

*Prepared by:*  
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NAPLES, FLORIDA 34103  
TEL: (239) 331-5100

## **NOTICE OF PRESERVATION OF USE RESTRICTIONS UNDER MARKETABLE RECORD TITLE ACT**

Pursuant to Chapter 712, Florida Statutes, the undersigned Claimant files this Notice and in support thereof states:

1. The name and address of the entity filing this Notice is **Wiggins Bay Foundation, Inc.**, (the "Association"), a Florida corporation, not-for-profit, c/o Towne Properties, 1016 Collier Center Way, Suite 101, Naples, Florida 34110. The Articles of Incorporation were originally filed in the office of the Secretary of State on October 11, 1983, and the Association has been organized for the purpose of operating and administering the community known as Wiggins Bay Foundation pursuant to the recorded covenants pertaining thereto, originally recorded on June 21, 1984, in O. R. Book 1088, at Page 1536, *et seq.*, in the Public Records of Collier County, Florida.

2. The Association has sent a Statement of Marketable Title Action in the form set forth in Section 712.06(1)(b), Florida Statutes, to all members of the Association and all other Lot owners in the subdivision described below. An Affidavit executed by a member of the Board of Directors of the Association affirming that the Board of Directors caused the Statement of Marketable Title Action to be mailed to all members of the Association and Lot owners, and the original Statement of Marketable Title Action which was mailed to all members of the Association and lot owners, are attached hereto as Composite Exhibit "A".

3. The lands affected by this Notice are depicted and legally described on the Plat of the Wiggins Bay Phase 1, a true and correct copy of which is attached hereto as Exhibit "B".

4. The real property interest claimed under this Notice is the right to preserve those certain use restrictions in the Declaration of Covenants recorded in O. R. Book 1088, at Page 1536, *et seq.*, on June 21, 1984 in the Public Records of Collier County, Florida and all subsequent amendments thereto, attached hereto as Exhibit "C" and as each may be amended in accordance with the terms, provisions, and conditions thereof. The property encumbered by said covenants and restrictions is described in Exhibit "C" and the Plat, Exhibit "B" attached hereto.

## WITNESSES:

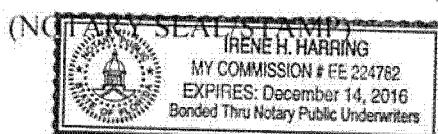
Sign: JoAnn Babiarz  
 Print: JoAnn Babiarz

Sign: Susan K. McGill  
 Print: SUSAN K. MCGILL

STATE OF FLORIDA  
 COUNTY OF COLLIER

APRIL THE FOREGOING INSTRUMENT was acknowledged before me this 1<sup>ST</sup> day of June, 2015, by Herbert Bias, as President of Wiggins Bay Foundation, Inc. who (check one):  
 is personally known to me  
 produced \_\_\_\_\_

as identification.



Notary Sign: Irene H. Harring  
 Print: IRENE H. HARRING

## WIGGINS BAY FOUNDATION, INC.

Sign: JoAnn Babiarz  
 Print: JoAnn Babiarz

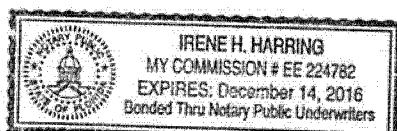
Sign: Susan K. McGill  
 Print: SUSAN K. MCGILL

STATE OF FLORIDA  
 COUNTY OF COLLIER

APRIL THE FOREGOING INSTRUMENT was acknowledged before me this 1<sup>ST</sup> day of June, 2015, by H. M. Grunter, Jr., as Secretary of Wiggins Bay Foundation, Inc. who (check one):  
 is personally known to me  
 produced \_\_\_\_\_

as identification.

(NOTARY SEAL/STAMP)



Notary Sign: Irene H. Harring  
 Print: IRENE H. HARRING

**AFFIDAVIT OF MAILING OR HAND DELIVERING  
STATEMENT OF MARKETABLE TITLE ACTION TO OWNERS**

The undersigned, whose name appears below, after being first duly sworn, states and affirms that the Statement of Marketable Title Action approved at the meeting of the Board of Directors of Wiggins Bay Foundation, Inc., held on April 1<sup>st</sup>, 2015, at 9:00 A.M./P.M. for the preservation of the original Declaration of Covenants for Wiggins Bay, and any amendments thereto, was mailed or hand delivered to all Owners at the addresses shown on the attached list in accordance with Florida law.

WIGGINS BAY FOUNDATION, INC.

Sign: H. M. Gunter, Jr.  
Print: H. M. Gunter, Jr.  
Title: SECRETARY

STATE OF FLORIDA  
COUNTY OF COLLIER

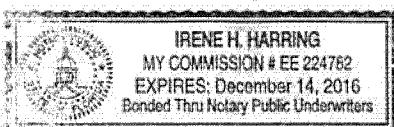
SWORN TO AND SUBSCRIBED before me this 1<sup>st</sup> day of APRIL, 2015, by H. M. Gunter, Jr. as, Secretary, of Wiggins Bay Foundation, Inc., who (check one):

is personally known to me  
 produced \_\_\_\_\_ as identification.

(NOTARY SEAL/STAMP)

Notary Sign: Irene H. Harring

Print: IRENE H. HARRING



EXHIBIT

A

**STATEMENT OF MARKETABLE TITLE ACTION**

WIGGINS BAY FOUNDATION  
THE S.W. 1/4 SECTION 16, T. 48 S., R 25 E.  
COLLIER COUNTY, FLORIDA

Wiggins Bay Foundation, Inc., ("Association"), has taken action to ensure that the Declaration of Covenants for Wiggins Bay as recorded in O. R. Book 1088, at Page 1536, *et seq.*, on June 21, 1984, in the Public Records of Collier County, Florida, currently burdening the property of each and every member of the Association and all Lots in Wiggins Bay as found in Plat Book 13, Pages 89 and 90, Public Records of Collier County, Florida, and as described in the Declaration of Covenants of Wiggins Bay, as recorded in O. R. Book 1088, at Page 1536, *et seq.*, on June 21, 1984 in the Public Records of Collier County, Florida, retain their status as the source of marketable title with regard to the transfer of a member's or Lot owner's residence. To this end, the Association shall cause notice required by Chapter 712, Florida Statutes, to be recorded in the Public Records of Lee County, Florida. Copies of this Statement and its attachments are available through the Association pursuant to the Association's governing documents and the law regarding official records of the Association.



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001542

## OR BOOK

PAGE

03.02. Plans, Specifications and Locations of Structures.

(a) Declarant may establish, and from time to time modify, standards for the control of the design of all structures and other work within Wiggins Bay.

(b) Declarant shall have the right, but not the obligation, to appoint to serve at the pleasure of Declarant, an architectural review board to advise the Declarant and to perform such other duties and exercise such rights herein reserved to Declarant as the Declarant may from time to time delegate.

(c) No structure shall be commenced, erected, improved or altered, nor shall any grading, excavation, tree removal or change of exterior color or other work which in any way alters the exterior appearance of any structure or Plot or of any Foundation Common Area or Neighborhood Common Area be done without the prior written approval of the Declarant.

(d) Each Owner shall, prior to the commencement of any construction, submit in sequence to Declarant the following materials: (i) a "preliminary concept" plan which shall include schematic site plans, floor plans and exterior elevations; (ii) "design proposals" which shall include more detailed building and site design documents sufficient and definitive in detail so that there can be determined the character, exterior appearance, exterior materials and colors, and the quality and kind of building and landscape materials proposed; and (iii) "construction plans and specifications" which shall be a true extension of the preliminary concept plans and design proposals. Declarant shall, in writing, within a reasonable time after receipt of each required submittal, reject or approve, subject to change, such plans, proposals and specifications as are submitted to it as required above. Failure to obtain written approval of Declarant of all such plans, proposals and specifications prior to the commencement of any construction shall be deemed a material breach hereof and Declarant shall then have the right, in addition to any other right permitted by law or in equity, to proceed in the courts to obtain a mandatory injunction requiring any construction done without said written approval to be torn down or removed forthwith.

(e) The approval, rejection or withholding of any approval by Declarant of the plans, proposals and specifications and the location of all structures, and every alteration of any structure shall not be construed or interpreted as a representation or determination by Declarant that any building, plumbing, electrical code or other applicable governmental regulations or requirements have or have not been properly met by the Owner. Each Owner shall be responsible for obtaining all necessary technical data and to make application to and obtain the approval of Collier County and any other appropriate governmental agencies prior to commencement of any work or construction.

061088

001536

OR BOOK

PAGE

WIGGINS BAYDECLARATION OF COVENANTS

DECLARATION, made this 20th day of June, 1984, by WIGGINS BAY ASSOCIATES, LTD., an Illinois limited partnership.

WITNESSETH:

WHEREAS, Wiggins Bay Associates, Ltd. is the developer of a new community development consisting primarily of residential and business properties near the City of Naples, in Collier County, Florida, known as WIGGINS BAY, and desires to create a superior and unique community; and

WHEREAS, Declarant desires to provide for the use, enjoyment and preservation of the lands and property known as WIGGINS BAY, to promote the personal and general health, safety and welfare of the residents, and for the maintenance of the land and improvements thereon, and to this end desires to subject the Properties together with such additions as may hereafter be made thereto in accordance with the provisions hereof, to the protective covenants, conditions, restrictions, reservations and other provisions hereinafter set forth, each and all of which is and are for the benefit of the Properties and each owner thereof; and,

WHEREAS, to provide a means for meeting certain, but not all, of the purposes and intents herein set forth, Declarant has incorporated under the laws of the State of Florida, Wiggins Bay Foundation, Inc., a not-for-profit corporation; and,

WHEREAS, Declarant may, in its sole discretion, from time to time, convey, lease or grant a license or other use right to lands within or without Wiggins Bay by deed, easements, or otherwise to the Foundation (which must accept the same) for the purpose of maintenance, landscaping, drainage, recreation or other purposes that will be for the use and benefit of its members and their families, tenants and guests.

NOW, THEREFORE, the Declarant, Wiggins Bay Associates, Ltd., hereby declares that the Properties, together with such additions as may hereafter be made thereto, are and shall be owned, used, and conveyed subject to the covenants, conditions, restrictions, reservations and all other provisions of this Declaration of Covenants, all as hereinafter set forth, which shall run with the real property, inure to the benefit of and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns.

001537

## OR BOOK

PAGE

## ARTICLE I

DEFINITIONS

01.01. Business Unit means each one-tenth (1/10th) of an acre of any commercial, institutional or clubhouse plot as provided in the General Development Plan; thus each acre of such property shall have ten (10) Business Units assigned to it.

01.02. Clubhouse Complex means the land and improvements lying within the area designated as Tract 3 on the plat of Wiggins Bay.

