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This instrument prepared by  
and return recorded instrument to:

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**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
RIO VILLA LAKES**

*This amends, restates and supercedes the Declaration of Covenants, Conditions and Restrictions for Rio Villa Lakes recorded March 17, 2004 in Official Records Book 2422, Pages 1437 through 1463, of the Public Records of Charlotte County, Florida.*

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Rio Villa Lakes (the "Declaration") is made this 7<sup>th</sup>, day of July, 2008, by RIO VILLA LAKES, LLC, a Florida limited liability company (hereinafter referred to as the "Developer" or "Declarant"), for itself and its successors, grantees and assigns.

**WITNESSETH:**

WHEREAS, pursuant to Section 11.4 of the Declaration of Covenants, Conditions and Restrictions for Rio Villa Lakes recorded March 17, 2004 in Official Records Book 2422, Pages 1437 through 1463, of the Public Records of Charlotte County, Florida, as amended (the "Prior Declaration"), Developer may, in its sole discretion, amend the Declaration; and

WHEREAS, the real property lying and being situated in Charlotte County, Florida, and being more fully described on Exhibit "A" attached hereto and made a part hereof (the "Property") is currently subject to the Prior Declaration. Developer desires to subject the Property to the protective covenants, conditions, restrictions and other provisions of this Declaration, each and all of which is and are for the benefit of the Property and the Owners thereof; and

WHEREAS, the Developer desires to amend and restate the Prior Declaration in its entirety.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, the Developer hereby declares that the Property shall be occupied, held, transferred, sold, and conveyed subject to the following covenants, conditions, easements, and restrictions, all of which shall run with the land and be binding upon, and inure to the benefit and burden of, the Developer, its grantees, successors and assigns, and upon any person which shall hereinafter acquire or own an interest in and to any portion of the Property and any improvements located thereon as well as the grantees, heirs, successors, successors-in-title, executors, administrators, personal representatives, devisees and assigns thereof.

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. The following words when used in this Declaration shall, unless the context shall otherwise indicate, have the following meanings:

A. "Architectural and Landscaping Standards" shall mean and refer to the rules, regulations, standards, and criteria promulgated by the Rio Villa Lakes DRC and as adopted by the Developer or the Board of Directors of the Association, as the case may be, as the same may be amended from time to time.

B. "Assessment" shall mean and refer to all actual and estimated expenses incurred by the Developer and the Association, as the case may be, for the general benefit of the Owners, including any reasonable reserves, pursuant to this Declaration, including without limitation the expenses incurred with respect to the easements.

C. "Association" shall mean and refer to RIO VILLA LAKES HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, and any successor thereof, which corporation has been formed for the primary purpose of owning, operating and maintaining all Common Areas (including the Surface Water Management System) and enforcing the covenants contained herein.

D. "Common Areas" shall mean all real property to be owned by the Association for the common use and enjoyment of the Owners, their agents, assigns, employees and invitees. The Common Areas include all land which is subject to this Declaration, including the surface water management system to be operated and maintained by the Association, less and excepting the platted lots which have been reserved by Developer for sale to Owners and less and excepting any areas dedicated to Charlotte County for streets and roadways. The said Common Areas shall be deeded by Developer to the Association as hereinafter provided.

E. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Rio Villa Lakes, together with any Amendments or Supplements thereto.

F. "Design Review Committee" (DRC) shall mean and refer to the not less than three (3) nor more than five (5) persons who shall serve at the pleasure of the Developer and the Board of Directors of the Association for the purpose of administering the Architectural and Landscaping Standards for the property.

G. "Developer" shall mean and refer to RIO VILLA LAKES, LLC, a Florida limited liability company, its successors and assigns.

H. "Development" shall mean and refer to the Property, together with all easements located thereon or adjacent thereto.

I. "Development and Construction Terms" shall have the same meanings as defined in the Zoning and Building ordinances and regulations enacted and promulgated from time to time Charlotte County. In the absence of individual definitions in said zoning and building regulations, specific terms shall take on the meanings customary to the construction industry in Charlotte County, Florida.

J. "Easements" shall mean such easements as are created by this Declaration and other easements necessary for the development of Rio Villa Lakes, including but not limited to drainage and utility easements.

K. "Lot" shall mean a portion of the Property intended by the Developer for use and occupancy as a residence for a single family.

L. "Member" shall mean and refer to those persons entitled to membership in the Association.

M. "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument.

N. "Mortgagee" shall mean and refer to any person or legal entity who is the holder of a mortgage, deed of trust, deed to secure debt or any other form of valid security instrument which encumbers land in Rio Villa Lakes.

O. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee or undivided fee interest in any Lot located within the Property, including the Developer, but shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure, any proceeding in lieu of foreclosure, or otherwise.

P. "Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee or any other legal entity.

Q. "Property" shall mean and refer to the real property located in Charlotte County which is legally described in Exhibit "A" attached hereto.

R. "Rio Villa Lakes" shall mean and refer to the Property.

S. "Rules and Regulations" shall mean and refer to any and all rules and regulations which are duly promulgated by the Developer or the Association pursuant to this Declaration, the Articles of Incorporation and/or the Bylaws of the Association.

T. "Surface Water Management System" shall mean those water management areas defined by Rule 40D-4.021(5), Florida Administrative Code, and shall include but not be limited to, all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 2.1. Property Subject to this Declaration. The Property, together with any improvements now or hereafter constructed thereon, shall be occupied, held, transferred, sold and conveyed subject to this Declaration.

## ARTICLE III

### EASEMENTS

Section 3.1. Owner and Third Party Easements of Access, Use and Enjoyment. There are hereby created the following perpetual easements in Rio Villa Lakes:

A. Each Owner, the Association and the Southwest Florida Water Management District, a state agency, shall have a non-exclusive easement for stormwater retention and drainage over and across the drainage easements recorded in the Public Records of Charlotte County, Florida, and any modifications or amendments thereto required by local, state or federal government agencies having jurisdiction thereof; and

B. Such other easements as are recorded in the Public Records of Charlotte County, Florida (all of the foregoing being collectively described hereinafter as the "easements".)

The above-described easements shall be non-exclusive and shall run with ownership of each and every Lot and they shall not be conveyed, devised, encumbered or

otherwise dealt with separately from a Lot. The said easements are subject to:

1. This Declaration and any restrictions or limitations contained in any deed conveying any portion of such property to the Association.

2. The rights of the Association, in accordance with its Articles of Incorporation and Bylaws and the powers granted to such an Association pursuant to Chapters 607, 617 and 720, Florida Statutes, to borrow money for the purpose of maintaining, reconstructing and improving the easements.

3. The right of the Developer to take such steps as are reasonably necessary or desirable to protect the easements from and against damage, destruction and foreclosure.

4. The right of the Developer to relocate or grant an easement on all or any part of the easements to any public agency, authority, telephone, cable television company or other public or private utility for such purposes and subject to such conditions as may be agreed to by the Developer; provided, however, that after Developer turns over control of the Association, no such dedication shall be effective unless: 1) written notice of the action is sent to every member not less than ten (10) days, nor more than fifty (50) days, in advance of the contemplated relocation or grant, 2) it is approved by a majority of the votes of the members entitled to vote at a meeting called in accordance with the Bylaws of the Association, and 3) a consent to dedicate is recorded in the Public Records and is signed by a duly authorized officer of the Association.

5. The right of the Developer and/or the Association to adopt reasonable Rules and Regulations regulating the use and enjoyment of said easements, or restricting the use and enjoyment thereof for failure to pay any assessments owed by Owners or for other violations of this Declaration, the Articles of Incorporation or the Bylaws of the Association with respect to the easements.

Section 3.2. Delegation of Use. Any Owner may delegate his right of enjoyment in the easements located thereon to his lessee, the members of his family, his bona fide guests and invitees, subject to such Rules and Regulations as may be established from time to time by the Developer and the Association, as the case may be.

Section 3.3. Rules and Regulations. The Developer and the Association, as the case may be, shall have the right, in its sole and absolute discretion, to adopt, modify, amend and terminate at any time any Rules and Regulations for the use of the easements and any Amenities located thereon.

## ARTICLE IV

### THE ASSOCIATION

Section 4.1. Membership. Every Owner of a Lot in Rio Villa Lakes shall be a Member of the Association.

Section 4.2. Voting Rights. The Association shall have two classes of voting membership.

A. Class A: Class A Members shall be all Owners except the Developer, until the Developer becomes a Class A Member as more particularly provided below. Each Class A Member shall be entitled to one (1) vote for each Lot in which he holds an interest. When more than one person holds an interest in any Lot, all such persons shall be Members, but only one (1) vote for such Lot shall be cast as they among themselves determine.

