

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
PINEHURST AT PELICAN SOUND NEIGHBORHOOD**

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**NOTE: SUBSTANTIAL REWORDING OF ENTIRE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS. SEE CURRENT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND SUBSEQUENT AMENDMENTS THERETO FOR PRESENT TEXT.**

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
PINEHURST AT PELICAN SOUND NEIGHBORHOOD**

**THIS AMENDED AND RESTATED DECLARATION** is made this, by Pinehurst at Pelican Sound Neighborhood Association, Inc., a Florida Not-For-Profit corporation ("Association"). The original Declaration of Covenants, Condition and Restrictions for Pinehurst at Pelican Sound Neighborhood was recorded in Official Records Book 3036, Pages through 1416 of the Public Records of Lee County, Florida, to provide for the preservation and enhancement of the property values, amenities and opportunities in the Pinehurst at Pelican Sound Neighborhood and to create a corporate entity to which was to be delegated and assigned the powers of administering and enforcing the Declarations of Covenants, Conditions and Restrictions, and collecting and disbursing the assessments and charges created thereby. The acquisition of title to property or any other interest in Pinehurst at Pelican Sound or the lease, occupancy, or use of any portion of a Lot constitutes an acceptance and ratification of all provisions of this instrument as amended from time to time, and an agreement to be bound by its terms.

The Association does hereby declare that the Declaration shall be amended and restated in its entirety, and that the Community shall hereafter be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, and charges and liens set forth herein, as the same may be amended from time to time, for the purpose of establishing uniform standards for the improvement of the Community and provide for the health, safety, welfare and recreational opportunities of the owners and users thereof.

**1. DEFINITIONS.** All terms and words in this Declaration and its recorded exhibits shall have the definitions, if any, specified in the Declaration of Covenants, Conditions, Restrictions and Easements for Pelican Sound Golf & River Club, Inc., as originally recorded in O.R. Book 3002, Pages 869-933, et seq., Official Records of Lee County, Florida, (the "Club Declaration"), as it may be amended from time to time, or, if different, the meanings stated below, unless the context clearly requires otherwise.

1.1 **"ARC" or "Architectural Review Committee"** means the Committee described in Article XIII of the Club Declarations.

1.2 **"Association" or "Neighborhood Association"** means Pinehurst at Pelican Sound \*, Neighborhood Association, Inc. a Florida corporation not for profit.

1.3 **"Association Property" or "Common Areas"** means and refers to the land, systems, facilities, rights and easements which may be deeded, leased, licensed, granted, reserved, assigned, dedicated or transferred to the Association, or was or is designated Association Property, together with all improvements and personal property thereon and equipment, facilities and rights associated therewith, including real property, regardless of whether title has been conveyed to the Association, that has been dedicated to the Association or its Members by a recorded plat or committed by this Declaration or other restrictive covenants to be leased or conveyed to the Association or any property for which the Association has assumed responsibility of maintenance. The term "Association Property" shall include,

without limitation, all "Common Areas" within the Properties, as that term is defined in Section 720.301 of the Act, and as may be dedicated or described on the Plat for the Properties.

1.4 **"Board"** means the Board of Directors of the Association.

1.5 **"Club"** means Pelican Sound Golf & River Club, Inc., a Florida corporation not for profit.

1.6 **"Club Declaration"** means the Declaration of Covenants, Conditions, Restrictions and Easements for Pelican Sound Golf & River Club, Inc., as recorded in O.R. Book 3002, Page 869-933, Official Records of Lee County, Florida (the "Club Declaration"), as it may be amended from time to time.

1.7 **"Club Documents"** means the Club Declaration and all recorded exhibits to it, including the Articles of Incorporation and By-Laws of the Club, all as amended from time to time.

1.8 **"Community Development District"** or **"CDD"** means the River Ridge Community Development District which is a special purpose government unit created under Chapter 190, Florida Statutes, and which may fund, construct, operate and maintain certain infrastructure and community services within or outside the Properties.

1.9 **"Community"** or **"Properties"** means the real property described as such in to the Club Declaration, together with any additional property subjected to the Club Declaration from time to time.

1.10 **"Governing Documents"** means the Club Documents, as well as this Declaration and all recorded exhibits to it, and the Rules and Regulations, all as amended from time to time. If there is an irreconcilable conflict between the provisions of any two of these documents, the first document to appear in the foregoing list shall prevail.

1.11 **"Declaration"** means this Amended and Restated Declaration of Covenants, Conditions and Restrictions for 'Pinehurst at Pelican Sound Neighborhood, as amended from time to time.

1.12 **"Guest"** means a person who is physically present in, or occupies a Living Unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment; of consideration.

1.13 **"Institutional Mortgagee"** or **"Institutional Lender"** shall refer to any one of the following:

A lending institution holding a mortgage encumbering a Lot, including without limitation any of the following types of institutions or entities: a federal or state savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company doing business in Florida which is approved by the Commissioner of Insurance of the State of Florida.

A governmental, quasi-governmental or private company that is engaged in the business of making, purchasing, holding, guaranteeing or insuring residential mortgages, including without limitation the Federal National Mortgage Association, the Federal Home Loan Mortgage

Amended and Restated Declaration of Covenants, Conditions and Restrictions  
For

Pinehurst at Pelican Sound Neighborhood

Corporation, the Federal Housing Administration, the Veterans Administration and the Department of Urban Development.

1.14 **"Lease"** means the grant by an owner of a temporary right to occupy the owner's Living Unit for valuable consideration

1.15 **"Living Unit," "Unit" or "Residence"** means any or all the residential dwellings which will be constructed on the Lots, each intended for use and occupancy as a residence for a single family.

1.16 **"Lot"** means any one or more of the up to eighty-two (82) platted parcels of land into which the Neighborhood has been subdivided upon each of which a Living Unit has been constructed. Wherever it appears, "Lot" shall be interpreted as if it is followed by the words "and Living Unit constructed thereon," except where the context clearly requires a different interpretation.

1.17 **"Neighborhood"** means all the real property which is subject to this Declaration.

1.18 **"Occupant"** when used in connection with a Living Unit, means any person who is physically present in the Living Unit on two or more consecutive days, including staying overnight. "Occupy" means the act of being an occupant

1.19 **"Owner" or "Member"** means a record owner of legal title to a Lot.

1.20 **"Pelican Sound"** means the name given to the master planned community developed on the Properties in Lee County in accordance with the Club Documents.

1.21 **"Rules and Regulations"** means the administrative rules and regulations governing procedures for administering the Association and the Neighborhood, as adopted amended or rescinded by resolution of the Board of Directors.