01.03. Condominium Association means the corporate entity responsible for the operation of any Plot submitted to condominium ownership.

01.04. Declarant means Wiggins Bay Associates, Ltd., an Illinois limited partnership, presently having its principal place of business in Collier County, Florida, its successors or assigns of any or all of its rights under this Declaration.

01.05. Declaration means this documents, entitled Declaration of Covenants, as the same may be amended from time to time.

01.06. Dwelling Unit means each residential dwelling which may be constructed at Wiggins Bay.

01.07. Foundation means Wiggins Bay Foundation, Inc., a Florida corporation not-for-profit, which has its principal place of business in Collier County, Florida, its successors or assigns.

01.08. Foundation Common Area means all real property, including any improvements and fixtures thereon, owned, leased or the use of which has been granted to the Foundation for the common use and enjoyment of its Members.

01.09. General Development Plan means the Declarant's plan of Wiggins Bay as it may be amended from time to time by Declarant, showing the land uses and the Property Units assigned by Declarant to the various portions of the Properties.

01.10. Governing Documents means the Declaration and the Articles of Incorporation and By-Laws of the Foundation, all as filed or recorded, if required, and all as may be amended from time to time. In the event of conflict or inconsistency among the documents, the governing provision shall be that first appearing in the following sequence: the Declaration, the Articles and the By-Laws.

01.11. Marine Unit means any boat slip intended for the mooring of one (1) boat.

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## OR BOOK

## PAGE

01.12. Members means those persons who are entitled to membership in the Foundation as provided in its Articles of Incorporation and By-Laws. The two classes of membership are:

(a) Class A means the class of membership which includes all Members with the exception of the Declarant for so long as it is a Class B Member.

(b) Class B means the class of membership which includes only the Declarant.

01.13. Owner means a record owner of a fee simple title to any Plot located within the Properties, but excluding those having an interest in a Plot merely as security for the performance of an obligation.

01.14. Wiggins Bay means those certain lands in Section 16, Township 48 South, Range 25 East, shown and described in the Plat of Wiggins Bay, Phase 1, as now or hereafter recorded in the public records of Collier County, Florida, and such other lands as may, from time to time, be added to or subtracted from said lands pursuant to Article II.

01.15. Person means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

01.16. Plot means a platted lot, a platted parcel, a condominium unit together with the undivided share of the common elements which is appurtenant to the unit, or any quantity of land; including any fixtures and improvements thereon, capable of being described with such definiteness that its location and boundaries may be established, which is designated by the Declarant to be used, developed and conveyed as a unit.

01.17. Properties means those certain lands located within Wiggins Bay and such additional lands as may hereafter be subjected to this Declaration pursuant to Article II.

01.18. Property Unit means any Dwelling Unit, any Marine Unit or any Business Unit; each Plot shall have such number of Property Units as may be assigned to it by Declarant in accordance with the provisions of this Declaration.

01.19. PUD means the real estate development project described in Ordinance 82-121, including the document titled "Wiggins Bay Planned Unit Development Document", adopted by the Board of County Commissioners of Collier County, Florida, on December 28, 1982, as it may from time to time be modified or amended.

01.20. Structure means that any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires more or less permanent location on the

061088

001539

OR BOOK

PAGE

ground, or which is attached to something having a permanent location on the ground, and any part thereof.

## ARTICLE II

DECLARANT'S RIGHTS AND POWERS02.01. Additions to the Properties.

(a) Declarant shall have the right and the power, but neither the duty nor the obligation, in its sole discretion, to add any lands within Sections 16 and 17 (and any land contiguous to lands within Wiggins Bay), Township 48 South, Range 25 East, in Collier County, Florida, to the Properties by recording an instrument subjecting such additional lands to this Declaration. The effect of such an addition would be to allow for an increase in the number of Plots, the number of Members, the number of Development Units, and the total number of votes which could be cast by members of the Foundation.

(b) At the time that any additional lands are made subject to this Declaration, Declarant may also record an instrument which (i) modifies any of the provisions of this Declaration insofar as they may apply to such additional lands only, or (ii) creates new provisions applicable only to such additional lands, or (iii) omits the applicability of any of the provisions of this Declaration to such additional lands, or (iv) does any, all, or none of the above.

(c) The execution and recordation of this Declaration shall not be construed to require Declarant to subject any lands, other than Wiggins Bay, to the covenants, conditions, restrictions, reservations or other provisions of this Declaration or any other recorded instrument.

02.02. Foundation Common Area.

(a) Declarant shall have the right and the power, but neither the duty nor the obligation, in its sole discretion, to convey, lease or grant a license or other use right to real property within or without Wiggins Bay to the Foundation for such purposes as may be expressed in the instrument of conveyance, lease or grant of license or use. No such real property shall be considered to be Foundation Common Area until actually so conveyed, leased or a grant of license or other use right is created by a written instrument.

(b) Any such conveyance, lease or grant of license or use right to the Foundation may be exclusive or non-exclusive so that persons or entities other than the Foundation may or may not have a right, power, duty, or privilege with respect to all or any part of any real property so conveyed, leased, licensed or the use of which has been granted. Foundation must accept from Declarant any such conveyance, lease, grant of license or grant of use

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OR BOOK

PAGE

right. Foundation shall not accept from any other than Declarant a conveyance, lease, grant of license or grant of use right except upon the prior written approval of the Declarant.

(c) Prior to any conveyance, lease or grant of license or other use right by Declarant to Foundation of any property, Declarant shall have the right to charge reasonable fees for the use of such property; thereafter, the right to use such property may be subject to reasonable rents, fees and other charges in favor of the Foundation; in any event, rents, fees and other charges required to be paid to Declarant under leases, grants, licenses or contracts creating use rights shall continue to be paid.

**02.03. Other Entities or Associations.**

Declarant shall have the right and the power, but neither the duty nor the obligation, to record an instrument subjecting the additional lands as provided in Section 2.01 to covenants, conditions, restrictions and reservations other than those provided for in this Declaration. Such provisions may or may not create property owners' associations, homeowners' associations, condominium associations or entities other than the Foundation. Such other entities may or may not have the same, additional, or different rights, powers, duties or privileges with respect to such additional lands; provided however, that any such recorded instrument may subject such additional lands to the jurisdiction of the Foundation, and may make the owners of such additional lands Members of the Foundation under such terms and conditions as may be provided therein, which may be the same as or substantially different from the terms and conditions of membership as are provided herein.

**02.04. Enforcement.**

(a) Declarant reserves unto itself the right and the power, (i) to enforce the covenants, conditions, restrictions, reservations and other provisions of this Declaration, and (ii) to delegate or assign, either exclusively or non-exclusively, any or all of its rights, powers, duties or privileges hereunder to the Foundation or to any other Person.

(b) The Declarant shall have the right and the power to enforce the covenants, conditions, restrictions, reservations and other provisions imposed by this Declaration by any proceeding at law or in equity against any person violating or attempting to violate any such provisions, to restrain any violation or attempted violation of such provisions, to require specific performance of such provisions, to recover damages for violations of such provisions, and to enforce any lien upon a Plot created by this Declaration. Failure by Declarant, or the Foundation, or an Association, or any Owner, or any other Person, to enforce any of such provisions shall in no event be deemed a waiver of their right to do so thereafter.

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OR BOOK

PAGE

(c) The costs and reasonable attorneys fees, including those resulting from any appellate proceedings, incurred by Declarant in any action against an Owner to enforce any provision of this Declaration shall be a personal obligation of such Owner which shall be paid by such Owner and any amount thereof which remains due and unpaid shall be a continuing lien upon such Owner's Plot, collectible in the manner provided in Article VI.

**02.05. Declarant's Inaction.**

Neither the execution and recordation of this Declaration nor the creation of any Association or other entity, nor the recordation of any other instrument subjecting any land in Wiggins Bay to protective covenants, conditions, reservations or other provisions shall obligate or require (i) Declarant to grant any right, power, duty or privilege of any nature or kind to the Foundation or to any other entity, or (ii) Declarant, the Foundation or any other entity to perform any act permitted by this Declaration or by any other recorded instrument, or to enforce any covenant, condition, restriction, reservation or other provision hereof or thereof, or to do anything which it does not, in its sole discretion, elect so to do.

**02.06. Assignment.**

Except as otherwise specifically provided herein, Declarant reserves the right and the power to delegate or assign, either exclusively or non-exclusively, to any person or entity, any or all of its rights, powers, duties or privileges created or provided for by this Declaration or by any other recorded instrument. Declarant shall be under no obligation to delegate or assign any of its rights, powers, duties and privileges contained in this Declaration to any person or entity.

**ARTICLE III**

**RESTRICTIONS**

**03.01. Use Restrictions.**

The Properties may be used for those purposes as provided in the Declarant's General Development Plan. The PUD contains certain provisions which allow flexibility in assigning and reassigning various land uses to the real property within Wiggins Bay. Declarant reserves solely unto itself the right and the power to assign and reassign various land uses to real property within Wiggins Bay as provided by the PUD, and to inaugurate and implement variations from, modifications to, or amendments of the PUD and any other governmental plans, land development regulations, development orders and development permits applicable to Wiggins Bay.

**DRAWING NUMBER**

#### DRAWING NUMBER

PROGRAMMING

#### DEPARTMENT SHEET

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PLAT BOOK 13 PAGE 90

001088

001543

## OR BOOK

## PAGE

(f) Declarant shall have no duty, responsibility or liability to any Owner or to any other Person whomsoever in respect to the exercise of its rights or the failure to exercise its rights. Declarant may reject plans, proposals and specifications based on any grounds or reason whatsoever, including purely aesthetic grounds, in its sole and absolute discretion. Declarant's decision to approve, reject or withhold its approval of such work may, in the sole exercise of its discretion, be based upon: (i) the harmony of its exterior design, color and location in relation to, and its effect upon, surrounding structures, vegetation, topography, and the overall community design; (ii) the character of the exterior materials; (iii) the planned quality of the exterior workmanship; (iv) Declarant's design and construction standards; (v) the General Development Plan; or (vi) any other material and relevant factors.

(g) Declarant reserves the right to require as a condition precedent to the approval of any development plans, a reasonable commitment for diligent prosecution and completion of construction and appropriate remedies in the event of default in order to protect the use and enjoyment of other lands within Wiggins Bay.

### 03.03. Colors.

No exterior colors on any structure shall be permitted that, in the sole judgment of Declarant, would be inharmonious or discordant or incongruous with Wiggins Bay, the Properties or the particular Neighborhood. Any future exterior color changes desired by Owner must be first approved by Declarant in writing.