B. Class B: The Class B Member shall be the Developer, and its successors and assigns, except for Class A Members who have purchased a Lot from Developer. The Class B Member's approval on all matters shall be required until the earlier of such time as the Class B Member shall voluntarily authorize a transfer of its membership to Class A Membership, or until Developer ceases to own ten percent (10%) of the Lots. At such time as the Class B Membership shall cease and be converted to Class A Membership, Developer shall then be entitled to one (1) vote for each Lot then held by Developer.

Section 4.3. Turnover of Association. Members other than the Developer are entitled to elect at least a majority of the members of the board of directors of the Association when the earlier of the following events occurs:

A. Three months after 90 percent of the parcels in all phases of the Development that will ultimately be operated by the Association have been conveyed to Members; or

B. Such other percentage of the parcels has been conveyed to Members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of parcels.

C. For purposes of this section, the term "Members other than the Developer" shall not include builders, contractors, or others who purchase a parcel for the purpose of constructing improvements thereon for resale.

Section 4.4. Change of Membership. Change of membership in the Association shall be established by recording a deed (or other instrument establishing a fee interest in any Lot in the

Property) in the Public Records at which time the membership of the prior owner is terminated. The prior Owner shall notify the Association of the proposed transfer of ownership. The new Owner shall furnish the Association and Developer with a recorded copy of the deed (or other instrument) within thirty (30) days after transfer of ownership.

Section 4.5. Dissolution of Association. In the event of dissolution of the Association, except upon the vote of all Members entitled to vote as provided in the Articles of Incorporation, any Owner or the Developer may petition a court of competent jurisdiction for the appointment of a receiver to manage the affairs of the dissolved Association in the place and stead of the Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association, including reinstatement of the Association as an active Florida corporation.

Section 4.6. Agreement for Deed or Lease. A vendee of Lot sold under an Agreement for Deed ("Agreement") or a lessee of a Lot subject to a written lease with a term in excess of one (1) year ("lease"), upon filing a copy of the Agreement or lease with the Association, which Agreement or lease authorizes such privileges, shall be considered the Owner for purposes of exercising all privileges of membership in the Association, except voting privileges.

## ARTICLE V

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

The Association shall have the following rights and obligations.

Section 5.1. Easements. The Association, subject to the rights and obligations of the Owners set forth in this Declaration, shall be responsible for the management, maintenance, repair, reconstruction and control of the easements and all improvements thereon and shall keep same in good, clean, attractive, and sanitary condition, order, and state of repair, pursuant to the terms and conditions hereof.

Section 5.2. Personal Property and Real Property. The Association may acquire, hold, dispose of fee or leasehold interests in tangible and intangible personal property and real property on its own accord or by acceptance of such property interest conveyed to it.

Section 5.3. Rules and Regulations. The Association may make and enforce reasonable rules and regulations governing the use of the easements and other Association property, which rules and regulations shall be consistent with the rights and duties established by this Declaration and by the Association's Articles of Incorporation and Bylaws. Sanctions shall be as provided in the Bylaws of the Association and may include reasonable monetary fines and suspension of the right to vote. The Association shall, in addition, have the power to seek damages and/or injunctive or other equitable relief in any court to enjoin violations or to abate nuisances.

Section 5.4. Books and Records. The Association shall make available to Owners and their respective mortgagees, and to holders, insurers or guarantors of any Mortgage on all or a portion of the Property current copies of the Declaration, Bylaws and Articles of Incorporation of the Association, any rules concerning the Property and the books, records, estimated budget for the current and, if available, upcoming fiscal year and Association financial statements for the preceding fiscal year. The Association shall furnish copies of such items at its cost or make such items available for inspection during normal business hours or under other reasonable circumstances within ten (10) days after receipt of written notice therefor.

Section 5.5. Other Material Matters. Upon written request identifying the name and address of the person making the request and the name and address of the Owner of the Lot, any Owner of any interest in, or the holder of Mortgage, or the insurer or guarantor of a Mortgage, on a Lot shall be furnished with all pertinent information known to the Association as to:

A. Any condemnation loss or casualty loss which affects a material portion of the Property or the Lot;

B. Any assessment(s) or charge(s) attaching to such Lot, which remain uncured for over sixty (60) days;

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

D. Any proposed action which would require the consent of a specified percentage of Owners and/or mortgage holders.

Section 5.6. Surface Water Management System. The Association has the responsibility to operate and maintain the Common Surface Water Management System in accordance with the Environmental Resource Permit issued by the Southwest Florida Water Management District. If the Association ceases to exist, the Owners shall be jointly and severally responsible for such operation and maintenance, unless and until an alternate entity assumes responsibility as provided by regulation. The Southwest Florida Water Management District shall have the right to take enforcement measures regarding the operation and maintenance of the Common Surface Water Management System, including a civil action for injunction and/or penalties, against the Association to compel it to correct any outstanding problems.

Section 5.7. Funds for Monitoring and Maintenance. If the Common Surface Water Management System includes on-site wetland mitigation which requires ongoing monitoring and maintenance, the Association shall allocate sufficient funds in its budget for monitoring and maintenance of the wetland mitigation areas each year until the Southwest Florida Water Management District determines that the areas are successful in accordance with the project's Environmental Resource Permit.

Section 5.8. Implied Rights. The Association may exercise any right, responsibility,



discretion or privilege expressly provided to the Association (except with respect to ownership, sales or construction within the Development, unless such construction is incidental to, and in conjunction with, its maintenance responsibilities) by this Declaration, the Articles of Incorporation, the Bylaws of the Association and every other right or privilege which may be reasonably implied from the existence of any such express right or privilege or reasonably necessary to effectuate any such right or privilege, all of which rights and privileges, express or implied, shall be exercised through its Board of Directors, which may delegate and assign the performance of, but not the responsibility or liability for, certain duties and responsibilities to its officers, directors, agents and employees.

Section 5.9. Wastewater System. The Association shall assume and accept liability for obligations of the Permittee pursuant to the terms and conditions of the Notification/Application for Constructing a Domestic Wastewater Collection/Transmission System from the Florida Department of Environmental Protection dated December 10, 2003, and any agreements regarding the Property between the Developer and any governmental agency including but not limited to the City of Punta Gorda, Florida.

## ARTICLE VI

### COMPLETION, MAINTENANCE AND OPERATION OF EASEMENTS AND COVENANT FOR ASSESSMENTS THEREFOR

Section 6.1. Operation and Maintenance of Easements. The Developer shall complete the construction of the easements according to the plans and specifications therefor as approved by Charlotte County, Florida and all other governmental agencies having jurisdiction thereof. Thereafter, the Owners and Association shall operate, maintain, repair and reconstruct the easements. Developer shall pay that portion of the Common Expenses which exceeds the amount assessed the other Owners until the date of conveyance of the last Lot. Developer shall be excused from payment of any assessments so long as it pays that portion of the Common Expenses incurred during the period which exceeds the amount assessed against other owners.

#### Section 6.2. Assessments.

A. Commencing on the date of conveyance of each Lot and for each calendar year thereafter, each Owner of a Lot (except the Developer) by acceptance of a deed or other instrument creating an interest in a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Developer:

1) Annual assessments for anticipated current maintenance, management and operating expenses;

2) Special assessments for capital improvements; and

3) Capital reserve assessments and resale capital assessments, all such assessments to be fixed, established and collected from time to time as hereinafter provided.

B. The Developer may levy assessments in accordance with this Declaration which shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in Rio Villa Lakes in connection with their use and enjoyment of the easements including, but not limited to, the payment of ad valorem and personal property taxes on common areas of the Property, water, power and other utilities, insurance premiums (including premiums for liability and hazard insurance) and debt service on mortgages, if any, maintenance, repair, replacement and additions to the easement facilities and its amenities, pruning, fertilizing, cutting, weeding and replacement of landscaping, the cost of labor, equipment, materials, management and supervision of and for the easements, or for creating reserves for such purposes.

Section 6.3. Amount and Payment of Annual Assessment. The Developer shall from time to time fix the amount of the annual assessment at a sum sufficient to pay the anticipated costs of maintaining and operating the easements as contemplated by this Article and any share of the aggregate assessment chargeable to each Lot shall be that proportion that one Lot has to the total number of Lots in the Development (except that the Developer is excused from such payments). An Owner's assessment obligation shall be payable in quarterly installments, in advance, commencing on the day the Owner takes title to his Lot. The Owner shall pay his prorated share of the assessment fee for the quarter during which closing on his Lot occurs.

Section 6.4. Capital Reserve Fund. Included in the annual assessments shall be a capital reserve fund for capital expenses, which must be segregated from general funds held by the Developer, and which shall be in such amount as the Developer deems necessary for maintenance and repair of the easements and its facilities, including, without limitation, sprinkling and irrigation systems. The Developer may include other reserve items as it deems necessary to the extent that specific funds are assessed and collected for such purposes, and such funds shall not be used for any purpose other than the periodic major maintenance and reconstruction of such facilities, repair and maintenance incidental to such major construction and reconstruction and subject to the rights of the Developer to utilize the reserve funds for general operating expenses or to help finance capital improvements. The Developer may resolve to provide no reserve or reserves that are less adequate than are required by this Declaration.