1.22 **"Service Charge"** means a charge against the owners of one or more Lots for any service, material or combination thereof which may be provided by the Association for the use and benefit of those owners, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Association on behalf of the owners accepting or receiving the repairs, services, materials or maintenance shall be passed on in the form of a service charge against the Lots so benefitted. The owner(s) are deemed to agree to such assessment by subscribing, requesting, or accepting the material or service.

1.23 **"Temporary" or "Temporarily"** means not more than sixty (60) days in any calendar year.

**2. PINEHURST AT PELICAN SOUND.** The real property which shall be held, transferred, sold, conveyed, given, donated, leased and/or occupied subject to this Declaration shall include the real property described in Exhibit "A", attached hereto, together with any and all other real property which has since been or may be subjected in the future to the conditions of this Declaration.

**3. ASSOCIATION; MEMBERSHIP VOTING RIGHTS.** The administration and management of this Neighborhood shall be by Pinehurst at Pelican Sound Neighborhood Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

3.1 **Articles of Incorporation.** A copy of the Articles of Incorporation of the Association is attached as Exhibit "C".

3.2 **Bylaws.** The Bylaws of the Association shall be the Amended and Restated Bylaws as attached as Exhibit "D" to this Declaration, as they are amended from time to time.

3.3 **Members.** Every person or entity who is a record owner of a fee simple interest in any Lot shall be a member of the Association. Membership is appurtenant to, runs with, and shall not be separated from, the real property interest upon which membership is based. The burden of notifying the Association of a change of membership shall be borne by the new member; and the Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership and the fulfillment of the requirements set forth in the Bylaws.

3.4 **Voting Interests.** The members of the Association are entitled to one (1) vote in Association affairs for each Lot owned by them. Votes shall be cast as provided in the Bylaws.

3.5 **Termination of Membership.** Termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

3.6 **Association as Owner of Lots.** The Association has the power to purchase Lots and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors. However, if at any time the Association owns two (2) or more Lots, it may not purchase any more Lots without the prior approval of a majority of the voting interests, unless the Association obtains title to the Lot by virtue of its foreclosure action, in which case no membership vote shall be required.

3.7 **Board of Directors.** Except as otherwise specifically provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members.

3.8 **Powers and Duties.** The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws, and those provided in Chapter 720, Florida Statutes (the "Act") and Chapter 617, Florida Statutes, to the extent not inconsistent with the foregoing documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Association has the power to enter into agreements and to acquire leaseholds, memberships and ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Neighborhood. If the Association has the authority to maintain a class action suit as plaintiff, the Association may also be joined as a defendant in an action as the representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

3.9 **Member Approval of Certain Litigation.** Notwithstanding any other provisions of the Governing Documents, the Board of Directors shall be required to obtain the prior approval of at least three-fourths (3/4ths) of the voting interests of the Association, present and voting at a membership meeting, prior to the payment of, or contracting for the payment of, legal or other fees or expenses to any

Amended and Restated Declaration of Covenants, Conditions and Restrictions  
For

Pinehurst at Pelican Sound Neighborhood



person engaged by the Association in contemplation of a lawsuit or for the purposes of making, preparing or investigating any lawsuit, or commencing any lawsuit, where the amount in controversy is in excess of \$50,000, other than for the following purposes:

- a) The collection of assessments;
- b) The collection of other charges which members are obligated to pay;
- c) The enforcement of the Governing Documents;
- d) The enforcement of the rules and regulations of the Association;
- e) In an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members, but in such event, the aforesaid vote shall be taken with respect to the continuation of the action at the earliest practical date (the eminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of the members; or
- f) Filing a compulsory counterclaim.
- g) This Section 3.11 shall not be amended without the approval of at least three-fourth (3/4ths) of all voting interests, present and voting at a membership meeting.

3.10 **Indemnification.** The Association covenants and agrees that it will indemnify and hold harmless the members of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property" sustained in or about the Neighborhood, from and against all costs, legal fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein.

4. **ASSESSMENTS.** The Association has the authority to levy assessments to pay common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Neighborhood Common Areas and association property, the expenses of insurance for the Association and/or directors and officers; the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a common expense by this Declaration or the Bylaws. If the Board enters into such a contract, the costs of a duly franchised cable or satellite television service obtained pursuant to a bulk contract shall be a common expense. The Club has the authority to enter into such an agreement for the Neighborhood in which case each Lot shall be billed directly by the Club as a portion of the Club's assessments,

4.1 **Covenant to Pay Assessments.** Each Owner of any Lot within the Neighborhood, hereby covenants, and each subsequent owner of any Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a) The Lot's pro-rata share of annual assessments based on the annual budget adopted by the Association;
- b) The Lot's pro-rata share of any special assessments levied for expenses not provided for by the annual budget; and

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Pinehurst at Pelican Sound Neighborhood

- c) Any service assessments or charges against less than all of the Lots specifically authorized in this Declaration or the Bylaws.

Assessments shall be established and collected as provided herein and in the Bylaws. The assessments and charges, together with interest, late fees, costs, and reasonable attorneys' fees shall bind each Lot in the hands of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance of title, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor any amounts paid by the transferee therefor. Except as provided elsewhere in this Declaration as to the Institutional Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused.

4.2 **Share of Assessments.** Except as otherwise provided below, each Lot and the owner thereof shall be liable for an equal share of all annual and special assessments, such share being a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of Lots (82) then included within the Neighborhood.

4.3 **Establishment of Liens to Secure Payment.** All assessments and charges levied by the Association in accordance with the provisions of this Declaration or any of the Governing Documents, together with interest at the highest rate allowed by law, late fees, and costs of collection (including, but not limited to costs and reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the Lot against which each such assessment or charge is made, and shall also be the personal obligation of the owner of each Lot assessed. This lien is superior to any homestead rights the owner may acquire. No owner may be exempt from personal liability for assessments and charges, or release any Lot from the liens and charges hereof, by a waiver of use rights, or by abandoning the Lot. The Association's lien is activated by recording a Claim of Lien by the Association in the public records of Lee County, but shall relate back to the date of recording of the original Declaration, setting forth the amount and due date of each unpaid assessment or charge as of the date the Claim of Lien is recorded. The Claim of Lien secures payment of all assessments and charges due at the time of recording (including interest, costs and attorney's fees as provided above), as well as all assessments and charges coming due subsequently, until the lien is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by a Claim of Lien, the party making payment is entitled to a satisfaction in recordable form.

