to actions in their official capacities and as to action in another capacity while holding such offices or positions, and shall continue as to a person who has ceased to be a director, officer, committee member, agent or employee and shall inure to the benefit of the heirs, executors and administrators of such a person.

**Section 7.** Notwithstanding the foregoing provisions, indemnification provided under this Article shall not include indemnification for any action of a director, officer, committee member, agent or employee of the Association for which indemnification is deemed to be against public policy. In the event that indemnification provided under this Article is deemed to be against public policy, such an event shall not invalidate or affect any other right or indemnification herein provided.

**Section 8.** The Association shall have the power, but shall not be obligated, to purchase and maintain indemnification insurance to provide coverage for any liability asserted



against any director, officer, committee member, agent or employee of the Association in any of his capacities as described in Section 1, whether or not the Association would have the power to indemnify him or her under this Article.

Section 9. Any person requesting indemnification shall first look to any insurance maintained by the Association for indemnification against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement (as described above). The Association shall be obligated to indemnify such person (if entitled to indemnification by the Association) only to the extent such insurance does not indemnify such person. In the event that any expenses, judgments, fines, or amounts paid in settlement are paid pursuant to insurance maintained by such Association, the Association shall have no obligation to reimburse the insurance company.

#### ARTICLE XIII INCONSISTENCY

In the event of any inconsistency between the terms and provisions contained in the Declaration and those contained in these Articles of Incorporation, the terms and provisions of the Declaration shall prevail.

#### ARTICLE XIV REQUIRED APPROVALS

Notwithstanding anything in these Articles to the contrary, as long as there exists a Class "B" membership, if any one or more of HUD, FHA or VA requires approval or consent by it or them to any merger or consolidation involving the Association, the placing of any mortgage lien on the Common Property, dedication to the public of any Common Property, any amendment of the Declaration or these Articles, or dissolution of the Association, by any one or more of said agencies as a condition of making, insuring or purchasing loans on Dwellings in the Property, and any such loan has been approved, insured or purchased by the applicable agency at the time of the proposed merger, consolidation, mortgaging, dedication, amendment or dissolution, then the required consent or approval shall be obtained.

#### ARTICLE XV DISSOLUTION

In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which would comply with Section 40C-42.027, F.A.C. and be approved by the **Southwest Florida Water Management District** prior to such termination, dissolution or liquidation.

ARTICLE XVI  
EXISTENCE AND DURATION

Existence of the Association shall commence with the filing of these Articles of Incorporation with the Secretary of State, Tallahassee, Florida.


The Association shall exist in perpetuity.

ARTICLE XVII  
INCORPORATOR

The name and street address of the sole incorporator to these Articles of Incorporation is as follows:


Gregory D. Lee  
1100 Town Plaza Court, Suite 2010  
Winter Springs, FL 32708

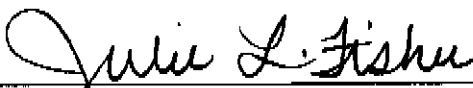
IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Florida, the undersigned, constituting the sole incorporator of this Association, has executed these Articles of Incorporation this 13<sup>th</sup> day of January, 2005.

  
\_\_\_\_\_  
Name: Gregory D. Lee  
Incorporator and Registered Agent

STATE OF FLORIDA  
COUNTY OF SEMINOLE

The foregoing Articles of Incorporation were acknowledged before me this 13<sup>th</sup> day of January, 2005, by Gregory D. Lee, as Incorporator and Registered Agent of **POITRAS ESTATES HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation, on behalf of the corporation. He {  } is personally known to me or {  } has produced \_\_\_\_\_ as identification.