Section 6.5. Special Assessments for Capital Improvements. In addition to annual assessments authorized by this Article, the Developer may levy, in any assessment year, special assessments (which shall be fixed in accordance with the proportion that one Lot has to the total number of Lots held by Owners other than Developer) for all such Lots, applicable to that year only, for the purposes of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement upon the easements, including the necessary fixtures and personal property related thereto. The due date of any specified assessment shall be fixed in the resolution authorizing such assessment. The Developer shall not be responsible for paying any special assessments for capital improvements for any Lot held by the Developer.

Section 6.5. Resale Assessments. In addition to annual and special assessments authorized by this Article, the Developer may levy, a resale assessment on the resale of each Lot in Rio Villa Lakes which shall be in such amount as the Developer deems necessary to defray anticipated current maintenance, management and operating expenses and utilized in accordance with the restrictions set forth above. Such Resale Assessment shall be due and payable upon the closing of any such transfer and shall be subject to the same enforcement procedures set forth herein for Annual Assessments.

Section 6.6. Nonpayment of Assessments; The Personal Obligation of the Owner; The Lien and Remedies of the Developer. Every assessment, together with such interest thereon and cost of collection thereof as are hereinafter described, shall constitute a personal obligation and debt from each Owner payable to the Developer without demand, and shall be secured by a lien upon the Owner's Lot and all improvements thereon of each such Owner. Said lien shall attach annually as hereinafter provided and shall be enforceable by the Developer in a court of competent jurisdiction and shall be deemed to run with the land. If any such assessments are not paid by the fifteenth (15th) day after the due date, such assessment shall bear interest from the fifteenth (15th) day after the due date at the maximum rate allowed by law. No member of the Association may vote on any matters coming before the Association if at the time specified for such vote, such Member is delinquent in any installment thereof. The Developer may bring a legal action against any Owner personally obligated to pay any assessment and/or may enforce or foreclose the Developer's lien against the Lot for the full amount of any assessment together with interest thereon, as provided hereinabove. The defaulting Owner shall be responsible for all actual costs, disbursements and expenses incurred by the Developer in collecting the delinquent assessment(s) and interest thereon as provided above, including reasonable attorney's fees and costs, whether or not litigation is commenced and including appellate fees and costs. Accordingly, in the event that a judgment against the defaulting Owner is obtained by the Developer, such judgment shall include interest on the assessment as above provided and a sum, to be fixed by the court, to reimburse the Developer for all costs, disbursements and expenses (including, without limitation, reasonable attorney's fees, including appellate attorney's fees and costs) incurred by the Developer in connection with said action.

Section 6.7. Continuing Liability for Assessments. A Lot Owner, regardless of how title is acquired, shall be liable for all assessments coming due while he is the Lot Owner. In any voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for assessments may not be avoided by waiver of the use or enjoyment of any easements or common areas or by abandonment of the Lot for which the assessments are made. If the Mortgagee or any purchaser of a Lot as a result of the foreclosure of the lien of the Mortgagee, or by voluntary conveyance in lieu of foreclosure, acquires the Lot, said Mortgagee or purchaser from the Mortgagee shall not be liable for the share of the assessments by the Association pertaining to such Lot or chargeable to the former Lot Owner which became due prior to acquisition of title by said Mortgagee or purchaser from the Mortgagee as a result of the foreclosure. Such unpaid share of common expenses or

assessments shall be deemed to be common expenses collectable from all of the owners of Lots.

Section 6.8. Certificate of Unpaid Maintenance Assessments. Each such lien for unpaid assessment, as between the Developer on the one hand and the Owner and any grantee of such Owner on the other hand, shall attach to the Lot and improvements against which the delinquent assessment was made as of the 1st of the month in which such quarterly assessment shall be assessed (said date being the attachment date of each such lien); provided, however, that all such liens shall be subordinate to the lien of an Institutional Mortgagee recorded prior to the time of recording of the claim of lien of the Developer pursuant to this Section. Upon request, the Developer shall furnish any Owner or mortgagee with a certificate setting forth whether the above described assessments have been paid and showing the amount of any unpaid assessments against the applicable Lot and the period or periods for which any such unpaid maintenance assessments were assessed and fixed. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

## ARTICLE VII

### MAINTENANCE AND REPAIR OF LOT

Section 7.1. Owner Maintenance. The Owner of each Lot at his own expense shall see to, and shall be responsible for, the maintenance of his Lot and all equipment and fixtures therein, including but not limited to, all air conditioning equipment used in or appurtenant to that Lot, and must promptly correct any condition which would, if left uncorrected, cause any damage to another Lot, and shall be responsible for any damages caused by this action or non-action. The Owner of each Lot shall also be responsible for the maintaining of all flower beds and trees on his Lot. Furthermore, the Owner of each Lot shall, at his own expense, be responsible for the upkeep and maintenance, including but not limited to, painting, replastering, sealing and polishing of the interior finished surfaces of the perimeter walls, ceiling and floor of each structure on his Lot and such Owner shall at his own expense maintain and replace when necessary all screening within or in the perimeter walls of all structures on the Lot, and all window glass in windows in the perimeter walls of all structures on the Lot and all exterior doors. The Owner may not change the exterior appearance of his Lot without the prior written consent of the Developer.

Section 7.2. Maintenance of Drainage Easement on Lot During Construction. It shall be the responsibility of each property Owner within Rio Villa Lakes at the time of construction of a building, residence or other structure, to comply with the construction plans for the Surface Water Management System pursuant to the applicable sections of the Florida Administrative Code, approved and on file with the Southwest Florida Water Management District (SWFWMD). No Owner within Rio Villa Lakes may construct any building, residence or structure or undertake or perform any activity in the retention and treatment described in the approved permits and record plat of the subdivision unless prior approval is received from the SWFWMD pursuant to the applicable sections of the Florida Administrative Code. Each Owner

shall be responsible for maintaining and repairing the drainage easement located on the Owner's Lot.

Section 7.3. Exterior Maintenance. Each Lot Owner shall be responsible for and shall see to the maintenance, repair and operation of the exterior of the structures situated on the Lot, including the roof of the building. If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner, with all due diligence, to rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken as soon as reasonably practicable, but in no event later than two (2) months from the date the damage occurs, and shall be completed within six (6) months from the date the damage occurs, unless prevented by causes beyond the control of the Owner. The Developer shall have all powers necessary to see that all responsibilities of the Owners hereunder are discharged, and may exercise these powers exclusively if it so desires. No alterations to the exterior of buildings shall be made without the prior written consent of the DRC set forth in Article IX.

Section 7.4. Owner's Additional Costs. In addition to the costs incurred by the Owner in fulfilling the Owner's obligations as set forth in this Article, each Owner shall also be responsible for the following costs (which are illustrative but not determinative of the total costs for which such Owner is responsible): the cost of property taxes attributable to the Lot; electricity; water and sewer; garbage pickup; telephone, cable television; maintenance of lines and pipes on or under the Lot and Association assessments.

Section 7.5. Repair or Replacement of Lot. Each Owner of a Lot shall be required to reconstruct or repair any Lot destroyed by fire or other casualty, whether or not such destruction shall have been an insured loss. If an Owner fails to repair or reconstruct a damaged Lot, the Developer may, in its sole discretion, repair the Lot and charge Owner for all costs of repair or replacement. The Plans and Specifications for the repair or reconstruction of such Lot must be approved by the DRC. Such costs for repair or replacement will become a lien on the Lot and, if not paid within fourteen (14) days, after written notice thereof is delivered to the Owner by Developer, the Developer may levy a special assessment upon such Owner's Lot and collect same, pursuant to this Declaration.

Section 7.6. Remedies of Developer. In the event that any Owner of a Lot fails to obtain required approvals or to repair, replace or maintain buildings as required herein, the Developer, other Owners or the Association shall have the right to proceed in a court of law or equity to seek compliance with the provisions hereof. The Developer shall also have the right to levy at any time an individual assessment against the Owner of the Lot for the necessary sums to put the improvements within the Lot in good condition and repair or to remove any unauthorized structural addition or alteration, plus interest on such amount which shall accrue at a rate of one and one-half percent (1 ½%) per month. After making such assessments, the Developer shall have the right to have its employees and agents enter the Lot (but not any structure thereon) at any time to do such work as deemed necessary to enforce compliance with the provisions hereof. The foregoing rights and remedies shall be cumulative with the rights and remedies of the Developer set forth elsewhere in this Declaration.