4.4 **Priority of Liens.** Except as otherwise provided by law, the Association's lien for unpaid assessments and charges shall be subordinate and inferior to that of any recorded First Institutional Mortgage, unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and takes priority over, any other mortgage regardless of when recorded. A lease of a Living Unit is also subordinate and inferior to any Claim of Lien for the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under any of them, shall hold title subject to the liability and lien of any assessment or charge coming due after taking title. A mortgagee of a first mortgage of record acquiring title to a Lot at the public sale resulting from a foreclosure judgment in a foreclosure suit in which the Association has been initially named as a defendant junior lienholder, or by deed in lieu of foreclosure where such mortgage is no longer a lien against the property, shall be liable for the share of common expenses or assessments attributable to the Lot, which came due prior to the mortgagee's acquisition of title, to the fullest extent provided by the Act, as the same may be amended from time to time, plus attorney fees and costs of

collection, including the protection of any assessment rights in any foreclosure action by any Institutional Lender or in an Owner's bankruptcy action. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all Owners. No acquirer of title to a Lot by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership. Third party purchaser acquiring title to a Lot at the public sale shall be responsible for all unpaid assessments, common expenses and other charges, including interest, late fees, attorneys fees and costs. Any unpaid assessment or charge which cannot be collected by reason of this Section shall be treated as a common expense, collectible from all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

The Association may file a Claim of Lien against a Lot for unpaid assessments after written notice or demand for past due assessments as well as any other amounts owed to the Association has been made by the Association. The written notice or demand must (i) provide the Owner with 45 days to make payment for all amounts due, including, but not limited to, any attorney's fees and actual costs associated with the preparation and delivery of the written demand; and (ii) be sent by registered or certified mail, return receipt requested, and by first-class U.S. mail to the Owner at his/her last address as reflected in the records of the Association, if the address is within the U.S., and to the address of the Lot if the Owner's address as reflected in the records of the Association is not the Lot address. If the Owner's address is outside the U.S., the Association may send the notice to that address and to the Lot address via first-class U.S. mail. A Claim of Lien shall secure payment of all Assessments due at the time of recording (including interest, late fees, costs and attorney's fees as provided above), as well as all Assessments, interest, late fees, costs and attorney's fees coming due subsequently, until the Claim of Lien is satisfied or a final judgment of foreclosure obtained. Any payment received by the Association and accepted shall be applied first to any interest accrued, then to any late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent Assessment. The preceding sentence applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

**4.5 Collection of Assessments.** If any owner fails to pay any assessment, charge, or installment thereof, within ten (10) days after the due date, the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association.

- a) To charge interest on such assessment or charge, from the due date until paid, at the highest rate allowed by law; and, in addition, to impose a late payment penalty which may not exceed the greater of twenty-five dollars (\$25.00) or 5% of each delinquent installment payment of the assessment, or such other maximum as may be provided for by law.
- b) To suspend the voting rights of the owner in the Association during the period of delinquency if any monetary obligation to the Association is delinquent in excess of ninety (90) days.
- c) To file an action in equity to foreclose its lien. Unless another procedure is required by law, the lien may be foreclosed by an action brought by the Association, in the same manner as provided in Section 720.3085 of the Act, as amended from time to time, for the foreclosure of liens on condominium parcels for unpaid condominium assessments.
- d) To bring an action at law for money judgment against the Owner without waiving any lien foreclosure rights of the Association.

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- e) If an Owner is delinquent for more than ninety (90) days in paying any monetary obligation due to the Association, to levy reasonable fines, or may suspend the Owner's right to use common areas or common facilities until the monetary obligation is paid, except for that must be used to access the Lot, utility services, or parking. Any such fines or suspension shall be imposed in accordance with the requirements of the Act.
- f) If any Owner is delinquent for more than 90 days in paying any monetary obligation due to the Association to suspend the voting rights of a Member until the monetary obligation is paid.
- g) As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Owner and the recording of a claim of lien, the Association may declare any Assessment installments due for the remainder of the budget year in which the claim of lien was filed to be accelerated and immediately due and payable.
- h) If a Lot is occupied by a tenant and the Owner is delinquent in paying any obligation due to the Association, the Association may make written demand on the tenant to pay directly to the Association the future monetary obligations related to the Lot, and the tenant must make such payment. Such demand shall be continuing in nature and the tenant must continue to pay the monetary obligations until the Association releases the tenant or the tenant discontinues its tenancy, provided that the tenant shall not be liable for any increase in monetary obligations due unless the tenant was notified in writing of the increase at least ten (10) days before the date on which rent is due. If the tenant fails to make such payment the Association may sue for eviction under Sections 83.59-83.65. Florida Statutes, as if the Association were a landlord thereunder, however, the Association is not otherwise considered a landlord under Chapter 83 of the Florida Statutes and shall have no duties thereunder.

4.6 **Certificate.** The Association shall, within fifteen (15) days of request for same, furnish to any owner liable for assessments a certificate in writing signed by an officer or agent of the Association, setting forth whether all assessments and charges against the owner's Lot have been paid. Any person, except the owner, who relies on the certificate, shall be protected thereby.

4.7 **Termination of the Association.** If the Association no longer exists for any reason, and if no other Neighborhood Association has assumed its duties and functions, the Club shall have the power to perform all functions of the Association and shall be authorized to assess all owners for the cost of such services.

**5. ARCHITECTURAL AND AESTHETIC CONTROL.** In order to preserve the values of the Living Units, no owner shall make any material change whatsoever in the exterior color of any portion of his Residence or any appurtenant structure, nor in the color or style, of roofing materials used on the Residence or appurtenant structure, without prior written approval of the Board of Directors, as well as the Architectural Review Committee of the Club (the "ARC"). No building, structure or other improvement shall be erected or altered on any Lot, nor shall any grading, excavation, landscaping, or other work which in any way materially alters the exterior appearance of any structure, be performed without the prior written approval of the Board of Directors, as well as the ARC. In obtaining the written approval, the owner, or any other person applying, shall comply with all applicable requirements and procedures of the Governing Documents and any Rules and Regulations adopted by the Board. Refusal to

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approve proposed changes may be based on purely aesthetic reasons. The membership, term of office, composition, compensation (if any), qualifications and procedures of the ARC shall be as provided in the Club Declaration and By-Laws of the Club.

## **6. APPURTENANCES; PROPERTY RIGHTS; EASEMENTS.**

6.1 **Appurtenances to Each Lot.** The owners of each Lot have certain rights and obligations appurtenant to such ownership, including without limitation the following:

- a) Membership in the Association, and the right to cast one (1) vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.
- b) The non-exclusive right to use the Neighborhood Common Areas for the purposes intended, subject to the restrictions and limitations provided in the Governing Document & Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the owner's share of liability for the assessments levied by the Association as set forth in Section 4.2 above. The ownership of an undivided share of the common surplus does not entitle the owner to a distribution of the common surplus.
- c) Class "A" membership and voting rights in the Club, and the non-exclusive right to use Club Common Areas, subject to the restrictions and limitations provided in the Governing Documents.
- d) Other appurtenances as may be provided in the Governing Documents.