 Julie L. Fisher  
My Commission DD323295  
Expires July 18, 2008

  
\_\_\_\_\_  
NOTARY PUBLIC  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

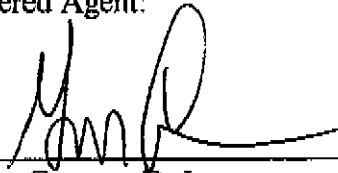
**CERTIFICATE DESIGNATING REGISTERED AGENT FOR  
SERVICE OF PROCESS**

Pursuant to Chapters 48 and 617, *Florida Statutes*, the following is submitted in compliance with said Acts. **POITRAS ESTATES HOMEOWNERS ASSOCIATION, INC.**, desiring to organize as a corporation under the laws of the State of Florida, with its registered office at 1100 Town Plaza Court, Suite 2010, Winter Springs, Florida 32708, has named Gregory D. Lee, located at the above-registered office, as its Registered Agent to accept service of process within this State.

**ACKNOWLEDGMENT:**

Having been named to accept service of process for the above-stated corporation at the place designated in this Certificate, I hereby accept to act in this capacity and agree to comply with the provisions of said Acts relative to keeping open said office.

Registered Agent:



Name: Gregory D. Lee

Dated: JAN 13, 2005

**EXHIBIT "C"**

**BYLAWS**

[Insert Bylaws of Association]

BY-LAWS  
OF  
**POITRAS ESTATES HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**IDENTITY AND LOCATION**

These are the By-Laws of **POITRAS ESTATES HOMEOWNERS ASSOCIATION, INC.**, herein called the Association, a corporation not for profit organized and existing under Chapter 617, *Florida Statutes*, for the purpose of administering the Property, as defined in and in accordance with the terms and conditions of that certain Declaration of Covenants, Conditions and Restrictions for **POITRAS ESTATES** (the Declaration). The principal office of the Association shall be located at 1100 Town Plaza Court, Suite 2010, Winter Springs, Florida 32708, but meetings of the Board of Directors may be held at such places within the State of Florida as may be designated by the Board of Directors.

**ARTICLE II**

**GENERAL**

Section 1. **Incorporation of Declaration.** As supplemented herein, the regulation of the business and affairs of the Association shall be governed by certain provisions of the Declaration, as amended from time to time, which are incorporated herein by reference as if set forth verbatim.

Section 2. **Definitions.** The definitions set out in the Declaration are incorporated herein by reference.

**ARTICLE III**

**ASSOCIATION PURPOSES AND POWERS**

Section 1. **Association's Purposes.** The Association has been organized for the purposes set forth in the Declaration and Articles, including, without limitation, the following:

- (a) to own, operate, maintain and convey the Common Property and to operate and maintain Areas of Common Responsibility, including any personal property owned by the Association;
- (b) to clean, clear, trim, remove weeds, limbs, and debris from, and to provide general grounds maintenance for both the Common Property and the Areas of Common Responsibility;
- (c) to fix assessments to be levied against the Lots in the Property;
- (d) to enforce any and all covenants and agreements contained in the Declaration; and
- (e) to pay taxes and insurance, if any, on the Common Property.

Section 2. Records of the Association. The Association shall maintain each of the following items, when applicable, which constitute the official records of the Association:

- (a) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the Common Property or Areas of Common Responsibility;
- (b) A copy of these By-Laws and of each amendment thereto;
- (c) A copy of the Articles of Incorporation of the Association and of each amendment thereto;
- (d) A copy of the Declaration and each amendment thereto;
- (e) A copy of the current rules of the Association;
- (f) The minutes of all meetings of the Board of Directors;
- (g) All of the Association's insurance policies or copies thereof;
- (h) A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease, or other contract under which the Association has any obligation or responsibility; and
- (i) The financial and accounting records of the Association, kept according to good accounting practices, which financial and accounting records shall be maintained for a period of at least seven (7) years. The financial and accounting records shall include: (1) accurate, itemized, and detailed records of all receipts and expenditures, (2) a current account and a periodic statement of Assessments or other charges, the due date and amount of each Assessment or other charge, the date and amount of each payment on the account, and the balance due, (3) all tax returns, financial statements, and financial reports of the Association, and (4) any other records that identify, measure, record, or communicate financial information.