### 03.04. Factory Built Structures.

No structure of any kind of what is commonly known as "factory built", "modular", or "mobile home" type construction, including sales facilities and facades, shall be erected without the prior written permission of Declarant.

### 03.05. Landscape.

All areas not covered by structures, walkways, tennis courts, or paved parking facilities shall be maintained as lawn or landscape areas, with underground sprinkler systems, to the paved edge of any abutting streets and to the waterline of any abutting river, pond or water management areas not to exceed thirty-five (35) feet from the boundary line of a Plot. No stone, gravel, or paving of any type shall be used as a lawn unless approved as part of the final landscape plan. All landscaping shall be accomplished in accordance with a landscape plan approved by Declarant. All required lawns and landscaping shall be completed at the time of completion of the structure as evidenced by the issuance of a Certificate of Occupancy by the appropriate governmental agency, and shall be kept in good and living condition by Owner. Temporary sales facilities shall be landscaped and otherwise conform to the provisions of this Section 03.05.

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001544

OR BOOK

PAGE

03.06. Driveways and Parking Areas.

No gravel, blacktop or other paved residential parking strips will be allowed unless first approved in writing by Declarant. Driveways and parking areas must be constructed with materials as first approved in writing by Declarant.

03.07. Underground Utility Lines.

All electric, telephone, television cable and other utility lines must be installed underground.

03.08. Antennas and Flagpoles.

No outside antennas, antenna poles, antenna masts, dish antennas, electronic devices, antenna towers or citizen band (CB) or amateur band (ham) radio antennas shall be permitted without prior written approval of Declarant. A flagpole for display of the American Flag only and any other flag approved in writing by Declarant shall be permitted and its design and location must be first approved in writing by Declarant. Declarant shall be entitled to limit the size and number of flags of every kind. An approved flagpole shall not be used as an antenna.

03.09. Temporary and Accessory Structures.

No tents or temporary structures shall be permitted unless their size, appearance and temporary location on the Plot have first been approved by Declarant in writing. Any signs to be used in conjunction with any tent or temporary structure must also be approved by Declarant in writing. Adequate landscaping shall be installed and maintained by Owner, around any tent or temporary structure in sufficient quantity so that they shall not be readily visible from any adjacent streets and properties. No accessory structure shall be permitted except with the prior written approval of Declarant.

03.10. Outdoor Equipment.

All garbage and trash containers, oil tanks, bottled gas tanks, swimming pool equipment and housing and sprinkler pumps and such other outdoor equipment must be underground or placed in walled, sight-screened, fenced areas landscaped so that they shall not be readily visible from any adjacent Plot, Common Area, street or properties.

03.11. Air Conditioners.

All air conditioning units shall be shielded and hidden so that they shall not be readily visible from any adjacent Plot, Common Area, street or properties. Wall air conditioning units may be permitted only upon the prior written approval of Declarant. Window air conditioning units shall not be permitted.

061060

001545

OR BOOK

PAGE

**03.12. Solar Collectors.**

Solar collectors shall only be permitted at locations and on structures as are first approved in writing by Declarant.

**03.13. Signs and Names.**

No signs, temporary or permanent, freestanding or otherwise installed, shall be erected or displayed in or on any Plot or structure, unless the placement, character, form, size, lighting and time of placement of such sign be first approved in writing by Declarant. Declarant may withhold approval of any "for rent" and "for sale" signs. All signs must also conform with governmental codes and regulations and with any master design plans for signs established by Declarant. All names of buildings and building complexes must be approved in writing by Declarant prior to being displayed within Wiggins Bay or used in advertising media.

**03.14. Walls, Fences and Shutters.**

No wall or fence shall be constructed with a height of more than eight (8) feet above the ground level of an adjoining Plot, and no hedge or shrubbery abutting the Plot lines shall be permitted with a height of more than eight (8) feet without the prior written approval of Declarant. No wall or fence shall be constructed on any Plot until its height, length, type, design, composition, material and location shall have first been approved in writing by Declarant. The height of any wall or fence shall be measured from the existing property elevations. Any dispute as to height, length, type, design, composition or material shall be resolved by Declarant, whose decision shall be final. Hurricane or storm shutters shall not be stored on the exterior of any building or structure.

**03.15. Lighting.**

All exterior lighting of a Plot shall be accomplished in accordance with a lighting plan approved in writing by Declarant.

**03.16. Clothes Drying Area.**

No outdoor clothes drying area shall be on the Properties.

**03.17. Trucks, Commercial Vehicles, Recreation Vehicles, Mobile Homes, Boats, Campers and Trailers.**

(a) No truck, van or other commercial vehicle of any kind shall be permitted to be parked for a period of more than four (4) hours unless such vehicle is necessary in the actual construction or repair of a structure or for ground maintenance.

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001546

## OR BOOK

PAGE

(b) No truck, van, or other commercial vehicle, and no recreation vehicle shall be permitted to be parked overnight unless kept fully enclosed inside a structure.

(c) No boat, boat trailer or other trailer of any kind, camper, mobile home or disabled vehicle shall be permitted to be parked or stored unless kept fully enclosed inside a structure.

(d) A truck, van or other commercial vehicle may be permitted to be parked on a Plot assigned Business Units for periods of more than four (4) hours, provided that such a vehicle is necessary and incident to the activities permitted on the Plot. Overnight parking of such a vehicle may be permitted only to the rear of a principal structure on a Plot assigned Business Units.

(e) None of the aforementioned vehicles shall be used as a domicile or residence, either permanent or temporary.

(f) Paragraphs (a) through (e) shall not be deemed to prohibit any temporary facility permitted pursuant to Section 03.09.

03.18. Pets and Animals.

(a) Commonly accepted household pets such as dogs, cats and pet birds may be kept in reasonable numbers. All animals shall be contained on the Owner's Plot and shall not be permitted to roam free.

(b) Commercial activities involving pets shall not be allowed except that reasonable commercial activities may be permitted on a Plot assigned Business Units upon the written approval of Declarant. Declarant may establish limits on the number and kind of pets that may be kept or permitted to be kept on any Plot.

(c) No hogs, pigs, swine, goats, chickens, pigeons or any other obnoxious animals, fowl or reptiles shall be kept or permitted to be kept on any Plot.

03.19. Maintenance of Premises.

No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any Plot and no refuse or unsightly objects shall be allowed to be placed or suffered to remain upon any Plot. All lawns, landscaping and sprinkler systems and any property, structure, improvement and appurtenance shall be kept in good, safe, clean, neat and attractive condition, and all structures shall be maintained in a finished, painted and attractive condition.

03.20. Water Management Area.

(a) No structure of any kind shall be constructed or erected, nor shall Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water, in any

001540

001547

OR BOOK

PAGE

portion of any water management area reserved for, or intended by Declarant to be reserved for, drainage ways, sluiceways, spreader waterways, or for the accumulation or retention of runoff waters, as reflected in any plat or instrument of record, without the specific written permission of Declarant.

(b) Owner shall in no way deny or prevent ingress and egress to such water management areas for maintenance or landscape purposes by Declarant, Foundation or any appropriate governmental agency that may reasonably require any right of ingress and egress, and easements therefore are hereby specifically reserved and created.

(c) No Plot shall be increased in size by filling in any water or retention and drainage areas on which it abuts. Owner shall not fill, dike, rip-rap, block, divert or change the established water or retention and drainage areas that have been or may be created by easement without the prior written consent of Declarant.

#### 03.21. Nuisances.

Nothing may or shall be done which may be or may become an annoyance or nuisance to any Person or to a Neighborhood. No obnoxious, unpleasant or offensive activity shall be carried on, nor may anything be done which can reasonably be construed to constitute a nuisance, public or private in nature. Any question with regard to the interpretation of this Section 03.21 shall be decided by Declarant whose decision shall be final.

#### 03.22. Declarant's Exculpation.

Declarant may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required without any liability of any nature or kind to Owner or any other Person for any reason whatsoever, and any permission or approval granted shall be binding upon all Persons.

#### 03.23. Subdivision and Regulation of Land.

(a) No Plot shall be divided or subdivided without the express written consent of Declarant, who may impose certain requirements on Owner to comply with the provisions of the PUD. Declarant shall assign the number of Dwelling Units for each Plot, and the number of Dwelling Units assigned to each Plot shall not be increased by any Owner and shall not be exceeded without the prior express written approval of Declarant, which approval may be denied at the sole discretion of Declarant.

(b) No provision of this Declaration shall be construed as in any manner limiting or preventing any Plot, and the improvements thereon, from being submitted to a plan of condominium ownership, and particularly a condominium shall not be construed as constituting a subdivision of any Plot provided that the number of Prop-

001088

001548

OR BOOK

PAGE

erty Units of the condominium is not greater than the number of Property Units assigned to the Plot.

(c) An Owner shall not inaugurate or implement any variation from, modification to, or amendment of the PUD, or any other governmental plans, land development regulations, development orders or development permits applicable to Wiggins Bay, to the Properties, or to any Plot, without the prior written approval of Declarant, which approval may be denied at the sole discretion of the Declarant.

**03.24. Owner and Member Compliance.**

(a) The covenants, conditions, restrictions, reservations and other provisions of this Declaration shall apply not only to Owners, Members and Persons to whom a Member has delegated his right of use in and to the Foundation Common Area, but also to any other Person occupying an Owner's Plot under lease from the Owner or by permission or invitation of the Owner or his tenants, expressed or implied, licensees, invitees or guests.

(b) Failure of an Owner to notify any Person of the existence of the covenants, conditions, restrictions, reservations and other provisions of this Declaration shall not in any way act to limit or divest the right of Declarant of enforcement of these provisions and, in addition, the Owner shall be responsible for any and all violations of these provisions by his tenants, delegates, licensees, invitees, guests, and by guests, licensees and invitees of his tenants at any time.

**ARTICLE IV**

**PROPERTY RIGHTS AND FOUNDATION COMMON AREA**

**04.01. Members Rights and Easements.**

(a) Subject to reasonable restrictions and limitations established from time to time by Declarant (including the exclusion of some but not all Members from portions of the Common Areas, other than streets providing access to public roads), every Member shall have a right and easement of enjoyment and use in and to the Foundation Common Areas, which right and easement shall be appurtenant to and shall pass with the title to every Plot, subject to:

(i) the right of the Foundation to charge reasonable admission and other fees for the use of any Foundation Common Area;

(ii) the right of the Foundation to suspend a Member's right to vote, and a Member's right to the use of the Foundation Common Area, for any period during which any assessment against the Member's Plot or any obligation of the Member to the Foundation remains unpaid, and for a reasonable period during or after any infraction of the Foundation's rules and regulations;

001088

001549

OR BOOK

PAGE

(iii) the right of the Foundation to dedicate or transfer all or any part of the Foundation Common Area to any governmental agency, public authority, or utility;

(iv) the right of the Foundation to borrow money for the purpose of improving the Foundation Common Area and in aid thereof to mortgage Foundation Common Area;

(v) the right to take such steps as are reasonably necessary to protect Foundation Common Area against foreclosure; and

(vi) the provisions of this Declaration, or any other applicable recorded instrument, the Articles of Incorporation and By-Laws of the Foundation; and any rules and regulations governing use and enjoyment of the Foundation Common Area adopted by the Foundation.