The appurtenances to a Lot automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Lot. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Lots.

6.2 **Use and Possession.** An owner is entitled to exclusive use and possession of his Lot and Living Unit. He is entitled to non-exclusive use of the Neighborhood Common Areas in accordance with the purposes for which they are intended, but no use of any Lot or Neighborhood Common Areas may unreasonably interfere with the rights of other owners or residents. No Lot may be subdivided or any part separately sold, leased or otherwise transferred. Every owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, and over the walkways and private roads laid out on the Club Common Area for use in common with all other owners, their tenants, guests and invitees. The portions of the Neighborhood Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the owners and each owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and regulation by the Association. These easements shall be appurtenant to and shall pass with the title to every Lot subject to the following:

- a) The right and duty of the Association to levy assessments against each Lot for the upkeep, maintenance, repair or betterment of the Neighborhood Common Areas and improvements thereon.
- b) The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Neighborhood Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be

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determined by the Board. No such easement shall materially interfere with the rights of owners to use the Neighborhood Common Areas for the purposes intended.

- c) The right of an owner to the non-exclusive use and enjoyment of the Neighborhood Common Areas and facilities thereon shall extend to the members of this immediate family who reside with him, and to his tenants, guests and invitees, subject to regulation from time to time by the Association.

6.3 **Partition, Separation of Interests.** There shall be no judicial partition of the Neighborhood Common Areas, except as expressly provided elsewhere herein, nor shall any owner or any other person acquiring any interest in the Neighborhood, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Lot and Living Unit owned in co-tenancy. The ownership of any Lot and the ownership of the Living Unit constructed thereon may not, however, be separated or separately conveyed, nor may any person who does not have an ownership interest in at least one Lot and Living Unit hold membership in the Association.

6.4 **Easements.** Each of the following easements and easement rights is reserved through the Neighborhood and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Neighborhood. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Lot shall be subject to an easement in favor of all other portions of the Neighborhood for the location of utilities, and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Neighborhood.

- a) **Encroachments.** If for any reason other than the intentional act of the owner or the Association, any Living Unit or Lot encroaches upon any of the Neighborhood Common Areas, upon any other Lot, or any Neighborhood Common Area encroaches upon any Lot, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- b) **Ingress and Egress.** A non-exclusive easement shall exist in favor of each owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Neighborhood Common Areas as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through and across such portions of the Neighborhood Common Areas as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.
- c) **Drainage.** A perpetual, non-exclusive easement shall exist in favor of the Association, the Club, the CDD and their employees or other designees for the use of drainage areas established throughout the Neighborhood, and an easement for ingress, egress, and access to enter any portion of the Neighborhood in order to construct, maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto, specifically including without limitation, access over and across portions of the Neighborhood Common Areas by the CDD or utility companies to utilize such areas for facilities for the transporting of treated effluents for irrigation purposes. No structure, landscaping, or other material shall be placed

or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

- d) Club. A perpetual, non-exclusive easement shall exist in favor of the Club to perform any function on behalf of the Neighborhood, which forms the basis of a proper Neighborhood Expense, as further provided in the Club documents.

6.5 **Easements for Playing Golf**. Non-specific, non-exclusive easements are hereby created over all Lots, Living Units and the Neighborhood Common Areas, to permit every act necessary, incidental, or appropriate, to the playing of golf. These acts include, without limitation, the recovery by golfers of errant golf balls, the flight of golf balls over and across such Lots, Living Units or Common Areas, the landing of errant golf balls upon the Lots, Living Units or Common Areas, the use of necessary and usual golf carts and maintenance equipment, the usual and common noises and other disturbances created by maintenance of the course and the playing of the game of golf, including occasional tournaments, together with all other common and usual occurrences normally associated with the existence and operation of a golf course. The Association shall not be liable for damage to property of Lot owners from errant golf balls.

## 7. MAINTENANCE; IMPROVEMENTS.

7.1 **Maintenance of Living Units**. The maintenance, repair and replacement of each Lot and Living Unit is the responsibility of its owner. The owner shall keep the appearance of the Lot and all landscaping and improvements in a condition comparable to when they were new, except normal wear and weathering. The owner is responsible for his own driveway and the components of the irrigation system serving his Lot, up to and including the tap into the main irrigation line, timers, switching devices and heads.

7.2 **Enforcement of Maintenance**. If the owner of a Lot and Living Unit fails to maintain it as required in this Declaration, the Association may institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot and performing the work necessary to bring the Lot into compliance with the Governing Documents, with or without consent of the owner. The Association may, but is not obligated to, repair, replace, or maintain any item which constitutes a significant hazard to other property or residents, or which has a material adverse effect on the appearance of the Neighborhood. Any expenses so incurred by the Association shall be assessed against the owner as service assessments, together with reasonable attorney's fees and all other expenses of enforcement pursuant to the terms of this Declaration.

7.3 **Negligence, Damage Caused by Condition in Living Unit**. The owner of each Lot and Living Unit shall be personally liable for the expenses of any maintenance, repair or replacement made necessary by his negligence, act or omission, or by that of any member of his family or his guests, employees, invitees, agents, or lessees; but such liability shall be limited to the extent that such expenses are not met by the proceeds of insurance available.

## 8. INSURANCE; DUTY TO RECONSTRUCT.

8.1 **Duty to Insure and to Reconstruct**. Each owner shall at all times maintain property insurance, including casualty, windstorm and flood insurance, on his residence and all other insurable improvements in an amount equal to the full replacement cost thereof. If any Living Unit or other

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improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner of such improvements shall remove all debris and cause repair or replacement to be made in accordance with the Club documents. All such repairs or replacements must restore the improvements to substantially their original character, design and appearance, and shall utilize and conform to the original foundation and appearance of the original improvements, except as otherwise approved by the ARC. The Association shall have the right, but not the obligation, to request a copy of the owner's insurance policy required by this section. Upon written request to the owner, the owner shall provide the Association with a copy of the policy within thirty (30) days.

8.2 **Failure to Reconstruct.** If the owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in the Club Documents, the Association shall give written notice to the owner of his default. If the owner has not notified the Association of satisfactory arrangements to meet his obligations within thirty' (30) days after the Association mailed such notice, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to remove all debris and damaged improvements, and additionally to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this Section, which shall be in the sole discretion of the Board of Directors, the owner of the Lot shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the Lot and residence to secure payment

8.3 **Failure to Insure; Association as Additional Insured.** For the purpose of this Section 8, each owner of a Lot within the Neighborhood agrees that the Association shall be an additional insured under any contract of property insurance and/or flood insurance relating to his Lot and improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements, taking into account local construction costs and property values as they may exist, from time to time. The Association has the right to require each owner to produce proof of insurance. If an owner fails or refuses to maintain such insurance coverage deemed reasonably necessary by the Association, or if the owner allows the required insurance coverage to lapse, or for some other reason causes the same to become ineffective, the Association may but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs incurred by the Association in procuring insurance shall become due and payable by the owner in all respects, together with interest, reasonable attorney's fees and costs of collection, immediately upon the Association notifying the owner, in writing, that it has procured such insurance, and the costs thereof. Such cost is assessable as a special charge against the Lot and collectable as an assessment pursuant to the terms of this Declaration.