Section 3. Inspection of Records. The official records of the Association shall be maintained within the state and must be open to inspection and available for photocopying by Members or their authorized agents at reasonable times and places within ten (10) business days after receipt of written request for access. This Section may be complied with by having a copy of the records available for inspection or copying in the community.

#### ARTICLE IV

##### MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Association shall be held within one year from the date of incorporation of the Association and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter. If the day for the annual meeting of the Members is a legal holiday, the meeting will

be held at the same hour on the first day following which is not a legal holiday. Business transacted at the Annual Meeting shall include the election of directors of the Association.

Section 2. Special Meeting. Special meetings of the Members may be called at any time by the president or by the Board of Directors, and shall be called upon written request of Members entitled to vote one-fourth (1/4) of all votes in the Association.

Section 3. Notice of Meeting. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each Member entitled to vote there at, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature thereof.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If such quorum is not present or represented at any meeting, the Members entitled to vote there at shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of title to that Member's Lot.

## ARTICLE V

### BOARD OF DIRECTORS

Section 1. Board of Directors; Selection; Terms of Office. The affairs of the Association shall be managed by a Board of Directors consisting of three (3), five (5), or seven (7) members. Initially the Board of Directors shall consist of three (3) Directors who shall be selected by the Declarant. The Declarant shall have the sole right to appoint and remove any member or members of the Board of Directors of the Association pursuant to Article II of the Declaration so long as Declarant shall own ten percent (10%) or more of the Lots in the Property. Within three (3) months after Declarant owns less than ten percent (10%) of the Lots in the Property, the members of the Board shall be determined as set forth in Article VI herein. Declarant shall be entitled to elect at least one member of the Board of Directors as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots in all phases of the Property.

Section 2. Vacancies in the Board of Directors. Vacancies in the Board of Directors shall be filled by Declarant until Declarant has no authority to appoint Directors and thereafter by the majority of the remaining Directors, or by a sole remaining Director, and any such appointed Director shall serve for the remaining term of his predecessor.

## ARTICLE VI

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. At such time as the Declarant owns less than 10% of the Lots in the Property (and with the exception of the one (1) Director Declarant is entitled to elect as set forth in Article V, Section 1 above), nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Association prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

Section 2. Election. When the Board of Directors is chosen by the Nominating Committee, said election to the Board of Directors shall be by secret written ballot. At such election the Members may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted and votes must be made in person at a Members' meeting or by ballots the Members personally cast.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Board of Directors' Powers. The Board of Directors shall have power:

- (a) to call special meetings of the Board;
- (b) subject to Article IX herein, to appoint and remove at its pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any Officer or Director of the Association in any capacity whatsoever;
- (c) to establish, levy and assess, and collect assessments or charges in accordance with the Declaration;
- (d) to adopt and publish rules and regulations governing the use of the Common Property and Areas of Common Responsibility;
- (e) to exercise for the Association all powers, duties and authority vested in or delegated to the Association;
- (f) to fill vacancies on the Board of Directors pursuant to Article V above;



- (g) to appoint an Executive Committee of three (3) Directors and delegate all or any portion of the powers of the Board of Directors to this Executive Committee, subject to the limitations on the authority of the Executive Committee imposed by law;
- (h) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and
- (i) to take such other action as provided in the Declaration.

Section 2. Board of Directors' Duties. It shall be the duty of the Board of Directors:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by at least one-fourth (1/4) of the Class "A" Members who are entitled to vote;
- (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
  1. fix the amount of the annual assessment against each Lot;
  2. send written notice of each assessment to every Owner subject thereto in advance of each annual assessment period; and
  3. foreclose the lien against any Lot for which assessments are not paid or to bring an action at law against the Owner personally obligated to pay same.
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment as against third parties relying thereon;
- (e) procure and maintain adequate liability, hazard and other insurance on any Common Property;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, if the Board deems appropriate;
- (g) cause the Common Property and Areas of Common Responsibility to be maintained.
- (h) to prepare the annual budget in accordance with the Declaration;
- (i) to prepare a roster of the Owners and Lots and the assessments applicable thereto, which roster shall be kept in the office of the Association; and

- (j) to send written notice of each assessment to each Owner as provided in the Declaration.