## ARTICLE VIII

### USE RESTRICTIONS

Section 8.1. The Property Subject to Use Restrictions. In addition to other restrictions, reservations and conditions set forth elsewhere in this Declaration and the Articles of Incorporation and Bylaws of the Association, the Property shall be subject to the following restrictions, reservations and conditions, all of which shall run with the land and, with the exception of the Developer, be binding upon each and every Owner who shall acquire or own a Lot on any portion of the Property, and shall be binding upon the respective heirs, personal representatives, successors and assigns thereof.

Section 8.2. Single Family Residential Uses and Structures Only. The subdivision shall be used and occupied and structures shall be constructed only for the following purposes:

- A. Single family residences and appurtenant structures such as decks, lanais, porches and the like;
- B. Attached noncommercial (private) two-car garages, each of which shall be constructed to contain not less than 330 square feet (on Lots that, because of their shape and size, will not accommodate a two-car garage, the Owner may, with approval of the DRC, construct a one and one-half car garage;
- C. Storage structures provided they are attached to the main residential structure;
- D. Swimming pools, only if approved by the DRC at its sole discretion, which approval maybe withheld for any reason whatsoever, based on such factors as the DRC may deem relevant in each case, including, but not limited to the size and configuration of the Lot and the views of any neighboring Lots;
- E. Spas.

Section 8.3. Construction on Lot. No buildings or structures whatsoever shall be erected or maintained in the subdivision except those to be used for the purposes aforescribed. No Lot shall contain more than one (1) single family residence, and no Lot shall contain a separate structure without the written approval of the Developer, which approval maybe withheld for any reason whatsoever. Each single family residence shall have an attached noncommercial (private) garage constructed to contain not less than 330 square feet.

Section 8.4. No Subdividing Lot. No Lot shall be subdivided or divided into any parcels, tracts or Lots smaller in size than that which was originally conveyed by Developer to the initial Owner thereof.

Section 8.5. Nuisance. Nothing shall be done and no condition shall be allowed to continue which may be or may become a nuisance. All Lots shall be kept free of accumulation of brush, trash or other material which may constitute a fire hazard or breeding place for rodents, snakes and the like. If any Owner fails to comply with this provision, after fifteen (15) days notice to the Owner or occupant, Developer, its successors and assigns, may enter upon the land for the purpose of clearing away any such accumulation or excess growth of ground cover and assess the cost thereof against the record owner of the land.

Section 8.6. Structure, Composition, Size and Height.

A. No residential structure shall contain an enclosed living area less than one thousand two hundred and fifty square feet (1,250 sq.) in size, exclusive of screened or open porches, lanais, patios, decks, entryways and garages;

B. Each home within the subdivision will have conventional gable or hip roof covered roofing, the color and material of which must be approved by the DRC. Only dimensional asphalt, fiberglass shingle and metal roofs shall be acceptable;

C. No piling home shall be constructed on a Lot.

Section 8.7. Excavating and Clearing Land. No bulldozing or clearing of trees on any Lot shall be commenced until plans and specifications showing the nature, kind, shape and location of work to be done and the grading plans of the Lot to be built upon shall have been submitted to and approved in writing by the Developer. Trees may not be removed unless the Owner shall comply with the local tree ordinance in effect at the time of such removal.

Section 8.8. Improvement Completion Time Frame. Unless specifically excepted by the Developer, all improvements for which an approval of the Developer or of the DRC is required under this Declaration shall be completed within one (1) year from the date of commencement of said improvements.

Section 8.9. Rights of Way and Lawn Care. Each Owner shall install an underground sprinkler system for watering the Owner's lawn and shrubbery. Each Lot Owner shall be responsible for keeping the lawn free of debris in the retention and drainage area within the limits of the Owner's Lot. Flower beds and shrubbery must be watered as necessary in order to keep them in a stable condition. No excessive weeds or unsightly undergrowth or brush shall be permitted within the flower beds. All watering hoses shall be stored by Owner out of the view of the general public and other owners.

Section 8.10. Easements. Nothing shall be placed on any part of any Lot which is reserved as an easement and which would interfere with the construction, use and maintenance of said easements.

Section 8.11. Retention and Drainage. Lot drainage shall be directed in accordance with

the approved plans on file at the Southwest Florida Water Management District and the Charlotte County Engineering Department.

Section 8.12. Building Setbacks. Except for corner Lots, no building, structure or part thereof shall be constructed on any interior Lot within twenty feet (20') of the front property line, within twenty feet (20') of the rear property line or within five feet (5') of side property lines. No building, structure or part thereof (except walls or fences) shall be constructed on any corner Lot unless the Lot Owner complies with Charlotte County Zoning Code. In case of the single ownership of more than one (1) contiguous Lot, these restrictions shall apply to the parcel owned as a whole and not to the interior Lot line of the contiguous Lots under common ownership. For the purposes hereof, the front property line is defined to be the principal street frontage on Lots abutting a street.

Section 8.13. Outside Storage. No motor vehicles without current license plates shall be stored and/or parked anywhere on the Property. No items may be hung or otherwise stored on a Lot outside the dwelling thereon, including without limitation scrap metal, any abandoned, wrecked or junked materials, items or articles, whether in the form of wrecked or junked vehicles, appliances, furniture, equipment, unsightly items, building materials, hoses, ladders, lawn or garden tools, equipment or other items of any type.

Section 8.14. Motor Vehicle Repairs. No Owner of any Lot, nor a member of his family, guests, invitees, licensees, or lessees, shall engage in the construction, reconstruction, repair or maintenance on the Lot of any motor vehicle, regardless whether said motor vehicle is owned by the Owner; provided, however, that an Owner may wash and/or apply polish or change a tire on his own motor vehicle on Owner's Lot. There shall be no repair, assembling or disassembling of motor vehicles, except inside the Owner's garage.

Section 8.15. Trash. No Lot or any part of the Property shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste (hereinafter referred to as "Trash"), all of which shall be bagged, tied and kept in covered sanitary receptacles in the garage.

Section 8.16. Pets. No animals, livestock or poultry of any kind, shall be raised, bred or kept on or in any Lot, except two domestic animals such as dogs, cats, and house birds may be kept; provided that, 1) they are not kept, bred or maintained for any commercial purpose. Pets shall be on a leash or restrained at all times when outside the Lot. Dogs shall not be walked on grass other than on Owner's Lot and in pet walk areas, if any, designated by the Developer. All pets are prohibited in the easements except areas designated as pet walk areas. Pet owners must clear and remove any fecal deposits made by their pets from any and all areas in the Property. No pets shall be allowed in the clubhouse, pool area, tennis court or other common areas.

Section 8.17. Business Activity. No business, commercial enterprise or business activity of any kind shall be carried on or conducted on or from any Lot, except for those businesses, commercial enterprises and business activities authorized by Developer and exempt by Developer on any Lot or other portions of the Property owned by the Developer.



Section 8.18. Prohibitions. No owner, tenant or other occupant of a Lot and/or residence in the subdivision shall:

A. Remit loud and/or objectionable noises or obnoxious odors to emanate from his/her Lot nor play any instrument at a volume which may cause a nuisance to the occupant of the other Lots in the subdivision;

B. Erect, construct or maintain any wire, antennas, garbage or refuse receptacles or other equipment or structures outside the residence (except T.V. antennas and satellite dishes provided that the location and type are approved by the Association);

C. Hang any clotheslines, laundry, garments or other unsightly objects which are visible outside the residence;

D. Allow anything to remain outside the residence which would be unsightly or hazardous;

E. Park outside the garage or other storage structure or park overnight or use for a living accommodation commercial vehicles, commercial trucks, boats, campers, trailers, and mobile homes, except service vehicles during the time they are actually serving the residence;

F. Conduct any motor repair or other repair work to a vehicle nor store any household articles, furnishings or other personal property outside the residence;

G. Conduct any trade or business whatsoever on any Lot at any time. Notwithstanding the foregoing, the Grantor and its agents shall have the right to conduct sales and promotional activities as long as Grantor owns any Lot in the subdivision;

H. Place or maintain any non-garaged mobile home, house trailer, tent, hut, shack, portable structure, recreational vehicle or other temporary living quarters on any Lot in the subdivision;

I. Keep any animals, birds or reptiles, other than commonly acceptable domestic pets, on any Lot in the subdivision;

J. Display any signs of any kind except a "For Sale" sign not exceeding eighteen inches by twenty-four inches (18" x 24") in size within a flower bed in the front of the residence, unless otherwise approved by the Association. "For Lease" or "For Rent" signs are not allowed. Nothing herein contained shall prevent the Developer from causing sales, marketing, directional and identification signs to be erected;

K. Nothing shall be hung, displayed or placed on the Lot, or the exterior walls, door or windows of any home or structure without the prior written consent of the Board;

provided however, that any unit owner may display one portable, removable United States flag in a respectful way and on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day may display in a respectful way, portable, removable official flags, not larger than 4 1/2 feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard. All approved flags must be mounted or hung on an approved pole located in a flower bed or on an approved wall mount.