8.4 **Association's Right of Entry.** For the purpose of performing the duties authorized by this Section 8, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the owner, to enter upon the Lot at reasonable hours.

8.5 **Association Insurance: Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to can'y, and may obtain and keep in force any or all of such other or additional insurance coverage as it may deem necessary. The premiums shall be a common expense. The name of the insured shall be the Association as agent for the owners without naming them, and their mortgagees.



8.6 **Required Coverage.** The Association shall maintain adequate liability insurance and casualty insurance for the Neighborhood Common Areas covering all buildings and other insurable improvements (if any) within the Neighborhood Common Areas, with coverage equal to the maximum insurable replacement value thereof, in an amount determined annually by the Board of Directors, such insurance to afford the following protection:

- a) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as shall be required by the Board of Directors, with cross liability endorsement to cover liabilities of the owners as a group to any single owner.
- b) **Fidelity.** Adequate fidelity bond coverage for all individuals having control of or access to Association funds.

8.7 **Optional Coverage.** The Association may purchase and carry such **other** insurance coverage as the Board of Directors may determine from time to time to be in the best interest of the Association and owners. Some common examples are:

- a) Flood insurance
- b) Broad Form Comprehensive General Liability Endorsement
- c) Directors and Officers Liability
- d) Medical Payments
- e) Property (all risk) policy
- f) Automobile. Automobile liability for bodily injury and property damage for owned and/or non-owned motor vehicles, in such limits of protection and with such coverage as shall be required by the Board of Directors.

8.8 **Description of Coverage.** A detailed summary of the coverages included in the Association's policies shall be available for each owner upon request. All Association insurance policies shall be available for inspection by owners upon request.

8.9 **Waiver of Subrogation.** If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogate as to any claim against owners, the Association, or their respective servants, agents or guests, except for any claim based primarily upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

8.10 **Insurance Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, and all proceeds shall be payable to the Association.

8.11 **Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the Association's common surplus.

8.12 **Association as Agent.** The Association is hereby irrevocably appointed agent for each owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Living Units.

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## **9. GENERAL COVENANTS AND USE RESTRICTIONS.**

9.1 **Residential Use.** Each Living Unit shall be occupied by only one Family and its temporary guests at any time, as a residence and for no other purpose. No time-sharing, business or commercial activity shall be conducted in or from any Living Unit. No person may publicly advertise the address of a Living Unit as the address of any business. The use of a Living Unit as a public lodging establishment shall be deemed a business or commercial use. This Section 9.1 shall not be construed to prohibit any Living Unit occupant from maintaining a personal or professional library, from keeping his personal, business or professional records in his Living Unit, or from handling his personal, business or professional telephone calls, written correspondence, or other communications in and from his Living Unit. Such uses are expressly declared customarily incident to residential use. This Section 9.1, however, is intended to prohibit commercial or business activity by an owner which would noticeably change the residential ambiance of the Neighborhood, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Neighborhood by persons making deliveries or pick-ups, employees or other business associates, or customers and clients.

9.2 **Approval of Improvements by ARC.** As described in Section 5 hereof and in the Club Documents, all buildings, structures, landscaping and improvements to be built on or in the Community, including the Neighborhood, must be approved by the ARC. The Club Declaration provides the procedure and method of obtaining said approval.

9.3 **Leasing.** An owner may lease his Living Unit without prior Association approval, subject to the Club Declaration and the following restrictions and conditions:

- a) The lease must be written, and a fully executed copy must be provided to the Association not less than three (3) days before the beginning of the lease term, together with such other information about the tenants as the Board may reasonably require., including, but not limited to, personal information of each occupant under the lease and vehicle information.
- b) No Living Unit may be leased or rented for a term of less than sixty (60) consecutive days with a maximum of two (2) lease periods per year except for the following exception. A Pinehurst owner who has sold his/her Pinehurst Unit may rent or lease back from the new owner, as recorded on the closing documents, that same unit for a term of less than sixty (60) consecutive days. Such rental period to commence no later than the official closing date for the sale of the unit and will be subject to the normal filing application and fee structure in force at the time. The first day of the lease shall determine in which calendar year the lease occurs, unless the lessee(s) occupies the Living Unit prior to the commencement of the lease term in which case the date of occupancy shall be determinative.
- c) No subleasing or assignment of lease rights is allowed. All of the provisions of the Governing Documents and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Living Unit as a lessee or guest to the same extent as against an owner, and a covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Governing Documents, designating the Association as the owner's agent, with the authority to seek damages, injunctive relief, and/or terminate any lease and evict the tenant, his family and his guests in the event of violations by the tenant of such covenant,

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without the need to join the Owner in such action, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not. In addition, the Association may proceed against the tenant and Owner for the recovery of the Association's expenses, costs and attorneys fees in any such action.

9.4 **Nuisance.** No noxious or offensive activity shall be carried on upon any Lot or in any Living Unit, nor shall anything be done that is or may become an unreasonable source of annoyance or nuisance to other residents.

9.5 **Temporary Structures.** No structure of a temporary character, including trailer, tent or shack shall be used on any Lot, either temporarily or permanently.

9.6 **Signs.** To the extent lawful, the display of signs, advertisements and advertising shall be subject to the Club Declaration and the control of the Club. The Board of Directors shall have the right to summarily remove and destroy all unauthorized signs.

9.7 **Appearance; Refuse Disposal.** Each owner shall keep his Lot free and clear of weeds, underbrush, unsightly growths, trash and debris and shall reasonably maintain his Living Unit. Trash, garbage or other waste shall not be kept except in sanitary containers suitably screened from view from the street and adjacent Lots. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No garbage incinerators shall be permitted.

9.8 **Maintenance.** The Association shall have the right to repair any structure or improvement on any Lot which constitutes a danger or nuisance or is in unsightly disrepair, provided that the owner is given reasonable notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner of said Lot, which charge shall be a lien on the Lot which may be foreclosed, and which shall secure the Association's attorney's fees and other costs in connection with said foreclosure.

9.9 **Awnings and Windows.** Awnings, hurricane shutters, solar film, and other window shading or decoration shall be subject to the prior approval and control of the ARC.