Section 3. Resignation. A Director of the Association may resign at any time by giving a written notice to the Board of Directors of the Association. The resignation of any Director shall take effect upon delivery of the notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4. Removal. So long as Declarant shall own ten percent (10%) or more of the Lots in the Property, any Director may only be removed, with or without cause, by the Declarant. Thereafter, except as otherwise provided in the Declaration, any Director may be removed, with or without cause, by a two-thirds (2/3) vote of the members of the Board.

Section 5. Directors' Fees. There shall be no Directors fees paid to members of the Board of Directors, except that Directors shall be entitled to reimbursement of out-of-pocket costs authorized by the Board of Directors.

## ARTICLE VIII

### DIRECTORS' MEETINGS

Section 1. Directors' Annual Meeting. The annual meeting of the Board of Directors shall be held at the discretion of the Board of Directors with ample notice given to each member.

Section 2. Notice. Not less than ten (10) days written notice of such annual meeting shall be given to each Director.

Section 3. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and at such place and hour as may be fixed from time to time by a majority of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 4. Special Meetings. Special meetings of the Board of Directors shall be held when called by any officer of the Association or by any two (2) Directors after not less than three (3) days notice to each Director.

Section 5. Waiver of Notice. A Director may waive notice of a meeting of the Directors before or after the date and time stated in the notice. Except as otherwise provided in this Section 4, the waiver must be in writing, signed by the Director entitled to the notice and filed with the minutes or corporate records. Attendance of a Director at any meeting shall constitute waiver of notice of such meeting, except where the Director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and does not thereafter vote for or assent to action taken at the meeting. If a meeting otherwise valid of the Board of Directors is held without notice where such is required, any action taken at such meeting shall be deemed ratified by a Director who did not attend, unless after learning of the action taken and of the impropriety of the meeting, he makes prompt objection thereto. Objection by a Director shall be effective only if written objection to the holding of the meeting or to any specific action so taken is filed with the Secretary of the Association.

Section 6. Action Upon Written Consent Without a Meeting. Action of the Board of Directors may be taken without a meeting upon the written consent signed by all members of the Board. Any such action without a meeting shall be effective on the date the last Board member signs the consent or on such date as is specified in the consent. Any such action by written consent shall have the same effect as a vote taken at a meeting of the Board of Directors.

Section 7. Board Quorum and Voting. The Majority of the Board of Directors shall constitute a quorum thereof. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers.

## ARTICLE IX

### OFFICERS

Section 1. Association Officers. The Officers shall be a President, a Vice-President, a Secretary and a Treasurer. The officers may be, but shall not be required to be, members of the Board of Directors. However, each officer must be either a Member of the Association or an officer, director or agent either of Declarant or of a general partner of Declarant.

Section 2. Election of Officers. The Declarant shall have the sole right to appoint and remove any officer of the Association so long as Declarant shall own ten percent (10%) or more of the total number of Lots in the Property. Thereafter, all officers shall hold office at the pleasure of the Board of Directors.

Section 3. Removal of Officer. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

Section 4. Special Appointment. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine. When a final decision regarding an expenditure of Association funds is to be made by such special appointment, no vote may be made by proxy or secret ballot.

Section 5. Multiple Offices. The holding of multiple offices shall be permitted.

Section 6. Duties. The duties of the officers are as follows:

(a) President. The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Members and of the Board of Directors. Except where otherwise provided by law or these Bylaws, the president shall have the general powers and duties of supervision and management of the Association, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds and other written instruments, shall co-sign all promissory notes, and shall perform all such other duties as are incidental to his or her office or as are required by the Board.