(b) Anything herein to the contrary notwithstanding, the principal roads within Wiggins Bay which provide access between any Plot and the public street shall not be subjected to any mortgage, lien or encumbrance which is not subordinate to the rights of the Owners to use such roads for access to their respective Plots.

(c) So long as there is a Class B Member, any and all rights of a Member and any and all restrictions, limitations, conditions and rules and regulations that a Member shall be subject to, pursuant to this Article IV shall not be effective without the written approval of the Class B Member.

#### 04.02. Delegation of Right.

(a) A Member may delegate his right of use in and to the Foundation Common Area to the members of his family, to business and residential tenants who reside or work in or on the Member's Plot and to the Member's guests, but only to the extent and subject to conditions, limitations, restrictions and reservations as may be provided for in the By-Laws and in accordance with the Foundation's rules and regulations.

(b) Each Member shall be responsible for the actions of any Person to whom the Member has delegated his right to use the Foundation Common Area. Any unpaid charge against such Person shall be charged against such Member personally and be assessed against such Member's Plot. Any infraction of the Foundation's rules and regulations by such Person shall be deemed to be an infraction by such Member.

#### 04.03. Conveyance and Use.

(a) Any real property conveyed, leased or the use of which has been granted by Declarant or any third party to the Foundation as Foundation Common Area is not and shall not be deemed

001088

001550

## OR BOOK

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dedicated for use by the general public, but is and shall be deemed restricted for the common use and enjoyment of Members.

(b) Declarant may convey property to the Foundation in either an improved or an unimproved condition, with or without any specific restrictions on its use, and Foundation must accept such property. The Foundation shall not accept the conveyance of real property from any third party, in either an improved or unimproved condition, without the prior written consent of Declarant, so long as Declarant owns any land in Wiggins Bay.

04.04. Foundation's Rights and Powers.

(a) Subject to the provisions of this Declaration or any other applicable recorded instrument and the Foundation's Articles and By-Laws, the Foundation shall have the right and the power to develop, promulgate and enforce rules and regulations for the use and enjoyment of Foundation Common Area.

(b) No Foundation Common Area shall be used in violation of any rule or regulation or other requirement of the Foundation established pursuant to the provisions of this Declaration or the By-Laws.

04.05. Declarant's Rights and Powers.

(a) Declarant shall have the right and the power to regulate and control the external design and appearance of Foundation Common Area in such a manner as (i) to promote a quality environment which will preserve the value of the Member's Plots; and (ii) to foster the attractiveness and functional utility of Wiggins Bay as a place to live, work and play, including a harmonious relationship among structures, vegetation and topography.

(b) The Foundation Common Area shall be subject to the provisions of Article III. The uses of the Foundation Common Area shall be in conformity with the uses permitted in Article III. The provisions of Article III shall not be applicable to any property owned by Declarant prior to its conveyance to the Foundation.

(c) No nuisance, obnoxious or offensive activity shall be conducted or permitted on any Foundation Common Area. The Declarant shall have the right and the power in the exercise of its reasonable discretion to determine what activities or uses constitute nuisances, obnoxious or offensive activity. Nothing shall be done within the Foundation Common Area which may be or become a nuisance to residents or Members.

(d) Any use of Foundation Common Area shall be subject to the prior written approval of Declarant so long as Declarant owns any land in Wiggins Bay.

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OR BOOK

PAGE

04.06. Maintenance.

The Foundation shall be responsible for the maintenance and control of Foundation Common Area and shall keep the same in good, safe, clean, attractive and sanitary condition, order and repair at all times.

## ARTICLE V

MEMBERSHIP AND VOTING RIGHTS05.01. Members.

(a) Every Owner and the Declarant, so long as they are Owners, shall be Members of the Foundation. Membership shall be appurtenant to and may not be separated from ownership of a Plot which is subject to assessment by the Foundation. Persons other than an Owner may become Members of the Foundation only if a membership right is created in such Person by the recordation of a written instrument as provided for in Section 02.03, which subjects real property, or any interest therein, owned by such Person to assessment by the Foundation in the manner provided for in Article VI.

(b) Members' rights, powers, duties and privileges shall be as set forth in the Articles of Incorporation and By-Laws of the Foundation.

05.02. Voting Rights.

The Foundation shall have two classes of voting membership:

(a) Class A. One (1) vote may be cast for each Property Unit assigned to a Plot of which one (1) or more Class A Members are the Owners. In the event that two (2) or more Class A Members are the Owners of a Plot, then the Class A Member who shall be entitled to cast the vote for each Property Unit assigned to such Plot shall be determined by the method provided for in the Foundations By-Laws.

(b) Class B. Three (3) votes may be cast for each Property Unit assigned to a Plot of which the Class B Member is the Owner. The Class B Member shall, in its sole discretion, determine the Person or Persons who shall be entitled to cast the votes for the Property Units assigned to the Plots of which the Class B Member is the Owner. The Class B membership shall be converted to Class A membership and shall forever cease to exist when the Class B Member no longer owns a Plot, or such earlier date as Declarant, in its sole discretion, establishes by a recorded instrument executed by Declarant, after which Declarant shall be a Class A Member entitled to cast one (1) vote for each Property Unit assigned to the Plots of which Declarant is the Owner.

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001552

OR BOOK

PAGE

(c) Class C. The owner of the clubhouse complex shall be a member of the Foundation and entitled to cast one hundred (100) votes.

(d) The Declarant may, in its sole discretion, assign the number of Property Units, if any, to each Plot. Any dispute as to the number of Property Units assigned to a Plot or to a Property Unit shall be decided by Declarant whose decision shall be final.

#### 05.03. Voting Control.

(a) The affirmative vote of the holders of at least seventy-five percent (75%) of the total number of votes entitled to be cast shall be required to adopt or approve any proposal submitted to the Members.

(b) The total number of outstanding votes at any one time shall be determined by the total number of Property Units assigned to the total number of Plots within the Properties at that time, subject to this Declaration or such other voting rights as are created by any other recorded instrument which creates membership rights in the Foundation. Subjecting additional lands to this Declaration or the recordation of another instrument subjecting additional lands to the jurisdiction of the Foundation will make the Owners of real property within such additional lands Members of the Foundation, which will increase the total number of votes, and may enable the Declarant to retain voting control for a longer period.

(c) From time to time, Declarant shall designate in the General Development Plan the number of Property Units that it has assigned for each Plot, whether or not there are any structures located on it. An Owner of a Plot with more than one (1) Property Unit assigned to it shall, in the event that a portion of the Plot is conveyed to another Owner, reassign the number of Property Units originally assigned to the Plot in accordance with any conditions or limitations established by the Declarant, provided that it does not result in the casting of any fractional votes. In the event that an Owner fails or refuses to make any necessary reassignment, then the Declarant may make such reassignment.

## ARTICLE VI

### ASSESSMENTS

#### 06.01. Creation of the Lien and Personal Obligation.

(a) Each Owner, by acceptance of a deed for a Plot, whether or not it shall be so expressed in such deed, shall be covenanting and agreeing to pay to the Foundation: (i) an additional capital assessment to have been paid at the time of closing of the first conveyance of a Plot from the Declarant to an Owner; (ii)

001088

001553

OR BOOK

PAGE

annual assessments; and (iii) special assessments for capital improvements.

(b) The assessed value of each Plot as annually determined by the Collier County Property Appraiser pursuant to the applicable provisions of the Rules and Regulations of the State of Florida and of the Florida Statutes and the uniform millage rate annually established by the Foundation shall be used for the purpose of fixing the amount to be assessed against each Plot. Such assessments shall be fixed, levied, established and collected as provided in the By-Laws.

(c) The initial, annual and special assessments, together with interest and costs of collection, including reasonable attorneys' fees, which includes those resulting from any appellate proceedings, shall be a continuing lien upon the Plot against which such assessment is made.

(d) Each such assessment, together with interest and costs of collection, including reasonable attorneys' fees, which includes those resulting from appellate proceedings, shall also be the personal obligation of the Person who was the Owner of the Plot at the time such assessment fell due, and any due and unpaid assessments shall also be the personal obligation of each Person who becomes an Owner of a Plot. Each Owner, by acceptance of a deed for a Plot, is personally covenanting and agreeing to pay any such obligation and such personal obligation shall survive any conveyance.

(e) In the event that a Plot has been submitted to a plan of condominium ownership, then the Condominium Association thereof shall have the duty and responsibility for collecting and timely remitting to the Foundation any and all Foundation assessments and other charges, provided however, that the Foundation may, in its sole discretion, elect to collect due and unpaid Foundation assessments and other charges directly from any Owner personally and may impose a lien against such Owner's Plot for the payment of such assessments and charges which are due and unpaid.

(f) For purpose, amount, rate, exemption from, and non-payment of initial, annual and special assessments, and the establishment of annual budgets shall be as set forth in the Foundation's By-Laws.

(g) A Plot shall not be subject to assessment for so long as it is Foundation Common Area, or it is owned by a governmental agency and used solely for a public purpose.

(h) Anything herein to the contrary notwithstanding, no assessment shall be levied upon the Clubhouse Complex.

OR BOOK

001554

PAGE

06.02. Declarant's Duties and Obligations.

(a) For any assessment year, the Declarant may elect to pay: (i) the portion of the actual expenses, less any provision for reserves, that do not exceed budgeted amounts and which were properly incurred by the Foundation during that year which is greater than the sums received by the Foundation from the payment of assessments for that year by Owners other than Declarant; or (ii) such amount as it would otherwise be obligated to pay if it had been subject to the annual assessment for that year on those Plots within the Properties of which it is the Owner. Declarant shall make said election each year at such time and in such manner as shall be provided in the Foundation By-Laws.

(b) Except as specifically provided in this Section 06.02 and in the Foundation By-Laws, the assessment and lien provisions of this Article VI shall not apply to any Plot owned by Declarant or by any successor developer succeeding Declarant whether by assignment or in reorganization or by other arrangement. The assessment and lien provisions of this Article VI shall apply to a Plot of which the Declarant is the Owner only after the occurrence of any one of the following events: (i) Declarant has conveyed the Plot to another Owner; or (ii) a permanent structure is constructed and completed on the Plot and it is occupied and used for an activity which requires the issuance of a Certificate of Occupancy or the equivalent approval by an appropriate governmental agency; or (iii) Declarant executes and records a written instrument subjecting the Plot to the assessment and lien provisions of this Article VI.