9.10 **Fences.** No fence, wall, hedge or other similar structure shall be erected on any Lot, except any approved by the ARC.

9.11 **Lawns; Landscaping.** Except for designated Conservation Areas, buffer zones, open space or other similar areas, all areas not covered by structures, walkways or paved parking facilities shall be maintained by their owners as lawn or landscaped areas to the pavement edge of any abutting streets and to the waterline of any abutting lakes, canals or water management areas. Stone, gravel, or paving may not be used as a substitute for grass in a lawn, unless required by law. Certain areas as determined by the CDD shall remain in a natural or unimproved state. Lawns must be regularly cut and mulched areas regularly re-mulched. The landscaping on Lots, including without limitation, the trees, shrubs, lawn, flower beds, walkways and ground elevations, shall be maintained by the owner thereof. No landscaping shall be installed, cut down, destroyed or removed without the prior written approval of the ARC.

9.12 **Outside Lighting.** No spotlights, floodlights, or other outdoor high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereof without the written authorization of the ARC. Low intensity lighting which does not unreasonably disturb the owners or other occupants of the Neighborhood shall be allowed. The

owner of each Lot shall maintain the front yard lamp (if any), and keep it operating during all hours of darkness.

9.13 **Commercial Activities.** No business or commercial activity shall be conducted in the Neighborhood, except the Developer's construction of improvements and the maintenance of sales offices or models.

9.14 **Pets.** The owner of each Living Unit may keep a reasonable number of household pets, such as a dog, cat, tropical fish or caged birds in a Living Unit, subject to reasonable regulation by the Club or the Association. All pets must be carried under the owner's arm or leashed at all times while outside of the Living Unit. The owner is responsible for cleaning up after his pet. The ability to keep such pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Neighborhood. No reptiles, amphibians, poultry or livestock may be kept in the Neighborhood. Pets shall not be left unattended on screened porches, lanais, yards or in garages.

9.15 **Motor Vehicles; Parking.** Parking in the Neighborhood is restricted to private automobiles and passenger-type "mini-vans," jeeps and pick-up trucks having a capacity of no more than two (2) tons. Abandoned or inoperable automobiles or oversized vehicles of any kind shall not be stored or parked on any portion of the property. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three (3) weeks or longer; provided however, this shall not include operable vehicles left on the Lots by owners while on vacation. No commercial vehicles, campers, mobile homes, motor homes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers or house trailers shall be permitted to be parked or to be stored in the Neighborhood. For the purpose of this Section 9.15, "commercial vehicles" shall mean those which are not designed and used for customary personal/family purposes or those with commercial markings. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The determination of the Club's Board of Directors as to the commercial nature of a vehicle shall be binding. The prohibitions on parking contained above in this Section 9.15 shall not apply to temporary parking of commercial vehicles such as for construction use or providing pick-up and delivery and other commercial services. No parking on lawns shall be permitted. No vehicle shall be parked anywhere but on paved areas intended for that purpose, or as approved by the Club for construction purposes. The Association shall have the right, without notice to tow any vehicle not in compliance with this section. Nothing herein shall restrict Developer or its designees from placing, parking or storing vehicles that are engaged in any activity relating to construction, maintenance, sale or marketing of any Lots in the Neighborhood.

9.16 **Garages, Carports and Accessory Buildings.**

- a) No detached garage or other accessory building shall be erected. Each residence shall have an attached or built in garage which shall accommodate no less than one (1), nor more than three (3), automobiles. Repair of vehicles shall be permitted only inside the garage. When ingress and egress to the garage is not desired, the garage doors shall remain closed.
- b) Carports are not permitted.
- c) No garage shall ever be permanently enclosed or converted to other uses without substitution of another enclosed garage and approval of the ARC. All garages must

have a minimum 16-foot wide overhead style garage door, or two (2) 8-foot wide overhead style garage doors.

9.17 **Garage Sales.** No garage sale, estate sale, flea market, auction, or similar event shall be held on any Lot without prior written approval of the Board of Directors and under no circumstances may more than one (1) such event be held on any Lot in any period of twelve (12) consecutive months.

9.18 **Mailboxes, Lamp Posts.** Mailboxes, front yard lamp posts, and their supporting structures shall be substantially uniform in style, appearance and location, and are subject to regulation by the ARC.

9.19 **Antennas, Radio Equipment and Flagpoles.** No antennae, aerials, ham radios or satellite dishes shall be placed upon any portion of a Lot or the Neighborhood Common Areas, except as may be required in connection with the provision of a cable television or master antenna system servicing the Neighborhood or that comply with the terms of the Club Documents or as may be allowed by any law. No ham radios or radio transmission equipment shall be operated or permitted to be operated within the Neighborhood without the prior written consent of the Board of Directors and the ARC. A flagpole, for display of the American flag only, may be permitted if its design and location are first approved by the ARC. No owner shall be prohibited from displaying a portable, removable United States flag or official flag of the State of Florida in a respectful manner, a portable, removable US Army, Navy, Air Force, Marine Corps or Coast Guard flag not larger than 4.5' x 6'. Notwithstanding the foregoing, no one shall be permitted to display the United States flag in a manner that violates: (i) Federal law or any rule or custom as to the proper display or use of the United States flag; or (ii) any reasonable restriction pertaining to the time, place and manner of displaying the flag. An approved flagpole shall not be used to mount an antenna. It is the intent of this Section 9.19 to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances which is sometimes caused by ham radios, CB base stations or other high-powered broadcasting equipment.

9.20 **Swimming Pools.** An owner, if approved by the ARC may, construct a swimming pool and screened enclosure on his Lot. In the event such construction requires entry of or access over an adjoining Lot, the entry or access shall be only with the consent of the owner of the adjoining Lot, which consent may not be withheld without good cause.

9.21 **Conservation Areas.** Certain portions of the Neighborhood contain or are adjacent to wetland preservation or mitigation areas and upland buffers that are or will be designated as conservation areas on the plat of the Neighborhood ("Conservation Areas"), which Conservation Areas will be protected by and be subject to a conservation easement in favor of the CDD and the South Florida Water Management District, and a conservation easement in favor of the CDD and the U.S. Army Corp of Engineers ("Conservation Easements").

The terms of the Conservation Easements shall provide that the Conservation Areas shall be maintained and managed in perpetuity by the CDD, its successors and assigns and the CDD shall enforce the terms and conditions of the Conservation Easements.

In accordance with the terms of the Conservation Easements, the CDD shall be responsible for the installation and perpetual maintenance of permanent physical signs/markers designating the Conservation Areas as required by South Florida Water Management District.