L. The Common Areas, including any recreational facilities (pool, clubhouse, tennis courts, etc.) constructed thereon, are for the exclusive use of owners and their immediate families, tenants, resident house guests and guests. Owner(s) or Tenant(s) (under an Association approved lease) MUST be present within the Community when such persons are using the Common Areas.

Section 8.19. Leases. All leases of Homes shall be restricted to single-family residential use under the restrictions set forth herein and shall be subject to a six (6) night minimum term. Each Lease Application shall be submitted to the Association Manager with the applicable fee set from time to time and shall be approved in writing by the Association prior to occupancy by the Tenant. Such Lease shall include the name of the Tenant, address of the Tenant, telephone numbers, copies of the Tenant's Drivers License and other contact information for the Tenant together with such other information as the Association shall from time to time reasonably request. The Lessee under every such Lease shall be bound by and subject to all of the obligations under this Declaration and Rules and Regulations of the Owner making such Lease and the failure of the Lessee to comply therewith shall constitute a default under the Lease which shall be enforceable by the Association and the Lease shall be deemed to expressly so provide. The Unit Owner making such Lease shall not be relieved thereby from any of such obligations. Each lease shall contain the following provision:

"The lessee hereunder acknowledges that lessee has received a copy of and that this lease is subject to the Declaration of Covenants, Conditions and Restrictions of Rio Villa Lakes and the Rules and Regulations provided thereunder which lessee has read and agrees to be bound thereby."

If the foregoing provision is not contained in any lease, it shall be deemed incorporated therein by reference. In the event a lessee, or a lessee's invitee, guest or licensee, occupies a Lot without a written lease, the occupancy thereof shall constitute an acceptance of this Declaration and an agreement to be bound thereby and subject thereto.

Section 8.20. Fences. No fence, wall or dog run shall be erected, constructed or placed on any Lot.

Section 8.21. Landscaping. Following the completion of any building, parking area or other improvement on any Lot, the areas not covered by structures or driveways must be covered by sod and the building, parking area and other improvement shall be fully landscaped. No

shrubby, trees or plants on any Lot in the Property shall be installed without the prior written consent of Developer. Each Owner shall submit a Landscaping plan to the DRC in accordance with Article IX. Owners may, however, replace dead shrubby or add additional shrubby within existing landscaped areas, without prior approval, if compatible with landscaping previously utilized by the Owner. Lawns shall be comprised of grass sod and may consist only of Bahia. No artificial shrubby, trees or other artificial vegetation or landscaping shall be permitted. All landscaping must meet or exceed the Charlotte County minimum standards and shall be approved by the Association. All new construction must have a sprinkler system.

Section 8.22. Water Supply. Each individual Lot shall connect to the common potable water system as provided by the City of Punta Gorda Utilities, its successor or assigns. No person may obstruct or rechannel drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Catch basins and drainage areas are for the purpose of natural flow of water only and no obstructions or debris shall be placed in these areas.

Section 8.23. Lighting. All exterior lighting on any Lot must be approved by the DRC and be designed, erected and illuminated to avoid annoyance to any other Owner and to avoid any adverse effect on traffic safety.

Section 8.24. Clotheslines. Hanging or dusting garments, rugs or any other materials from the windows, balconies or from the exterior of any Lots is prohibited. Clotheslines are prohibited.

Section 8.25. Window and Wall Air Conditioning Units. No window or wall air conditioning units shall be permitted to be placed in a Dwelling Unit. No Lot shall have aluminum foil placed in any window or glass door, nor shall any reflective substance be placed on any glass, except as may be approved by the Developer for energy conservation purposes.

Section 8.26. Swimming Pools. No swimming pool may be constructed on any Lot unless the Owner has received a variance from the Association for the construction of such pool. Each application for variance shall be considered on its own merits and any pool constructed shall be pursuant to Association approved plans and specifications which will be unique to each pool.

Section 8.27. Utility Lines. All telephone, electric and other utility lines and connections between the main or primary utility lines and the Lots and buildings or structures located on each Lot shall be concealed and located underground so as not to be visible.

Section 8.28. Over 55 Community. The subdivision is restricted to older persons occupancy only. At least 80% of the units must be permanently occupied by at least one person fifty-five (55) years of age or older. No children shall be allowed to permanently occupy any unit. Persons under the age of eighteen (18) years shall be construed to be children. Occupancy of the unit for more than thirty (30) days in any twelve (12) month period shall be construed to be permanent. Any exception to this age restriction must be approved in writing by the Board of

Directors, with consideration to the requirements of the "Fair Housing Amendments Act of 1988" and the "Housing for Older Persons Act of 1995". The Community must comply with rules made by the Secretary of the United States Department of Housing and Urban Development for verification of occupancy. The Association shall have the right to require copies of acceptable identification be promptly provided and maintained for all Owner and occupants of Lots and Dwelling Units in order to insure compliance with the age restrictions and reporting requirements set forth herein.

Section 8.29. Firearms. The discharge of firearms within the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

Section 8.30. View Protection. The DRC reserves the right to reasonably restrict the placement of landscaping, walls or other impediments to the enjoyment of views from and of adjoining Lots.

Section 8.31. Elevation. No changes in the elevation or drainage characteristics of the land shall be made without prior written approval of the DRC or Developer nor shall any fill be used to extend the Property beyond the property line or to encroach upon the stormwater management easements.

Section 8.32. Conduit. No lines, wires, pipes or utility service of any type shall be constructed, placed or be permitted to be maintained upon any Lot unless the same shall be in appropriate conduit underground.

Section 8.33. Garages. Each dwelling in Rio Villa Lakes shall include a fully enclosed attached garage for at least one (1) but not more than three (3) vehicles.

Section 8.34. Quiet Enjoyment Free of Nuisances. In addition to all other Covenants and Restrictions set forth in this Article, no noxious or offensive activity shall be carried on or upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the Property, nor shall any disturbance be permitted which will interfere with the rights, comforts or convenience of other Owners and their respective guests, invitees or lessees. Owners shall be prohibited from doing anything or conducting any activity which would detract or in any way deter from the beauty or natural aesthetics of the Property.

Section 8.35. Right to Enter the Property and Levy Special Assessments. The Developer, the Association or its employees, agents or assigns, after giving an Owner reasonable notice and opportunity to cure a violation of these Covenants Conditions and Restrictions, may enter upon a Lot (but not within a residential structure) for the purpose of curing the violation, but shall have no liability to the Owner, whether for trespass or otherwise as a result of such entry upon the Lot. The Developer may levy and collect a special assessment pursuant to the provisions of this Declaration, in an amount to be determined in the sole and absolute discretion of the Developer against any Owner who fails to abide by, or whose guests, invitees, licensees and lessees fail to abide by, any of the Covenants, Conditions and Restrictions, or any Rules and

Regulations.

Section 8.36. Legal Proceedings for Violations. If any person shall violate or attempt to violate or in any way fail to abide by any of these Covenants, Conditions and Restrictions, or any rules and regulations, it shall be lawful for the Developer, or any other person(s) owning any Lot in the Property to conduct such legal proceedings as are available to enforce compliance therewith, to prevent further or continued violation by injunctive relief, and to recover damages, attorneys' fees, court costs and litigation costs and expenses for such violation or attempted violation.

Section 8.37. Developer Exempt. The Developer, as long as it owns any Lot in the Property, or in the event that the Developer is doing construction work or repair work in the Property, shall be exempt from the restrictive provisions of this Article.

## ARTICLE IX

### DRC

Section 9.1. Composition of the Design Review Committee. The Developer, acting in its own name, shall constitute the Design Review Committee ("DRC") until such time as Developer, in its sole and absolute discretion, shall appoint a committee of not less than three (3) nor more than five (5) members, which shall thenceforth constitute the DRC. In the event a member of such committee resigns or becomes unable to serve thereon, the Developer shall appoint a successor. If Developer has not appointed such a committee by the time Developer ceases to be a Class B Member of the Association, the Association shall appoint a committee of not less than one three (3) nor more than five (5) members to act as the DRC.