(c) Declarant's duties and obligations as set forth herein shall be further subject to the conditions, restrictions, reservations and other limitations and any procedures for billing and payment as set forth in the Foundation's By-Laws.

06.03. Clubhouse.

Because the Clubhouse Complex provides recreational space, meeting facilities and aesthetic benefit to all Owners, any annual or special assessments provided for herein attributable to the Clubhouse and its underlying property will be only one-half (1/2) of the amount that would otherwise be required under the other provisions of this Declaration. There shall not be an initial capital assessment in respect of or arising out of the Clubhouse or its underlying property.

06.04. Lien.

(a) If any Owner fails to pay any assessment or make any other payment herein required to be paid to the Foundation within thirty (30) days after written request by the Foundation, then the Foundation is hereby granted a lien on such Owner's Plot, which lien shall secure the payment then due and all sums coming due thereafter up to the date of the satisfaction or other dis-

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001555

OR BOOK

PAGE

charge of the claim of lien hereinafter mentioned, together with interest at the highest permitted legal rate under the laws of the State of Florida from date of delinquency, and all costs of collection, including reasonable attorneys' fees, which includes those resulting from appellate proceedings, which may be incurred by the Foundation in enforcing this lien, and the costs of performing any other work required to enforce compliance with this Article VI.

(b) The lien herein granted shall be effective from and after the date of recording of a Claim of Lien in the public records of Collier County, Florida, which Claim of Lien shall state the description of the property encumbered thereby, the name of the Owner, the amount then due and the date when due and the lien shall continue in effect until all sums secured by said lien, as herein provided, shall have been fully paid, and the lien satisfied and discharged.

(c) The Foundation may bring an action of law against an Owner to pay his personal obligations to the Foundation, or it may foreclose the lien against his Plot. An Owner against whom any such proceeding is successfully brought shall pay all costs of collection, including reasonable attorneys' fees, which includes those resulting from appellate proceedings.

(d) No Owner may waive or otherwise escape liability for the payments provided for herein by non-use or abandonment of his Plot.

#### 06.05. Subordination of the Lien.

The lien herein created is specifically declared to be subordinate and inferior to the lien and operation of any first mortgage encumbering the Plot in question given by the Owner to an institutional mortgagee. For the purpose of this Section 06.05, an institutional mortgagee shall be a bank, savings and loan association, insurance company, union pension fund or any agency of the United States government, or any Person given a mortgage insured by the Federal Housing Administration, the Veterans Administration, Federal National Mortgage Association, or any branch or agency of the United States Government or the government of the State of Florida, and furthermore, the term "institutional mortgagee" shall be deemed to include any mortgagee that Declarant shall declare by instrument in writing and placed of record among the public records of Collier County, Florida, to be an institutional mortgagee.

001556

OR BOOK

PAGE

## ARTICLE VII

GENERAL AND PROCEDURAL PROVISIONS07.01. Utility Easements.

(a) There is hereby reserved for the purpose of installing, operating and maintaining governmental, public or private utility facilities, and for other purposes incidental to the development of the Properties, those easements shown upon any recorded plat and as may be shown on any future recorded plats of the Properties, and there is also thereby reserved within such easements, areas and rights-of-way for such other purposes as Declarant, in its sole discretion, may in the future determine.

(b) Declarant hereby reserves the right and the power, during a period of thirty (30) years from the date of the recordation of this Declaration or of the recordation of the plat or of any other applicable recorded instrument, whichever is later, to declare and file or record, additional easements granting the full free right, power and authority to lay, operate and maintain such drainage facilities, sanitary sewer lines, potable and irrigation water lines, storm sewers, gas and electric lines, communication lines, cable television lines, and such other and further public service facilities as Declarant may deem necessary, along, through, in, over and under a strip of land up to ten (10) feet in width from all side, front and rear lines of any Plot. The duration of any such easement shall be as set forth in an instrument of record. Said easements and the rights granted shall not be inconsistent with the then existing improvements on the applicable portions of the Plot.

07.02. Public Facilities.

In order to supplement the public facilities and services that may be furnished by any local governmental agency, and in order to provide additional facilities and services that may not be otherwise available, Declarant is hereby authorized and empowered by all of the Owners, when Declarant, in its sole discretion, determines that it is necessary or desirable, to act on their behalf to contract for the installation of a water plant and supply system, irrigation water system, a gas system, a sewage disposal plant and sanitary sewer system, storm sewers, gutters, curbs, bike paths and sidewalks, street lighting and any other facilities or services customarily furnished or provided by local governmental agencies. Each Owner shall be liable for and shall promptly pay to the Declarant a pro-rata share of the cost of said water plant and supply system, irrigation water system, gas system, sewage disposal plant and sanitary sewer system, storm sewers, gutters, curbs, bike paths, sidewalks, street lighting or other facilities or services, and said cost shall be apportioned among the Plots in proportion to their front footage, square footage, assessed value, or by any other reasonable method as determined by the Declarant, in its sole discretion. Payment shall be

## OR BOOK

## PAGE

due and payable immediately upon letting of the contract for any of the construction of such facilities. The judgment of the Declarant in the letting of such contract and the expenditure of said funds in compliance with such contract shall be final. Each Owner shall be vested with the right to benefit from (subject to charges for the use thereof) any water plant and supply system, irrigation water system, gas system, sewage disposal plant and sanitary sewer system, storm sewers, gutters, curbs, bike paths, sidewalks, street lighting and other facilities and services. Each Owner shall install, subject to the written approval of Declarant, all sewer connections, both storm and sanitary, so that direct connections can be made to the nearest street, alley, main or collection lines, and the plan for such sewer connections shall be submitted to Declarant for approval prior to commencement of said construction. No Owner shall install any potable or irrigation well or draw irrigation water from any lake or drainage area without the prior written approval of Declarant, and if permission is granted, Owner may be required to connect to central potable or irrigation water systems when available and thereafter to discontinue any private well or system. Declarant, in its sole judgment, shall determine when an Owner must connect to central potable or irrigation water systems and disconnect any private system.

**07.03. Declaration and General Protective Covenants Run With the Land**

The covenants, reservations, restrictions and other provisions of this Declaration shall run with and bind the properties subject hereto and shall inure to the benefit of the Declarant or any Owner subject to this Declaration, their respective legal representatives, heirs, successors and assigns, (i) for a term of thirty (30) years from the date this Declaration is recorded; or (ii) the date of the last addition of covenants, conditions, restrictions, reservations and other provisions shall automatically be extended for successive periods of ten (10) years, unless an instrument signed by the then Owners of Plots assigned at least two-thirds (2/3rds) of the Property Units has been recorded agreeing to change or terminate these covenants, conditions, reservations, restrictions or provisions in whole or in part.

**07.04. Completion of Construction - Remedy.**

When the construction of any structure is once begun, work thereon must be prosecuted diligently and completed within a reasonable time. If for any reason work is discontinued or there is no substantial progress toward completion for a continuous sixty (60) day period, then Declarant shall have the right to notify the Owner of its intentions herein, enter the Plot and take such steps as might be required to correct the undesirable appearance. The reason for such correction shall be solely in the discretion of the Declarant and may include, but not be limited to, aesthetic grounds. The Owner shall be liable for all costs incurred in such action as provided in Section 02.04.

001088

OR BOOK

001558

PAGE

**07.05. Non-Liability of Declarant.**

The Declarant shall not in any way or manner be held liable or responsible for any violation of these covenants, conditions, reservations, restrictions or other provisions by any Person other than itself.

**07.06. Amendment of Declaration.**

In addition to any right of amendment or modification provided for in this Declaration, in which case those provisions shall apply, Wiggins Bay Associates, Ltd., may, in its sole discretion, by an instrument filed of record, modify, enlarge, amend, waive or add to the covenants, conditions, reservations, restrictions and other provisions of this Declaration so long as the same do not substantially impair the General Development Plan.

**07.07. Other Documents.**

Declarant, Foundation, or other entity provided for herein, or in any applicable recorded instrument, shall have such rights, powers, duties and privileges as set forth herein or in the Articles of Incorporation, By-Laws and other constituent documents of such entity; however, no such entity may have rights, duties, powers or privileges that are in conflict with the provisions of this Declaration which shall prevail in all events of conflict.

**07.08. Severability.**

If any covenant, condition, reservation, restriction or other provision of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction, then such holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect.

**07.09. Dissolution.**

In the event of dissolution of the Foundation in accordance with the terms of its Articles of Incorporation, each Plot shall continue to be subject to the annual assessment specified in Article VI and each Owner shall continue to be personally obligated to Declarant or the successors or assigns of Foundation as the case may be for such assessment to the extent that such assessments are required to enable Declarant or any such successors or assigns acquiring any real property previously owned by the Foundation to properly maintain, operate and preserve it. The provisions of this Section 07.09 shall only apply with regard to the maintenance, operation and preservation of property which has been Foundation Common Area and continues to be so used, as otherwise provided for in Article IV for the common use and enjoyment of Owners.

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001559

OR BOOK

PAGE

07.10. Gender.

Wherever used in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include all genders.

07.11. Notices.

(a) To Declarant. Notice to Declarant as may be required herein shall be in writing and delivered or mailed to Declarant at its principal place of business as shown by the records of the Secretary of State of Florida, or at any other location designated by Declarant.

(b) To Foundation. Notice to Foundation as may be required herein or in the By-Laws of the Foundation shall be in writing and delivered or mailed to the Foundation at its principal place of business as shown by the records of the Secretary of State of Florida, or any other location designated by Foundation.

(c) To Owner. Notice to any Owner of a violation of any of these restrictions, or any other notice as may be required herein, shall be in writing and shall be delivered or mailed to the Owner at the address shown on the tax rolls of Collier County, Florida, or if not shown thereon, to the address of the Owner as shown on the deed recorded in the public records of Collier County, Florida.

07.12. Construction.

The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with the General Development Plan and the purposes set forth herein, including the Preamble.

## ARTICLE VII

Wiggins Bay Club08.01. Creation.

The Declarant intends to create an entity to be known by the name of the "Wiggins Bay Club" or such similar name as Declarant may select. The Club shall occupy the premises identified on the master plan as the "Clubhouse Area" at Wiggins Bay. The Clubhouse complex may consist of a clubhouse with restaurants, cocktail lounges, meeting rooms, swimming pools, courts for tennis and other racket sports, shuffleboard, and other such recreational facilities as Declarant may elect to install. The size, location, lighting, hours of operation, and other matters concerning the operation of the Club shall be at the sole discretion of Declarant.