Any acts or uses detrimental to the preservation of the Conservation Areas in their natural condition shall be prohibited, with the exception of exotic or nuisance vegetation removal, or otherwise in accordance with the terms of the Conservation Easements and Permits. Pursuant to the terms of the Conservation Easements, exotic and/or nuisance vegetation may include Melaleuca, Brazilian Pepper, Australian Pine, Japanese Climbing Fern, Cattails, Primrose Willow and Grape Vine.

THE CONSERVATION AREAS SHALL BE THE PERPETUAL RESPONSIBILITY OF THE CDD AND MAY IN NO WAY BE ALTERED FROM THEIR NATURAL STATE. ACTIVITIES PROHIBITED WITHIN THE CONSERVATION AREAS INCLUDE, BUT ARE NOT LIMITED TO, CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND; DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS TRASH; REMOVAL OR DESTRUCTION OF TREES, SHRUBS, OR OTHER VEGETATION REMOVAL; EXCAVATION, DREDGING OR REMOVAL OF SOIL MATERIAL; DIKING OR FENCING; ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE; FLOOD CONTROL, WATER CONSERVATION, EROSION CONTROL, OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.

9.22 **Lakes, Water Retention Ponds.** No Lot or Neighborhood Common Areas shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without the prior written consent of the CDD and the South Florida Water Management District. No person other than the Association or the Club may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.

9.23 **Open Space.** Any land subject to this Declaration and designated as open space, landscape buffer, preserve area, Conservation Areas or words of similar import on any plat, declaration of covenants and restrictions, site plan, permit or other document shall be preserved and maintained by the owner of such land as open space. If such land or an easement over such land has been conveyed or dedicated to the Association, the Association shall preserve and maintain such land. No development may occur on such land except structures or improvements which promote the use and enjoyment thereof for open space purposes.

9.24 **Energy Conservation Equipment.** All solar heating apparatus must conform to the standards set forth in the HUD intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Water Systems. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as reasonably determined by the Association or ARC. This provision is not intended to prohibit the use of solar energy devices.

9.25 **Additional Restrictions.** The Club Documents contain additional restrictions which are applicable to the Neighborhood and the owners. In the event of a conflict between the provisions of this Declaration and the provisions of the Club Documents, the provisions of the Club Documents shall control; provided, however, that this Declaration and the other Neighborhood documents may contain provisions which are more restrictive than those contained in the Club Documents, in which event the more restrictive provisions shall control.

**10. OWNERSHIP OF LOTS.** The transfer of ownership of Lots shall be subject to the following restrictions:

10.1 **Notice to Association.** An owner intending to sell his Lot shall give the Association written notice of such intent at least seven (7) days prior to the closing of the sale, including the name of the purchaser and such other information about the purchaser as the Association may reasonably require. A new owner acquiring title shall provide to the Association a copy of the recorded deed, or other instrument evidencing title, within thirty (30) days after the transfer occurs. The Association may designate by rule a separate entity to receive the applicable conveyance documents on behalf of the Association.

10.2 **Designation of Golf Member of the Club.** Where legal title to a Lot is held in the name of two or more natural persons who are not husband and wife, or in the name of a corporation, partnership or other entity which is not a natural person, the owner shall designate in writing one individual or family as the regular member of the Club, as further provided in Rules and Regulations of the Club. For purposes of applying restrictions on the occupancy of Living Units, the individual or family designated to the Club shall also be deemed the owner of the Lot.

10.3 **Life Estate.** A Lot may be subject to a life estate, either by operation of law or by a voluntary conveyance. In that event, the life tenant shall be as if the life tenant was the only owner. The life tenant shall be liable for all assessments and charges against the Lot. Any consent, approval or vote required may be given by the life tenant, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

**11. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS.** Every owner, and all guests, tenants and occupants, shall at all times comply with Chapter 617, Florida Statutes, Chapter 720, Florida Statutes, the Governing Documents, and the rules of the Club and of the Association. Before undertaking any remedy, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper\* interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors of the Association, whose interpretation of the Governing Documents and/or whose remedial action shall control. Each member and the member's tenants, guests, and invitees, and the Association, are governed by, and must comply with Florida Statutes Chapters 720 and 617, the Governing Documents, and the rules of the Club and of the Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Association or by a member against:

- a) The Association
- b) A member;
- c) Any Director or officer of the Association who willfully and knowingly fails to comply with these provisions and,
- d) Any tenants, guests, or invitees occupying a parcel or using the Neighborhood Common Areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Section 11 does not deprive any person of any other available right or remedy.

11.1 **Enforcement Action.** Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any

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covenants or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.2 **Self-help Remedies.** Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the owner of the land, any construction or other violation that may be or exist thereon. The Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

11.3 **Suspension of Common Area Use Rights; Fines.** The Association may levy a reasonable fine or suspend, for a reasonable period of time, the rights of an owner, the owner's family, or an owner's tenants, guests, or invitees, or both, to use Neighborhood Common Areas and facilities in the event of their failure to comply with any covenant, restriction, or rule contained in the Governing Documents or applicable law or in the event they condone such violation by their family members, guests, tenants or invitees. The procedure for levying fines and suspending use rights is set forth in the Bylaws.

12. **THE CLUB.** By taking title to a Lot, the owner becomes subject to the terms and conditions of the Club Declaration as it may be amended from time to time.

12.1 **Golf Membership in the Club.** Each Lot shall have as an appurtenance one Golf membership in the Club, which membership shall carry such rights and obligations, and be exercised in such manner, as is more fully set forth in the Governing Documents. The Membership cannot be sold, conveyed or assigned separately from the Lot. Assessments and dues levied by the Club shall be paid directly by the Lot owner to the Club.

12.2 **Membership and Voting in the Club.** All owners in this Neighborhood are automatically Class "A" members of the Club. Notwithstanding such membership, only authorized representatives of the members shall be entitled to vote on behalf of all members at meetings of the members of the Club. At Club meetings, the votes of this Neighborhood shall be cast by the Association President, as Neighborhood Voting Representative.

13. **SECURITY** THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE NEIGHBORHOOD DESIGNED TO MAKE THE NEIGHBORHOOD SAFER THAN IT OTHERWISE MIGHT BE. ADDITIONALLY, THE CLUB, NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE. ALL OWNERS AGREE 'I'0 HOLD THE CLUB AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION OR THE SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY (WITHIN THE NEIGHBORHOOD. NEITHER THE ASSOCIATION OR THE CLUB SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OR SECURITY MEASURES UNDERTAKEN, IF ANY. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND TENANTS, GUESTS AND INVITEES OF OWNERS, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD, AND THE CLUB AND ITS BOARD OF DIRECTORS DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM, IF ANY,

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Pinehurst at Pelican Sound Neighborhood



DESIGNATED BY OR INSTALLED ACCORDING TO THE GUIDELINES ESTABLISHED BY DECLARANT, DEVELOPER, THE CLUB, THE ARC OR THE ASSOCIATION MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD, THE CLUB AND ITS BOARD OF DIRECTORS, AND THE ARC ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST, AND INVITEE OF THE UNIT OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND LIVING UNITS AND TO THE CONTENTS OF LIVING UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD, THE CLUB AND ITS BOARD OF DIRECTORS, AND THE ARC HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER OR OCCUPANT OF ANY LOT, OR ANY TENANT, GUEST OR INVITEE OF AN OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE NEIGHBORHOOD, IF ANY.