Section 9.2. Review by DRC. In order to enhance, maintain and preserve the aesthetic beauty and the property values of the Property and all Lots located thereon, no building, fence, swimming pool, tennis court, screen enclosure, sprinkler systems, sewers, drains, disposal systems, decorative building sign, landscape device or object, recreational or other exterior lighting, wall, or other structure or improvement (including landscaping) shall be commenced, painted, erected or maintained upon the Property, nor shall any exterior addition, change or alteration be made to any previous improvement on a Lot, nor shall any awning, canopy, shutter, or antenna be attached to or placed upon outside walls or roofs of buildings or other improvements, until the proposals, drawings, blueprints, and plans and specifications showing the nature, kind, shape, height, materials, color selection, and location of the same (hereinafter referred to as "Plans and Specifications") shall have been submitted to, and approved in writing by, the DRC upon its satisfaction as to the harmony of exterior design and location in relation to surrounding structures and topography, and as to conformance with the architectural and landscaping standards, and assurance that any damage to the Property as a result of such additions or alterations will be repaired in a timely fashion. The DRC may establish conditions to its approval of Plans and Specifications and/or may require submission of additional Plans and

Specifications or other information prior to approving or rejecting the Plans and Specifications submitted. The architectural and landscaping standards may include rules or guidelines setting forth procedures for the submission of Plans and Specifications submitted for its review as it deems proper. Upon receipt by the DRC of any required Plans and Specifications, the DRC shall have thirty (30) days within which to approve or reject such proposed Plans and Specifications and, if the DRC has not expressed its approval or rejection of same in writing within said thirty day period, said Plans and Specifications shall be deemed to have been approved in writing. All changes and alterations to any Lot shall also be subject to all applicable permit requirements and other governmental laws, statutes, ordinances, rules, regulations, orders and decrees.

Section 9.3. Approval Not to be Construed as Waiver. The approval by the DRC of any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the approval and consent of the DRC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar Plans and Specifications submitted for approval or consent.

Section 9.4. DRC Expenses. The members of the DRC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder, which such expenses shall be the sole responsibility of Owner. If such expenses are not paid by the Owner to the DRC within fourteen (14) days of such notice, the DRC shall levy and collect a special assessment against such Owner for reimbursements pursuant to the provisions of this Declaration.

Section 9.5. Limitations on DRC Liability. Neither the DRC, nor the Developer, nor the Association shall be liable to any Owner or other person or entity for any loss, damage or injury arising out of, or in any way connected with, the performance or nonperformance of the DRC's duties hereunder, unless due to the willful misconduct or gross misconduct of an individual member and only the member engaging in such willful misconduct shall have any liability in such event.

Section 9.6. Variances. The DRC may grant written variances from compliance with the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, in which event no violation of the Conditions and Restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variances were granted. **NO VARIANCE SHALL BE EFFECTIVE UNLESS IN WRITING.** The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration, except to the extent covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the Lot.

Section 9.7. Compliance with Covenants and Restrictions. Except as otherwise provided for in this Article, all construction and other activities for which approval must be obtained from the DRC shall be in compliance with the Covenants and Restrictions of this Declaration and the Plans and Specifications approved by the DRC.

Section 9.8. Attorneys' Fees and Costs. For all purposes necessary to enforce, defend or construe this Article, the Developer, the DRC and Association, as appropriate, shall be entitled to collect reasonable attorney's fees, costs and other expenses from the Owner, whether or not judicial proceedings are involved, which amounts shall constitute a lien against the Owner's Lot and be enforced in the same manner as provided in this Declaration.

Section 9.9. Exemption of Developer. The Developer shall be exempt from the provisions of this Article with respect to all improvements, alterations and additions which Developer shall make in the Property.

Section 9.10. Appeals. Any decision made by the DRC may be appealed to two Association director representatives appointed by the Association president. Included with the request for appeal shall be technical design information supporting the appeal. The Owner making the appeal shall be responsible and by making such appeal, agrees to pay, fees required for the processing of the appeal, including any outside consulting services deemed necessary by the representatives. The granting of such an appeal shall not, however, operate to waive any of the terms and provisions of this Declaration, except to the extent covered by the particular appeal, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the Lot. The granting of an appeal shall not be deemed to imply or warrant that a similar appeal will be granted on another residence. Each case will be reviewed on its own design merits.

## ARTICLE X

### ENFORCEABILITY

Section 10.1 Parties Who May Seek Enforcement. If any Person shall violate or attempt to violate any of the provisions of this Declaration, the Association's Bylaws or Articles of Incorporation, or any Rules and Regulations, it shall be lawful for the Developer, the Association or, under appropriate circumstances, any Owner (hereinafter referred to as the "Enforcing Party" for the purpose of this Section) to prosecute proceedings to either prevent, enjoin or seek other equitable relief and/or to seek recovery of the damages against those so violating or attempting to violate any such provisions in any court of competent jurisdiction. Should the Enforcing Party seek to enforce or defend any such provisions, its reasonable attorneys' fees and costs incurred, whether or not judicial proceedings are involved, including the attorney's fees and costs incurred on appeal, shall be collectible from the party against whom enforcement is sought; the collection of such damages, costs and attorney's fees may be enforced by any method set forth in this Declaration for the collection of an annual assessment or special assessment, including without limitation the initiation of foreclosure proceedings against the Owner's Lot and/or against the Owner personally. The remedies contained in this provision shall be construed as cumulative of all other remedies now or hereafter provided by law. The failure of the Enforcing Party to

enforce any Covenant or Restriction or any obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to any recurring, similar or dissimilar breach or violation.

Section 10.2. Special Assessment. In addition to all other remedies provided in this Declaration, the Association, in its sole discretion, may levy a special assessment upon an Owner for failure of the Owner, his family, guests, agents, lessees, licensees, invitees, tenants or employees, to comply with any provision of this Declaration or any Rules or Regulations or for the failure to pay to, or reimburse the Developer and/or the Association for any sums owed by Owner to Developer under this Declaration.

Any special assessment levied in accordance with this Article may be enforced by the Developer in the same manner as the enforcement of an assessment provided for in this Declaration, including recording a lien on the Owner's Lot and foreclosing same and/or seeking injunctive or other equitable relief and/or the recovery of monetary damages from the Owner personally.

Section 10.3. Fines. In addition to the means of enforcement provided elsewhere herein, the Association shall have the right to assess fines against a unit, a unit owner, or his guests, relatives or lessees in the event of a violation of the provisions of the Declaration, the Articles of Incorporation, the Bylaws, and Rules and Regulations of the Community Association regarding the use of units, common elements, or Association property. Each such violator and the unit owner shall be given written notice of the alleged violation and the opportunity for a hearing before the Board of Directors with at least fourteen (14) days notice. Said notice shall include a statement of the date, time and place of the hearing; a statement of the provisions of the Declaration, Articles, Bylaws or Rules which have been allegedly violated; and a short and plain statement of the matters asserted by the Association. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The amount of such fine shall not exceed One Hundred Dollars (\$100.00) per occurrence, or the maximum permissible by law, and each reoccurrence of the alleged violation for each day during which such violation continues shall be deemed a separate offense and may result in additional fines, without the requirement of a separate hearing, such not to exceed the maximum permissible by law. The payment of fines shall be the ultimate responsibility of the unit owner, even when the violations for which fines have been levied arise out of the conduct of family members, guests or tenants. Any action to collect a duly levied fine shall entitle the prevailing party to an award of all costs and reasonable attorney's fees.

- (A) Collection of Fines. A fine shall be treated as a special charge due to the Association ten (10) days after written notice from the Association to the owner of the imposition of the fine. If not paid by the due date, the fine shall accrue interest at the highest rate allowed by law, and may itself be the



subject of a late payment fee.

- (B) Application. All monies received from fines shall become part of the common surplus.
- (C) Nonexclusive remedy. Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover at law from such owner.

Section 10.4. Suspension of Use Rights. To the extent lawful, the Board of Directors may suspend the right of any unit owner, or his guests, tenants, or family members, to use Common Areas during any period of time the owner shall have failed to pay any fine levied, or for a reasonable time as punishment for one or more infractions of Association rules and regulations by the owner, his family, guests or tenants. No such suspension shall affect the unit owner's right of access to his unit.

- (A) A suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, Directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, Director, or employee. If the committee, by majority vote, which may be by secret ballot, does not approve a proposed suspension, it may not be imposed.
- (B) The requirements of the previous paragraph do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the Governing Documents.
- (C) Suspension of common area use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

## ARTICLE XI

### RIGHTS OF DEVELOPER

Section 11.1. Completion of the Development. The Developer reserves the right to itself, its agents, assignees, employees or any contractor or subcontractor dealing with the Developer, to enter upon the Property for the purpose of carrying out whatever activities are desirable or necessary for the completion of the Development, including but not limited to, filling, grading, or installation of drainage, water lines or sewer lines.

Section 11.2. Easements. Perpetual exclusive, but assignable and delegable, easements of ingress and egress over the easements for the installation and maintenance of sewer, water, gas, cable television, telephone and power and drainage facilities for the benefit of the adjoining property owners and the applicable governmental entity and/or public or private utility company ultimately operating such facilities are reserved to the Developer.

Section 11.3. Right to Modify the Development. In the event Developer determines it is necessary or desirable to modify the Development, Developer may do so, in its sole discretion, by amendment to this Declaration or by plat amendment or replat of any portion of the Development. Developer also reserves the right, in its sole discretion, to construct certain improvements on any portion of the Property deemed to be, in Developer's sole discretion, reasonably necessary or desirable, without the consent of any Owner or the Association.