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001560

OR BOOK

PAGE

08.02. Membership.

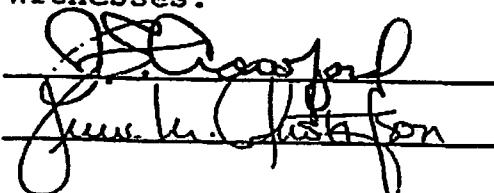
The Declarant reserves the right to increase and decrease the total membership, and to divide the total membership into different classifications. One classification shall be resident members. Each Plot, when transferred or conveyed by the Declarant, shall entitle the purchaser or transferee of the Plot to a number of resident memberships equal to the number of Property Units allotted to the Plot. Each such membership may be assigned and transferred from time to time by the Owner of the Property Unit to which the membership is appurtenant upon payment of a reasonable transfer fee to be established by Declarant. In the event the holder of such membership shall fail to abide by the rules and regulations of the Club, the membership may be terminated by the Declarant. A membership appurtenant to a Property Unit shall be classified as resident memberships. In the event a resident membership is terminated, the Declarant may reduce the total number of resident memberships. Other than the resident memberships made available upon the initial transfer of each Plot, all memberships shall be filled on a space available basis in accordance with the rules and regulations established by the Declarant. A resident shall not be obliged to be a member of the Wiggins Bay Club. Subject to reasonable rules and regulations, the members of the Club, and the guests and invitees of the members, and the owners of the Clubhouse property shall have free and unhindered access to the Clubhouse property over and across the roads at all times.

08.03. Ownership.

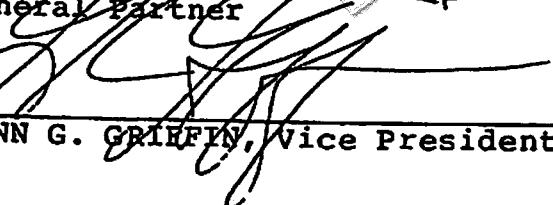
The Declarant may continue to own or may transfer the ownership of the Wiggins Bay Club to any other person, including the Foundation.

IN WITNESS WHEREOF, Wiggins Bay Associates, Ltd., a limited partnership, organized and existing under the laws of the State of Illinois and authorized to transact business in the State of Florida, as Owner of Wiggins Bay, hereby executes this Declaration of Covenants by its respective officer.

Witnesses:



WIGGINS BAY ASSOCIATES, LTD.  
By: Surrey Wayne Corporation  
General Partner

By:   
GLENN G. GRIFFIN, Vice President

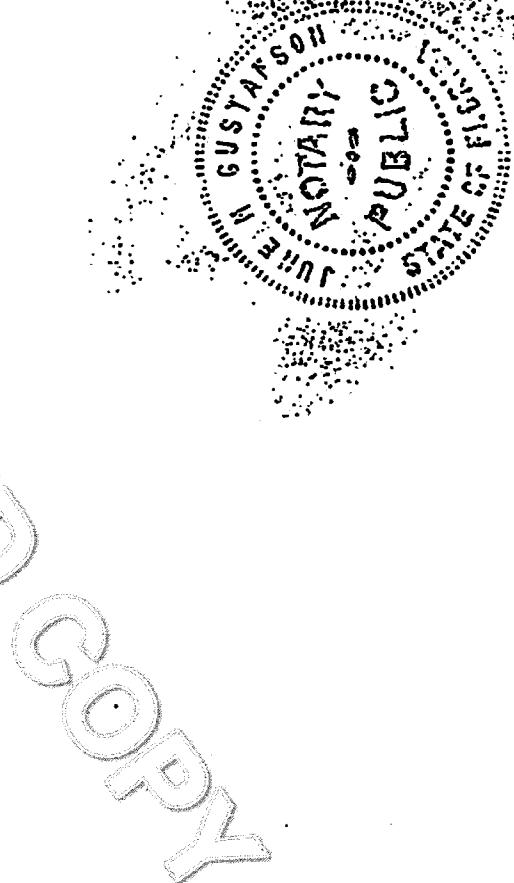
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PAGESTATE OF FLORIDA:  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 20th day of June, 1984, by GLENN G. GRIFFIN, Vice President of Surrey Wayne Corporation, on behalf of the corporation as general partner of WIGGINS BAY ASSOCIATES, LTD.

Kirk W. Crawford  
Notary Public  
My Commission Expires  
(NOTARIAL SEAL)

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES FEB 14, 1986  
BONDED THRU GENERAL INS. USD

This instrument prepared by  
and return to:  
J. Stephen Crawford, Esq.  
2125 Colonial Boulevard  
Fort Myers, Florida 33907



Entered and Verified  
In Official Records of  
COLLIER COUNTY, FLORIDA  
WILLIAM J. REAGAN, CLERK  
BY LAURA PROKOP, D.R.

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COLLIER COUNTY1984 DEC -3 PM 4:55  
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PAGEDECLARATION OF COVENANTS

Wiggins Bay Associates, Ltd., an Illinois limited partnership, as owner of the lands described in Exhibit A hereto attached and by this reference made a part hereof, hereby declares, for itself, its successors and assigns, that said lands are subject to all of the provisions of that certain Declaration of Covenants dated June 20, 1984, and recorded June 21, 1984, in Official Records Book 1088, at pages 1536 to 1561, inclusive, of the public records of Collier County, Florida.

IN WITNESS WHEREOP, Wiggins Bay Associates, Ltd., an Illinois limited partnership authorized to transact business in the State of Florida, has executed this Declaration of Covenants this 28th day of November, 1984.

Witnesses:

*Sanda Z. Manning*WIGGINS BAY ASSOCIATES, LTD.  
By: Surrey Wayne Corporation  
General Partner*J. Stephen Crawford*By: GERALD F. GRIFFIN, III  
Vice President

Sworn to and Subscribed before me  
this 28th day of November, 1984.

*Sanda Z. Manning*  
Notary Public  
My Commission Expires:

Notary Public, State of Florida  
My Commission Expires Oct. 29, 1988  
Noted Two Five Five - 1000

This instrument prepared by  
and return to:  
J. Stephen Crawford, Esq.  
2125 Colonial Boulevard, Suite 100  
Fort Myers, Florida 33907-1409

ISLM DEC/COV 112884

## EXHIBIT "A"

COASTAL ENGINEERING  
CONSULTANTS, INC.

Development Consultants • Coastal Engineers • Marine Scientists  
Civil Engineers • Surveyors  
3803 Davis Blvd. • P.O. Box 8308 • Naples, Florida 33941 • (813) 774-4402

## DESCRIPTION

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OR BOOK

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PAGE

A tract of land lying in the southwest quarter of Section 16, Township 48 South, Range 25 East, Collier County, Florida, more particularly described as follows:

Commencing at the west quarter corner of said Section 16 run N 88°07'23" E along the north line of the southwest quarter 2105.69 feet; thence S 01°52'37" E 80.00 feet; thence along the southerly and easterly lines of Tract 9, Wiggins Bay, Phase I, as recorded in Plat Book 13, pages 89 & 90 of the Public Records of Collier County, Florida run 98.17 feet along the arc of a curve concave to the Southeast having a radius of 125.00 feet and subtended by a chord having a length of 95.67 feet and bearing S 65°37'21" W to a point of tangency; thence S 43°07'23" W 103.84 feet to the point of beginning; thence 50.10 feet along the arc of a curve to the right having a radius of 29.00 feet and subtended by a chord having a length of 43.18 feet and bearing S 62°15'38" W to a point of reverse curvature; thence 36.39 feet along the arc of a curve to the left having a radius of 26.00 feet and subtended by a chord having a length of 33.22 feet and bearing S 39°45'38" W to a point of tangency; thence S 01°52'37" E 20.00 feet to a point of curvature; thence 25.80 feet along the arc of a curve to the right having a radius of 132.67 feet and subtended by a chord having a length of 25.78 feet and bearing S 03°45'48" W to a point of reverse curvature; thence 25.80 feet along the arc of a curve to the left having a radius of 32.67 feet and subtended by a chord having a length of 26.76 feet and bearing S 03°45'38" W to a point of compound curvature; thence 198.53 feet along the arc of a curve to the left having a radius of 2,275.00 feet and subtended by a chord having a length of 198.47 feet and bearing S 06°23'57" E to a point of tangency; thence S 06°52'35" E 100.72 feet to a point of curvature; thence 106.29 feet along the arc of a curve to the left having a radius of 145.00 feet and subtended by a chord having a length of 103.93 feet and bearing S 27°52'37" E to a point of reverse curvature; thence 107.19 feet along the arc of a curve to the right having a radius of 192.14 feet and subtended by a chord having a length of 105.87 feet and bearing S 32°58'39" E; thence along the lines of a drainage easement as recorded in O.R. Book 1088, page 1562 of the Public Records of Collier County, Florida run east 43.65 feet; thence N 45°00'00" E 127.28 feet; thence N 18°26'06" W 79.06 feet; thence N 45°00'00" E 130.81 feet; thence north 90.33 feet; thence N 46°52'37" W 365.90 feet to the point of beginning of the herein described tract.

Subject to easements and restrictions of record.

The above describes an area of 127,510 square feet or 2.927 acres of land more or less.

Bearings are based on a bearing of N 88°07'23" E on the north line of the southwest quarter of section 16, Township 48 South, Range 25 East.

COASTAL ENGINEERING CONSULTANTS, INC.

S. Richmond  
Samuel S. Richmond, P.L.S.  
Florida Certificate No. 4118  
CC File No. 84.140-1  
Sketch of description

COASTAL ENGINEERING CONSULTANTS, INC.  
3803 Davis Blvd.  
Naples, Florida 33941  
Telephone (813) 774-4402  
FAX (813) 774-4403  
E-mail: [info@coastalinc.com](mailto:info@coastalinc.com)

Serial Release of Mortgage

01263777

1989 MAR 17 PM 5:09

COLLIER COUNTY

RECORDED

DECLARATION OF RESTRICTIONS

REC 700  
PRM 250  
DOC \_\_\_\_  
INT \_\_\_\_  
IND \_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that the undersigned  
WIGGINS BAY ASSOCIATES, LTD., an Illinois Limited Partnership,  
being the owner of a certain real property located in Collier  
County, Florida, and more particularly described as set forth in  
Exhibit "A" attached hereto, makes the following Declaration of  
Restrictions covering the above-described real property,  
specifying that this declaration shall constitute a covenant  
running with the land and that this declaration shall be binding  
upon the undersigned and upon all persons deriving title  
through the undersigned. These restrictions, during their  
lifetime, shall be for the benefit of and limitation upon all  
present and future owners of the real property.