**14. COMMUNITY DEVELOPMENT DISTRICT.** A uniform community development district pursuant to Chapter 190, Florida Statutes, known as River Ridge Community Development District ("CDD") exists to administer all or a portion of the Properties, including this Neighborhood. CDD will provide certain urban infrastructure facilities and services and will have the authority to levy and collect fees, rates, charges, taxes and assessment to pay for, finance and provide such services. CDD is empowered to plan, establish, acquire, construct and reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for basic infrastructure which may include, without limitation, the following:

- a) water management and control lands within the CDD;
- b) roads and bridges;
- c) potable water distribution;
- d) sewage collection;
- e) waste water management;
- f) irrigation;
- g) perimeter landscaping; and
- h) limited access assurance services.

CDD will impose taxes and/or assessments on the Lots through a special taxing district. These assessments pay the construction, operation and/or maintenance costs of certain public facilities within CDD and are set annually by its governing board. These assessments are in addition to county and all other taxes and assessments provided for by law.

These fees, rates, charges, taxes and assessments will either appear on the annual real estate bill for each unit as a separate and district tax payable directly to the Lee County Tax Collector or on a separate bill issued to each owner by the CDD.

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Each owner agrees, by acceptance of a deed or other instrument conveying title to a Lot, to pay any and all fees, rates, charges, taxes and assessments imposed by CDD with respect to the Lot, and to abide by all of the rules and regulations of CDD, as they may be amended from time to time.

## **15. DURATION OF COVENANTS; AMENDMENT OF DECLARATION:**

15.1 **Duration of Covenants.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the Neighborhood, and shall inure to the benefit of and be enforceable by the Association, and any owner, their respective legal representatives, heirs, successors and assigns, for an initial period that expires on the thirtieth (30th) anniversary of the date of recordation of the Declaration of Covenants, Conditions, Restrictions, and Easements for Pelican Sound Golf & River Club, Inc. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths (3/4ths) of the votes cast at a duly held meeting of members of the Association vote in favor of terminating this Declaration at the end of its then current term. Written notice of any meeting at which such a proposal will be considered shall be given at least forty-five (45) days before the meeting. If the members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. The certificate shall be recorded in the Public Records of Lee County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

15.2 **Amendments; Proposal.** Notwithstanding the foregoing, this Declaration may be amended from time to time by a vote of the members. Amendments may be proposed by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests. The proposed amendments must be submitted to a vote of the members not later than the next annual meeting.

15.3 **Amendments; Vote Required.** Except as otherwise provided by law or by other specific provision of the Governing Documents, a proposed amendment to this Declaration shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests of the Association present and voting at any annual or special meeting called for the purpose, provided that notice of each proposed amendment has been given to the members in accordance with law. Unless otherwise provided by law, notice of proposed amendments shall be in substantially the same form as is specified in Chapter 718, Florida Statutes, for proposed amendments to a Declaration of Condominium. No amendment shall change any Lot's share of liability for assessments or any owner's voting rights, unless the owner consents to the amendment.

15.4 **Amendments; Certificate; Recording; Effective Date.** A copy of each amendment shall be attached to a certificate attesting that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration was originally recorded, and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County.

15.5 **Exceptions.** Wherever in this Declaration the consent, approval, or affirmative vote of more than two-third (2/3rds) of the voting interests present and voting in person or by proxy is required in order to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action.

## **16. GENERAL PROVISIONS.**

16.1 **Severability.** If any section, subsection, sentence, clause, phrase or portion of this Declaration is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portion thereof.

16.2 **Headings and Capitalization.** The headings of Sections and paragraphs herein, and the capitalization of certain words, are for convenience only, and do not affect the meaning or interpretation of the provisions of this Declaration.

16.3 **Notices.** Any notice required to be sent to any owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner in the records of the Association at the time of such mailing. The owner bears the responsibility for notifying the Association of any change of address.

16.4 **Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

16.5 **Rule Against Perpetuities.** In the event any court should hereafter determine any provisions as originally drafted herein in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose. "Measuring lives" shall be that of the incorporator of the Association.

Instrument prepared by and after  
recording return to:  
Ashley D. Lupo, Esq.  
Roetzel & Andress  
850 Park Shore Drive  
Naples, FL 34103  
(239) 649-6200

INSTR # 2013000125228, Pages 63  
Doc Type RES, Recorded 05/29/2013 at 04:11 PM,  
Linda Doggett, Lee County Clerk of Circuit Court  
Rec. Fee \$537.00  
Deputy Clerk LTALONE  
#1

(Space above line for recording information)

**CERTIFICATE OF AMENDMENT**

THE UNDERSIGNED, being the duly elected and acting President of Pinehurst at Pelican Sound Neighborhood Association, Inc., a Florida corporation, not for profit, does hereby certify that at the duly noticed annual members' meeting held on March 7, 2013, at which a quorum was established, the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pinehurst at Pelican Sound Neighborhood and the Amended and Restated Bylaws of Pinehurst at Pelican Sound Neighborhood Association, Inc. set forth in Exhibits "A" and "B" respectively and attached hereto, were approved and adopted by the required vote of the membership. The original Declaration of Covenants, Conditions and Restrictions for Pinehurst at Pelican Sound Neighborhood was recorded at O.R. Book 3036 at Page 1416, et. seq., Public Records of Lee County, Florida.

PINEHURST AT PELICAN SOUND  
NEIGHBORHOOD ASSOCIATION, INC.

(SEAL)

Joyce Lenart  
Name: Joyce Lenart  
As: President

J. Ann Lenart  
Witness:  
Print Name: JOAN S. LENART

Denise West  
Witness:  
Print Name: Denise West

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 25 day of March, 2013, by Joyce Lenart, as President of Pinehurst at Pelican Sound Neighborhood Association, Inc., the corporation described in the foregoing instrument and who is ( ☒ ) personally known to me or who has produced \_\_\_\_\_ as identification and acknowledged executing the same under authority vested in him/her by said corporation and the seal affixed thereto is the seal of said corporation.



Denise West  
Notary Public  
Print Name: Denise West  
My Commission Expires: 4-11-13