(b) Vice President. The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board or the president.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

## ARTICLE X

### LIABILITY AND INDEMNIFICATION

Section 1. Liability of Board Member. No Board Member or Officer of the Association shall be liable to any Owner for any decision, action or omission made or performed by such Board Member or Officer in the course of his duties unless such Board Member or Officer acted in bad faith or in reckless disregard of the rights of any person or of the terms of the Declaration or these By-Laws.

Section 2. Indemnification. To the fullest extent allowed by Section 617.0831, *Florida Statutes*, as same may be amended, and subject to any limitations set forth in the Declaration or Articles, the Association shall indemnify the Directors, Officers, employees, agents and other persons specifically designated from time to time by the Board of Directors whom it may indemnify pursuant to law. In this connection, the Association is authorized to take out such insurance as it may deem necessary or desirable consistent with such indemnification.

## ARTICLE XI

### INSURANCE

The Board of Directors or its duly authorized agent shall obtain hazard insurance for improvements to the Common Property and Areas of Common Responsibility and a broad form public liability policy covering all Common Property and Areas of Common Responsibility and all damage or injury caused by negligence of the Association or any of its agents as more fully described in the Declaration.

## ARTICLE XII

### AMENDMENTS

These By-Laws may be amended or repealed and new By-Laws adopted by the Directors so long as Declarant has the authority to appoint the Directors and thereafter by a majority vote

of the Board of Directors present, in person or by proxy, and entitled to vote at a regular or special meeting of the Board; provided that any matter which is in fact governed by the Declaration may not be amended except as provided in the Declaration. Notwithstanding anything herein to the contrary, HUD, FHA and VA shall have the right to veto any amendments to these Bylaws as long as a Class "B" membership exists.

### ARTICLE XIII

#### COMMITTEES

The Association shall appoint a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

### ARTICLE XIV

#### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

### ARTICLE XV

#### ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual, special and individual assessments which are secured by a lien upon the property against which the assessment is made.

### ARTICLE XVI

#### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: "**POITRAS ESTATES HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation", and the year of incorporation in the center of that circle.

### ARTICLE XVII

#### GENERAL

Section 1. Conflicts. It is intended that the provisions of the Declaration which apply to the governance of the Association, as supplemented by the provisions in these By-Laws which are not contained in the Declaration, shall operate as the By-Laws of the Association. In the case of any conflict between such provisions set forth in the Declaration and these By-Laws, the Declaration shall control.

Section 2. Waiver. No provision of these By-Laws or any regulation promulgated by the Board of Directors pursuant hereto shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

Section 3. Severability. The provisions of these By-Laws are severable, and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remainder.

Section 4. Captions. Captions are inserted herein only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision.

Section 5. Gender and Number. All nouns and pronouns used herein shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall include the plural and the plural shall include the singular whenever the context requires or permits.

Section 6. Roberts Rules. All meetings of the membership of the Board of Directors shall be conducted in accordance with *Roberts Rules of Orders Revised*.

Section 7. Fiscal Year. The fiscal year of the Association shall be the calendar year or such other period as shall subsequently be determined by the Board of Directors.

IN WITNESS WHEREOF, we, being all of the directors of **POITRAS ESTATES HOMEOWNERS ASSOCIATION, INC.**, have adopted these Bylaws as the Bylaws of the Association this 13<sup>th</sup> day of January, 2005.

Katherine P. Cote  
Witness

Julie L. Fisher  
Witness

[Signature]  
Witness

[Signature]  
Larry W. Williams, Director

[Signature]  
Gregory D. Lee, Director

[Signature]  
Gregory V. Wybo, Director

**JOINER AND CONSENT BY MORTGAGEE**

KNOW ALL MEN BY THESE PRESENTS:

THAT PEOPLES FIRST COMMUNITY BANK (the "Mortgagee"), whose address is 1022 West 23<sup>rd</sup> Street, 6<sup>th</sup> Floor, Panama City, Florida 32405, the owner and holder of that certain Mortgage and Security Agreement recorded December 11, 2002 in Official Records Book 05197, Page 2138, Public Records of Polk County, Florida (the "Mortgage"), encumbering the Property described in the foregoing Declaration of Covenants, Conditions and Restrictions for POITRAS ESTATES (the "Declaration"), by the execution hereof, hereby joins into and consents to the placing of the Declaration on the Property described in Exhibit "A" to the Declaration, and further covenants and agrees that the lien of the Mortgage is and shall be subordinate to the Declaration as if the Declaration had been executed and recorded prior to execution, delivery or recordation of the Mortgage.