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PAGE

1. The use of said property shall be limited to  
ingress, egress and parking for automobiles owned or used by  
those persons entitled to use the boat docks located in the  
Cocohatchee River lying immediately south of Tract 3 as shown in  
the plat of Wiggins Bay Phase I, according to plat thereof  
recorded in Plat Book 13, Pages 89 and 90, Public Records of  
Collier County, Florida.

2. The declarer reserves unto itself, and its  
successors and assigns the right to improve the property  
consistent with its restrictive use and regulate the parking and  
use of the property in a reasonable manner consistent with the  
restricted use and designed to maintain the property in an  
attractive and functional state for the purpose of parking and  
ingress to and egress from said boat docks.

3. The parking area and roadway shall be in conformity  
with the roadway and parking areas in the Princeton Place project  
at Wiggins Bay Development.

4. These restrictions may not be removed without the  
consent of the owners of the real property described in Exhibit  
"B", their successors or assigns.

FIRST AMERICAN TITLE

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PAGE

IN WITNESS WHEREOF, we have set out hands and seals this 15th

day of March, 1989.

WIGGINS BAY ASSOCIATES, LTD.,  
an Illinois Limited Partnership

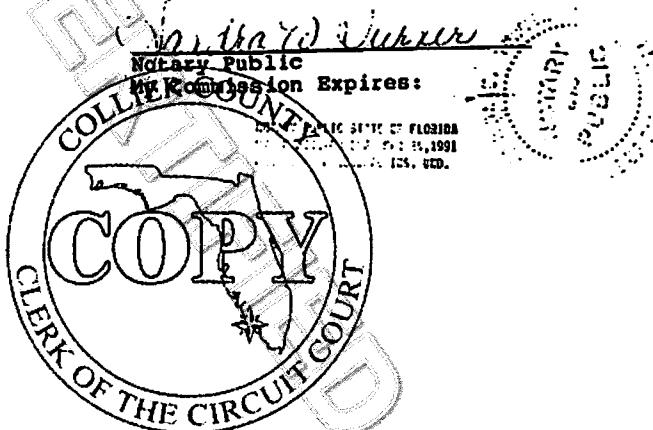
SURREY WAYNE CORPORATION,  
General Partner

BY

Patrick J. Griffin, President  
(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me by  
Patrick J. Griffin, President of the above named corporation, on  
behalf of the corporation as general partner of the limited  
partnership.



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OR BOOK

PAGE

## EXHIBIT "A" TO THE DECLARATION OF RESTRICTIONS

A PARCEL OF LAND LYING IN THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 48 SOUTH, RANGE 25 EAST, COLLIER COUNTY, FLORIDA, AND BEING A PART OF TRACT 1 OF "WIGGINS BAY PHASE 1", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 13, PAGES 89 AND 90, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT 1; THENCE RUN ALONG THE NORTH LINE OF TRACT 1, N 68°07'23" E A DISTANCE OF 234.24 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF NURSE CREEK DRIVE; THENCE RUN ALONG SAID RIGHT-OF-WAY LINE S 31°14'52" W A DISTANCE 33.23 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A CENTRAL ANGLE OF 23°45'08" A RADIUS OF 50.00 FEET AND A CHORD BEARING S 19°22'18" W FOR 20.58 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 20.73 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE RUN S 28°36'14" E A DISTANCE OF 163.00 FEET; THENCE RUN S 28°36'14" E A DISTANCE OF 14.51 FEET; THENCE RUN S 90°20'17" E A DISTANCE OF 33.40 FEET; THENCE RUN S 54°20'17" E A DISTANCE OF 7.07 FEET; THENCE RUN S 90°20'17" E A DISTANCE OF 25.00 FEET; THENCE RUN S 81°00'33" W A DISTANCE OF 15.00 FEET; THENCE RUN N 90°20'17" W A DISTANCE OF 38.30 FEET; THENCE RUN N 36°27'44" W A DISTANCE OF 74.41 FEET TO THE POINT OF BEGINNING. CONTAINING 0.31 ACRES MORE OR LESS.



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## EXHIBIT "B" TO THE DECLARATION OF RESTRICTIONS

A PARCEL OF LAND LYING IN THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 48 SOUTH, RANGE 25 EAST, AND BEING A PART OF TRACTS 1 AND 2C OF "WIGGINS BAY PHASE 1", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 13, PAGES 89 AND 90, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT 2C ALSO BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF HORSE CREEK DRIVE; THENCE RUN S 88°07'23" W A DISTANCE OF 52.49 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A CENTRAL ANGLE OF 56°52'31" A RADIUS OF 175.00 FEET AND A CHORD BEARING S 59°41'07" W FOR 166.67 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 173.72 FEET TO A POINT OF TANGENCY; THENCE RUN S 31°14'52" W A DISTANCE OF 196.97 FEET TO THE POINT OF BEGINNING OF LANDS HEREIN DESCRIBED; THENCE LEAVING SAID RIGHT-OF-WAY LINE RUN S 58°45'08" E A DISTANCE OF 332.19 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF SAID TRACT 2C; THENCE RUN S 39°08'54" W A DISTANCE OF 38.66 FEET; THENCE RUN S 22°42'22" W A DISTANCE OF 38.48 FEET; THENCE RUN S 26°26'13" E A DISTANCE OF 18.55 FEET; THENCE RUN S 62°43'32" W A DISTANCE OF 310.03 FEET TO THE SOUTHWEST CORNER OF SAID TRACT 2C AND THE SOUTHEAST CORNER OF TRACT 1; THENCE CONTINUE S 62°43'32" W A DISTANCE OF 115.75 FEET; THENCE RUN S 01°03'34" W A DISTANCE OF 107.00 FEET; THENCE RUN N 9°20'17" W A DISTANCE OF 25.84 FEET; THENCE RUN N 54°20'17" W A DISTANCE OF 7.07 FEET; THENCE RUN N 9°20'17" W A DISTANCE OF 331.40 FEET; THENCE RUN N 28°36'01" W A DISTANCE OF 14.51 FEET; THENCE RUN N 88°07'23" E A DISTANCE OF 163.00 FEET TO THE POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF HORSE CREEK DRIVE ALSO BEING A POINT ON A CURVE CONCAVE TO THE NORTHEAST HAVING A CENTRAL ANGLE OF 193°54'22" A RADIUS OF 58.06 FEET AND A CHORD BEARING S 89°27'27" E FOR 99.26 FEET; THENCE RUN SOUTHWESTERLY TO NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 169.22 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A CENTRAL ANGLE OF 37°39'10" A RADIUS OF 70.00 FEET AND A CHORD BEARING N 11°25'03" E FOR 45.18 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 46.01 FEET TO A POINT OF TANGENCY; THENCE RUN N 31°14'52" E A DISTANCE OF 57.41 FEET TO THE POINT OF BEGINNING. CONTAINING 3.49 ACRES MORE OR LESS.

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NOTE

Recorded and Verified  
in Official Records of  
COLLIER COUNTY, FLORIDA  
JAMES C. GILES, CLERK

.MAY 28'96 11:17 FR QUARLES - MMH/DR

REC'D 05/28/96 10:58:00 AM

2080480 OR: 2209 PG: 0102

Prepared By & Return To:  
 Thomas E. Maloney, Esq.  
 Quarles & Brady  
 4501 Tamiami Trail N.  
 Suite 300  
 Naples, FL. 33940

RECORDED in OFFICIAL RECORDS OF COLLIER COUNTY, FL  
 07/23/96 at 09:27AM DWIGHT I. BROCK, CLERK  
 REC PNR 19.50  
 Retn:  
 QUARLES & BRADY  
 4501 TAMIA MI TR N #300  
 NAPLES FL 34103 3060

**AMENDMENT TO DECLARATION OF COVENANTS  
 FOR  
 WIGGINS BAY**

THIS AMENDMENT is made this 28 day of MAY, 1996.

WHEREAS, the original Declaration of Covenants for Wiggins Bay was made on the 20th day of June, 1984, and was recorded in OR Book 1086, page 1536, Public Records of Collier County, Florida, and

WHEREAS, SIGNIG, INC., is the present owner of that portion of the Wiggins Bay subdivision generally referred to as the Clubhouse Complex and legally described as Tract 3, Wiggins Bay Phase 1, according to plat recorded in Plat Book 13, pages 89 and 90, Public Records of Collier County, Florida, and

WHEREAS, the original Declaration of Covenants for Wiggins Bay contains conflicting provisions concerning the assessment amount which the Wiggins Bay Foundation (Foundation) is entitled to make against Tract 3, and

WHEREAS, there are approximately ninety-six (96) boat docks which have been constructed along the Cocohatchee River, in close proximity to the Tract 3 property, and

WHEREAS, there has been a dispute concerning the right of boat dock owners who are not Foundation members to use the Foundation's private roads and security gate, and

WHEREAS, as part of a settlement agreement, it has been agreed that the Wiggins Bay Declaration of Covenants would be amended in the manner hereinafter set forth.

NOW, THEREFORE, the Wiggins Bay Declaration is hereby amended as follows:

1. Paragraph 6.01 (b) is amended to read as follows:

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Anything to the contrary notwithstanding, for the calendar year 1996 and each subsequent year, the Clubhouse Complex shall pay an annual assessment equal to the product of its assessed value for the preceding year, as established by the Collier County Tax Assessor, multiplied by the uniform millage rate established each year by the Foundation for the purpose of determining the assessment amount to be paid by each plot pursuant to the procedure set forth in paragraph 6.01 (b) of the Declaration. The assessment for 1996 is \$6,600.00, which was computed by multiplying the 1995 assessed value of Tract 3 (\$1,200,000.00) by the assessment rate (.0055) established by the Foundation for 1996.

Any assessment made by the Foundation against the Clubhouse Complex pursuant to the provisions of this Paragraph 6.01(h) shall be the personal obligation of the owner of the Clubhouse Complex in accordance with Section 6.01(d). The Foundation shall have the same lien rights against Tract 3 for unpaid assessments as it has against other plots which are subject to the Wiggins Bay Declaration of Covenants. Such lien rights are set forth in Paragraphs 6.04 and 6.05 of the Declaration.

2. Paragraph 8.02 is amended by the addition of the following sentence to the end of paragraph 8.02:

The owners of the ninety-six (96) boat docks located along the Cotochagchen River in close proximity to the Clubhouse Complex, and their guests and invitees, shall have access rights on the same basis as members of the Club, over and upon the Foundation's roads, and through the Foundation's security gate, for the purpose of using the aforesaid boat docks. No Foundation assessment shall be made against the boat docks or the owners of said boat docks by reason of the access rights set forth in this paragraph.

3. Paragraph 6.03 is amended to read as follows:

Because the Clubhouse Complex provides recreational space, meeting facilities and aesthetic benefit to all Owners, there shall not be an initial capital assessment in respect of, or arising out of, the Clubhouse or its underlying property. Any annual assessment made by the Foundation against the Clubhouse Complex shall be made in the manner provided for in paragraph 6.01(h), as amended by the instant amendment.