Section 11.4. Right to Amend Declaration. Developer reserves the right to hereafter, from time to time, amend, modify, add to or delete any provision, section or article of this Declaration or any portion thereof, without notice to or consent from any Owner or the Association.

Section 11.5. Rights and Responsibilities Pending Turnover to Association. Developer shall be vested with:

A. All rights, powers, privileges, obligations and responsibilities delegated to the Developer under the terms of this Declaration (including, without limitation Association's rights and obligations under Article V hereof) and shall act in accordance therewith with respect to each particular right, responsibility or portion of real or personal property until such time as particular rights, responsibilities and properties are transferred, from time to time, at the Developer's sole discretion, to the Association in the manner specified under the terms of this Declaration and as contemplated below.

B. All rights, powers, privileges, obligations and responsibilities reserved unto the Developer hereunder (hereinafter referred to as "rights") shall apply to its successors and assigns (except original purchasers of Lots) and Developer may assign such rights, in whole or in part, from time to time, including, without limitation, an assignment to the Association and to the Architectural Review Board. An assignment recorded in the Public Records shall entitle all third parties to deal with the assignee as the true and lawful obligee thereof.

Section 11.6. Right to Elect Directors of the Association. The developer is entitled to elect at least one member of the board of directors of the homeowners' association as long as the developer holds for sale in the ordinary course of business at least 5 percent of the parcels in all phases of the community. After the developer relinquishes control of the homeowners' association, the developer may exercise the right to vote any developer-owned voting interests in the same manner as any other member, except for purposes of reacquiring control of the

homeowners' association or selecting the majority of the members of the board of directors.

## ARTICLE XII

### GENERAL PROVISIONS

#### Section 12.1. Duration of Declaration.

A. This Declaration shall be in full force and effect for a period of fifty (50) years from the date this Declaration is recorded in the Public Records of Charlotte County, Florida, and shall be automatically extended for successive periods of five (5) years thereafter, as modified and unless and until cancelled by either Developer, in its sole discretion (as long as Developer is a Class B Member), or at a regular or special meeting of the Association by the vote of Members entitled to vote who represent two-thirds (2/3) of the total number of Lots owned by Class A Members in the Association and by the Class B Member (so long as such Developer shall continue to be a Class B Member).

B. Failure of the Developer, Owners or the Association to enforce any one or more of these Covenants and Restrictions shall not be deemed to negate or otherwise affect any other of the Covenants and Restrictions, nor in any way be interpreted as a waiver by the Developer, the Owners or the Association of the right to seek relief by proceeding at law or in equity from any violation, or attempt to violate, any of these Covenants, Conditions and Restrictions.

Section 12.2. Covenants Running With the Property. The Covenants, Conditions and Restrictions of this Declaration shall run with the land as to all portions of the Property, and shall inure to the benefit of, and be enforceable by, the Developer, the Association, or any Owner, their respective heirs, successors and assigns, subject to the Developer's right to amend as provided for in this Declaration.

Section 12.3. Compliance. Every Owner and occupant of any Lot shall comply with all lawful provisions of this Declaration and the Articles of Incorporation, the Bylaws and the Rules and Regulations of the Association. Failure to comply therewith shall be grounds for an action to recover any sums due to any such noncompliance, for other monetary damages and/or injunctive relief, or for any other remedy available at law or in equity, as may be maintainable by the Developer, the Association or, in a proper case, by any aggrieved Owner or Owners. Any such rights contained in this Section shall be deemed cumulative of any and all rights heretofore and hereafter provided in this Declaration.

Section 12.4. Notices. Any notice required or permitted to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent and delivered when mailed by certified U.S. Mail, postage prepaid, return receipt requested to the last known address of the person who appears as Owner on the records of the Developer or Association at the time of such mailing, except notices of meetings and other such notices common to all Owners in the

Property, which are deemed properly sent when mailed by regular U.S. Mail, postage prepaid or when hand delivered.

Section 12.5. Indemnification. The Association shall indemnify all of the officers, directors and committee members against any and all expenses, demands, judgments and claims, including reasonable attorney's fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by its then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith, nor have any personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Developer or the Association. The Association shall indemnify and forever hold each such officer, director and committee member free and harmless from and against any and all liability to others on account of any such contract or commitment, which right to indemnification provided for herein shall not be exclusive of any other rights to which they may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available, the expense of which shall be levied as part of the annual assessments levied upon members.

Section 12.6. Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the Association at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the scheduled date of such transfer of title and such other information as the Association may reasonably require. Until such written notice is received by the Association, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

Section 12.7. Severability. A determination by a court of competent jurisdiction finding any provision of this Declaration invalid or otherwise unenforceable shall not negate or otherwise affect any other provisions of this Declaration, all of which shall remain in full force and effect.

Section 12.8. Headings. The captions used in connection with the Articles and Sections of this Declaration are for convenience and reference only and in no way define, describe, extend or limit the scope of intent of any such provision hereof.

IN WITNESS WHEREOF, the undersigned Developer has executed this Declaration this 3<sup>rd</sup> day of July, 2008.

Witnesses:

Dayna McLaughlin  
Print Name: Dayna McLaughlin

Shirley C. Scott  
Print Name: Shirley C. Scott

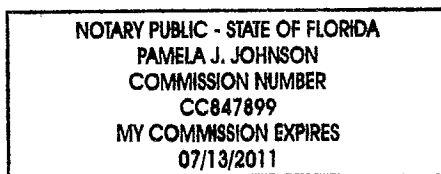
RIO VILLA LAKES, LLC,  
a Florida limited liability company

By: Ben Maltese  
Ben Maltese, Manager

STATE OF FLORIDA  
COUNTY OF LEE

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, BEN MALTESE, as Manager of RIO VILLA LAKES, LLC, a Florida limited liability company, who is personally known to me or who have produced their Florida driver's license as identification and who did/did not take an oath.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 3<sup>rd</sup> day of July, 2008.



Pamela Johnson  
Notary Public  
My commission expires:

Exhibit "A"  
(Legal Description of the Property)

Rio Villa Lakes, according to the Plat thereof recorded in Plat Book 19, Pages 12A – 12E, Public Records of Charlotte County, Florida.

Formerly known as:

Lots 1 through 15 inclusive, and Lots 17 through 27, inclusive, Block H, AQUI ESTA, UNIT 2, a subdivision according to the plat thereof, as recorded in Plat Book 3, at Pages 49A through 49C, of the Public Records of Charlotte County, Florida.

Lots 1 through 30, inclusive, Block I, AQUI ESTA, UNIT 2, a subdivision according to the plat thereof, as recorded in Plat Book 3, at Pages 49A through 49C, of the Public Records of Charlotte County, Florida.

Lots 1 through 27, inclusive, Block J, AQUI ESTA, UNIT 2, a subdivision according to the plat thereof, as recorded in Plat Book 3, at Pages 49A through 49C, of the Public Records of Charlotte County, Florida.

Lots 7 through 19, inclusive, Block K, AQUI ESTA, UNIT 2, a subdivision according to the plat thereof, as recorded in Plat Book 3, at Pages 49A through 49C, of the Public Records of Charlotte County, Florida.

**BY-LAWS  
OF  
RIO VILLA LAKES HOMEOWNERS ASSOCIATION, INC.  
A NON-PROFIT CORPORATION**

**ARTICLE I  
NAME, LOCATION AND DEFINITIONS**

The name of the corporation is Rio Villa Lakes Homeowners Association, Inc., a Florida Corporation, non-profit, hereafter referred to as the "Association". The principal office of the corporation shall be located at 9696 Bonita Beach Road, Suite 203, Bonita Springs, FL 34135, but meetings of members and directors may be held at such places within the State of Florida, County of Charlotte, as may be designated by the Board of Directors, hereafter referred to as "Board". Members of the Board are hereafter referred to as "directors".

The terms used in these By-Laws shall have the meanings as provided in the Declaration of Covenants, Conditions and Restrictions for Rio Villa Lakes, a recorded subdivision, hereafter referred to as "Declaration".

**ARTICLE II  
MEMBERS AND MEETINGS OF MEMBERS**

Section 1. Qualification. Every person or entity who is a record fee simple owner of a lot, including Declarant, at all times so long as it owns all or any part of the property subject to his/her Declaration, shall be a member of the Association provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a member. If an owner of a lot is not a natural person, the subject entity shall designate a natural person who shall be the "primary occupant", and such natural person shall exercise that lots membership rights. Membership shall be appurtenant to, and may not be separated from ownership of any lot which is subject to assessment. When any lot is owned of record by two or more persons or other legal entity, all such persons or entities shall be members.