IN WITNESS WHEREOF, the Mortgagee has executed this Joinder and Consent by Mortgagee this 13<sup>th</sup> day of JANUARY, 2005.

Signed, sealed and delivered in the presence of:

MORTGAGEE:

PEOPLES FIRST COMMUNITY BANK

By: Norman P. Thompson Jr.

Print Name: NORMAN P. THOMPSON Jr.

Title: CITY PRESIDENT

Date: 1/13/05, 2005

(CORPORATE SEAL)

Judy A. Bowers

Print: JUDY A. BOWERS

O. Palermo

Print: O. PALERMO

STATE OF FLORIDA )  
COUNTY OF SEMINOLE )

THE FOREGOING INSTRUMENT was acknowledged before me this 13 day of JANUARY, 2005 by NORMAN P THOMPSON, the CITY PRESIDENT, of PEOPLES FIRST COMMUNITY BANK, on behalf of said bank. He  is personally known to me or  has produced \_\_\_\_\_ as identification.

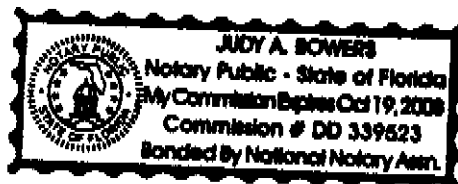
Judy A. Bowers

Name: \_\_\_\_\_

Title: Notary Public

My Commission Expires: \_\_\_\_\_

(NOTARY STAMP)



**JOINDER AND CONSENT BY MORTGAGEE**

KNOW ALL MEN BY THESE PRESENTS:

THAT MARONDA HOMES, INC. OF FLORIDA (the "Mortgagee"), whose address is 411 Central Park Drive, Sanford, Florida 32771, the owner and holder of that certain Second Mortgage and Security Agreement recorded April 5, 2004 in Official Records Book 5727, Page 1419, Public Records of Polk County, Florida (the "Mortgage"), encumbering the Property described in the foregoing Declaration of Covenants, Conditions and Restrictions for POITRAS ESTATES (the "Declaration"), by the execution hereof, hereby joins into and consents to the placing of the Declaration on the Property described in Exhibit "A" to the Declaration, and further covenants and agrees that the lien of the Mortgage is and shall be subordinate to the Declaration as if the Declaration had been executed and recorded prior to execution, delivery or recordation of the Mortgage.

IN WITNESS WHEREOF, the Mortgagee has executed this Joinder and Consent by Mortgagee this 13 day of JANUARY, 2005.

Signed, sealed and delivered in the presence of:

MORTGAGEE:

MARONDA HOMES, INC. OF FLORIDA, a Florida corporation

Evelyn D. West

Print: Evelyn D. West

William W. Bayhill

Print: William W. Bayhill

By: [Signature]

Print Name: Billy Rousch

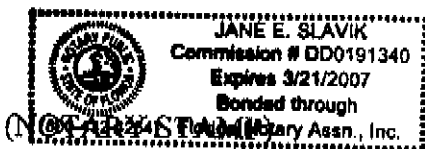
Title: VICE-PRESIDENT

Date: Jan. 13, 2005

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF Summit

THE FOREGOING INSTRUMENT was acknowledged before me this 13 day of January, 2005 by Billy Rousch, the Vice-President of MARONDA HOMES, INC. OF FLORIDA, a Florida corporation, on behalf of said corporation. He  is personally known to me or  has produced \_\_\_\_\_ as identification.



[Signature]  
Name: JANE E. SLAVIK  
Title: Notary Public  
My Commission Expires: 3/21/07