4. The provisions of this amendment are not intended to increase or decrease, or to make any change in the rights which the members of the Foundation may have to use the

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Clubhouse Complex, nor are such provisions intended to add to the burden imposed on the boat docks.

The amendments set forth herein shall become effective upon recordation in the Public Records of Collier County, Florida.

Witnesses

*Carol Ann Antfield*  
CHARLES ANTFIELD

Print Name of Witness

*Thomas E. Maloney*  
THOMAS E. MALONEY

Print Name of Witness

WIGGINS BAY FOUNDATION,  
 a Not For Profit Florida  
 Corporation

By: *Matthew J. Tolson* *REC*

Print Name of Officer

Matthew J. Tolson

ITS PRESIDENT

Witnesses

*Carol Ann Antfield*  
CHARLES ANTFIELD

Print Name of Witness

*Matthew J. Tolson*  
Matthew J. Tolson

Print Name of Witness

SIGWIG, INC.

a Florida corporation  
 (The Present Owner of Tract 3,  
 Wiggins Bay Phase 1, Plat  
 Book 13, pages 89-90,  
 Public Records of Collier  
 County, Florida)

By:

*Matthew J. Tolson* *REC*

Print Name of Officer

Matthew J. Tolson

ITS PRESIDENT

STATE OF FLORIDA  
 COUNTY OF COLLIER

The foregoing instrument was acknowledged before me on the  
23<sup>rd</sup> day of May, 1996, by Matthew J. Tolson as  
President of Wiggins Bay Foundation, Inc., a Florida  
 Not For Profit Corporation, who is  personally known to me, or  
 has produced check one as identification



CAROL ANN ANTFIELD  
 MY COMMISSION #02376217 EXPIRES  
 APR 17, 1998  
 NOTARY PUBLIC, STATE OF FLORIDA  
 NO. 02376217

QMAP1178752.1

Notary Public

*Carol Ann Antfield*  
 Print Name of Notary Public  
 My Commission Expires

MAY 29 '96 11:18 FR QUARLES - BRADY

813 1311996 TO 95110377

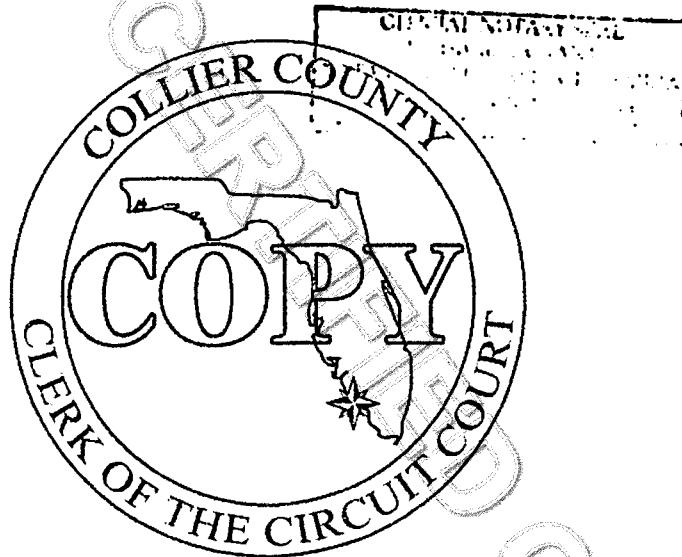
P.05/05

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STATE OF FLORIDA  
COUNTY OF COLLIER

28<sup>th</sup> The foregoing instrument was acknowledged before me on the  
day of 29, 1996, by GRANT F. GRANT as  
vice President, of Sigwig, Inc., a Florida Corporation,  
who is [ ] personally known to me, or [ ] has produced  
as identification (check one).

Notary Public  
Richard C. Grant  
 Print Name of Notary Public  
 My Commission Expires



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-4-

\*\* TOTAL PAGE.005 \*\*  
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ENCODED in OFFICIAL RECORDS of COLLIER COUNTY, FL  
09/21/97 at 11:00AM DWTCHY B. BRUCE, CLERK  
REC 702 19.50

Prepared By & Return To:  
 Thomas E. Maloney, Esq.  
 Quarles & Brady  
 4501 Tamiami Trail North, Suite 300  
 Naples, FL. 34103

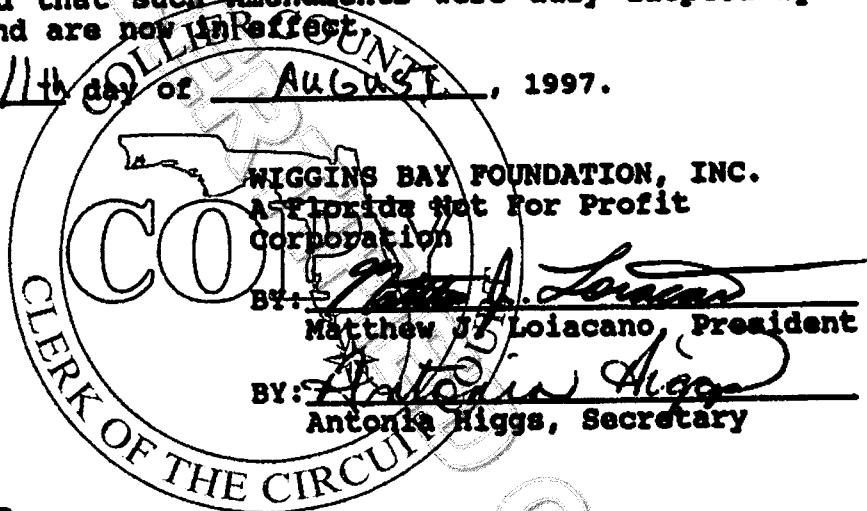
Re:to:  
 Quarles & Brady  
 4501 TAMMIAMI TR # 3300  
 Naples FL 34103 3860

NOT

## CERTIFICATE OF AMENDMENT

The undersigned officers of Wiggins Bay Foundation, Inc., a Florida Not For Profit Corporation, do hereby certify that the attached Amendments to the Wiggins Bay Declaration of Covenants (pertaining to the Annual Assessment and Cable Television) were voted upon by the membership in accordance with procedural requirements, and that such Amendments were duly adopted by the necessary vote and are now in effect.

Dated this 11th day of August, 1997.



STATE OF FLORIDA  
 COUNTY OF COLLIER

The foregoing instrument was acknowledged before me on the 11 day of August, 1997, by Matthew J. Loiacano and Antonia Higgs, as President and Secretary, respectively, who are  personally known to me, or  have produced as identification (check one).

Carol Ann Antfeld  
 Notary Public  
Carol Ann Antfeld  
 Print Name of Notary Public  
 My Commission Expires



CAROL ANN ANTFELD  
 MY COMMISSION # CC370217 EXPIRES  
 June 17, 1998  
 SIGNED THRU TROY PARK INSURANCE, INC.

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ANNUAL ASSESSMENTS

1. Paragraph (b) under Article VI, 06.01 is hereby amended as follows:

(b) In order to maintain an equilibrium, or assessment balance, between developed and undeveloped properties, and between commercial and residential properties, the annual assessment made by the Foundation against properties subject to assessment shall be made in accordance with the following rules:

(1) The annual assessment against undeveloped properties (residential and commercial) and against developed commercial properties, shall be calculated by multiplying the assessed value of the property as established by the Collier County Tax Assessor for the preceding year, by the uniform millage rate annually established by the Board of Directors of the Foundation.

(2) The annual assessment made by the Foundation against developed residential property shall, as an aggregate, also utilize the assessed value of such property as established by the Collier County Tax Assessor for the preceding year; however, the annual Foundation assessment for each completed residential unit shall be equal. Thus, the method by which the annual assessment for completed residential units shall be calculated shall be as follows:

- i. The aggregate assessed value for all completed residential units subject to assessment shall be established by reference to the assessed value placed upon such aggregate residential units by the Collier County Tax Assessor for the preceding year.
- ii. The aggregate assessed value shall be multiplied by the uniform millage rate annually established by the Board of Directors of the Foundation.
- iii. The total dollar amount established by the calculation described in the next

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previous paragraph, i.e., paragraph 6.01(b)(2)ii, shall be divided by the total number of completed residential units subject to assessments so that all completed residential units shall pay an equal annual assessment.

(3) The annual uniform millage rate established by the Board of Directors shall be the same for all properties subject to assessment. The annual uniform millage rate shall be established by the Board by the following method:

- i. Prior to January 1 of each year, the Board shall adopt a budget for the upcoming year, which budget shall establish the amount of money needed to operate the Foundation for such year.
- ii. The Board shall divide the needed dollar amount, as established by the budget, by the total assessed value for all properties subject to assessment so as to establish a uniform assessment rate.

Thus, by way of example, if the Board adopted a budget of \$180,000.00, and the total assessed value of all property subject to assessment was \$32,000,000.00, the uniform assessment rate would be .0056.

Residential Units shall be treated as developed or completed for assessment purposes if the tax assessor's office assessed such units individually in the preceding year.

Notwithstanding any other provision in this paragraph (b), the Declarant's assessment obligation shall continue to be determined pursuant to Article VI, 6.02.

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2. The following Article IX is hereby added to the Wiggins Bay Declaration of Covenants:

## ARTICLE IX

### CABLE TELEVISION

The Foundation's Board of Directors shall have the power to enter into contracts with providers of cable television and related services. In the event the Foundation's Board determines that it is advisable to enter into a contract with a cable television provider, the Board shall have the power to enter into said contract and the power to make assessments against its members to enable the Foundation to meet its contractual obligations to such providers. Since it is generally important in obtaining the best price for such services (a bulk rate), that the Foundation be committed to pay a fee for basic service for each residential unit, whether or not every residential unit owner wishes to utilize said service, the Foundation Board shall have the power to enter into such contracts and to make assessments against residential units which are offered said services, whether the owners of such residential units accept such services or not. In the event the Foundation Board enters into such a contract, the payment of the assessment by each residential unit for which the Foundation is obligated to pay a fee shall not be elective for the owner of said residential unit. Rather, said residential unit shall be subject to said assessment in the same manner that it is subject to other assessments by the Foundation.

Since the benefit of a bulk cable contract will inure solely to the benefit of completed residential units, any assessment made by the Foundation to meet its contract obligations with the cable provider will be paid solely by owners of completed residential units within the property made subject to the Wiggins Bay Declaration. The authority given by this Article IX shall be limited to "basic" service contracts and any service in excess of basic service shall be on an elective basis and shall be strictly between the cable provider and the unit owner, and the Foundation shall not be involved in collecting fees for such service.