Section 2. Voting Rights. The members of the Association shall be entitled to one (1) vote for each lot owned by them. The total voters shall not exceed the total number of lots. The vote of a lot shall not be divisible. The right to vote may not be denied because of delinquent assessments. If a lot is owned by one natural person, his/her right to vote shall be established by the record title to the lot. If a lot is owned jointly by two or more natural persons, that lot's vote may be taken. If two or more owners of a lot are resent and cannot agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the owner of a lot is not a natural person, the vote of that lot shall be cast by the lot's primary occupant designated as set forth in Section 1 above.

A majority of votes cast in person or by proxy shall be sufficient for corporate action except where provided otherwise in these By-Laws, the Articles of Incorporation or the Declaration.

Section 3.     Change in Membership.     A change in membership in the Association shall be established by the recording in the Public Records of Charlotte County, Florida, a deed or other instrument establishing a record title to a lot. Thereupon the grantee in such instrument will become a member of the Association and the membership of the prior owner shall thereby be automatically terminated. Upon such transfer of title, the transferee shall notify the Association of such transfer and provide to the Association an address to which all notices and correspondence should be sent. If the said transferee fails to provide such an address, the Association shall mail or deliver all notices and correspondence to the said transferee to the address of the lot.

Section 4.     Termination of Membership.     The termination of membership from the Association does not relieve or release any former member from liability or obligation incurred under or in any way contracted with the Association during the period of his/her 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 anyway connected with such ownership and membership and the covenants and obligations incident thereto.

Section 5.     Annual Meeting.     The first annual meeting of the members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held at a date and time as may be determined by the Board each year thereafter.

Section 6.     Special Meeting.     Special meetings of the members may be called at any time by the President or by the Board, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the membership.

Section 7.     Notice of Meetings.     Written notice of each meeting of the members shall be given by, or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and in the case of a special meeting the purpose of the meeting. The notice shall also be posted in a conspicuous place on the sub-division property.

Section 8.     Quorum.     The presence at the meeting of a least one-half of the members entitled to vote in person or by proxy shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, until a quorum as aforesaid shall be present or be represented.

Section 9.     Proxies.     At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. Every proxy shall be revocable and shall automatically cease upon



conveyance by the members of his/her lot. In no event shall a proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given.

Section 10. Adjourned Meetings. If a quorum is not present at any duly called meeting of the members, the majority of the voting interests present shall adjourn the meeting to a later date when a quorum may be obtained. When a meeting is adjourned notice of the time and place of its continuance shall be given as provided in Section 7 herein.

Section 11. Order of Business. The order of business at member's meetings shall be substantially as follows:

- a. Call of the roll and certification of quorum and proxies.
- b. Proof of notice of meeting or waiver of notice.
- c. Reading and disposal of any unapproved minutes.
- d. Reports of officers.
- e. Reports of committees.
- f. Election of directors.
- g. Unfinished business.
- h. New business.
- i. Adjournment.

Section 12. Minutes. Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by members of their authorized representatives and Board members at all reasonable times and for a period of seven (7) years after the meeting.

Section 13. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, or with the Declaration or these By-Laws.

Section 14. Action by Members without Meeting. Any action required or permitted to be taken at a meeting of the members (except the annual meeting and a meeting at which a vote is taken to waive or fund reserves), may be taken without a meeting if written consents, setting forth the action to be taken, are signed by the members having not less than the minimum number of votes that would be necessary to take such action at a meeting, or a majority of the total votes of the entire membership, whichever is greater. Upon receiving the requisite number of written consents, the Board may take the authorized action upon adopting a resolution to that effect. Within ten (10) days after adopting the resolution, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in his/her paragraph shall be construed in subrogation of members' rights to call a special meeting of the membership as elsewhere provided in these By-Laws.

### **ARTICLE III** **BOARD: TERM OF OFFICE**

Section 1. Number. The affairs of his/her Association shall be managed by a Board of at least three (3) directors initially appointed by the Developer.

Section 2.     Term of Office.         Each director elected by the members shall hold office for a term of one (1) year.

Section 3.     Removal.

- a.     Directors elected or appointed by lot owners other than the Developer may be removed from the Board, with or without cause, by a majority vote of the lot owners other than the Developer, in person or by proxy. For the purposes of establishing percentages of voting interests, and establishing a quorum, only lots owned by lot owners other than a Developer shall be counted.
- b.     Directors elected or appointed by the Developer may be removed from the Board, with or without cause, only by the Developer.

In the event of a death, resignation or removal of a Developer appointed director, the Developer shall appoint the successor.

Section 4.     Replacement. Only lot owners other than the Developer may vote, in person or by proxy, to fill a vacancy on the Board previously occupied by a Board member elected or appointed by lot owners other than the Developer, in which case a quorum for purposes of that vote shall consist of a majority of lot owners other than the Developer.

Only the Developer may vote, in person or by proxy, to fill a vacancy on the Board previously occupied by a Board member elected or appointed by the Developer, in which case a quorum for purposes of that vote shall consist of a majority of lots owned by the Developer.

Section 5.     Compensation.         No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his/her actual expenses incurred in the performance of his/her duties.

#### **ARTICLE IV** **NOMINATION AND ELECTION OF DIRECTORS**

Section 1.     Nomination.         Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board prior to the annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 2.     Election.         Election to the Board shall be by either open or secret written ballot. At such election the members or their proxies may cast, in respect to each

vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these By-Laws. The persons receiving the largest number of votes shall be elected, except that a run-off shall be held to break a tie vote. Cumulative voting is not permitted.

## **ARTICLE V.** **MEETINGS OF DIRECTORS**

Section 1.     Regular Meetings.     Regular meetings of the Board shall be held as determined by the Board, at such place and hour as may be fixed from time to time by resolution of the Board. Notice of all meetings shall be posted conspicuously on the sub-division property at least forty-eight (48) hours in advance, except in an emergency. Notice of any meeting in which assessments against lot owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

Section 2.     Special Meetings.     Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days notice unless waived by each director.

Section 3.     Quorum.     A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4.     Meetings of the Board shall be open to members, but members shall not be entitled to participate at such meetings, other than at meetings of the Board at which the budget is being considered.

## **ARTICLE VI** **POWER AND DUTIES OF THE BOARD**

Section 1.     Power. The Board shall have power to:

- a. Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members, tenants and their guests thereon, and to establish penalties and fines for the infraction thereof;
- b. Exercise for the Association all powers, duties and authorities vested in or delegated to his/her Association, and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration;
- c. Declare the office of member of the Board to be vacant in the event such member shall be absent for three (3) consecutive regular meetings of the Board;
- d. Employ a manager, an independent contractor, or such employees as they may deem necessary and to proscribe their duties; and

- e. Appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Association and as proscribed by these By-Laws and the Declaration.

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

- a. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting when such statement is requested in writing by one-tenth (1/10) of the members who are entitled to vote;
- b. Supervise all officers, agents and employees of his/her Association and to see that their duties are properly performed;
- c. As more fully provided in the Declaration to: (1) fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period; (2) send written notice of each assessment to every owner subject thereto at least fifteen (15) days in advance of each annual assessment period; and (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same;
- d. Issue, or cause an appropriate officer to issue, upon demand by a person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- e. Procure and maintain adequate liability, hazard, and other types of insurance on property owned or maintained by the Association;
- f. Cause all officers or employees having fiscal responsibilities to be bonded, as and if they may deem appropriate and as required by law;
- g. Cause the Common Area to be maintained;
- h. Prepare the annual budget; and
- i. Perform or act upon anything else required by law.

**ARTICLE VII**  
**OFFICERS AND THEIR DUTIES**

Section 1.     Enumeration of Officers.     The officers of his/her Association shall be a President and Vice President, who shall at all times be members of the Board, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2.     Election of Officers.     The election of officers shall take place at the first meeting of the Board following each annual meeting of the members.

Section 3.     Term.     The officers of his/her Association shall be elected annually by the Board and shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 4.     Special Appointments.     The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5.     Resignation and Removal.     Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.     Vacancies.     A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.     Multiple Offices.     The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of his/her Article, however, no person shall simultaneously hold the office of President and Secretary.

Section 8.     Duties. The duties of the officers are as follows:

- a.   PRESIDENT. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out shall sign all leases, mortgages, deeds and the written instruments, promissory notes and checks.
- b.   VICE-PRESIDENT. The Vice President shall act in the place and stead of the President in the event of his/her absence, inability or refusal to act; and shall exercise and discharge such other duties as may be required of him by the Board.

- c. SECRETARY. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members, keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of member; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board.
- d. TREASURER. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall distribute such funds as directed by resolution of the Board; shall sign all promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Board and deliver a copy of each to the members.

### **ARTICLE VIII** **BOOKS AND RECORDS**

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

### **ARTICLE IX** **FISCAL MATTERS AND ASSESSMENTS**

Section 1. Assessments. As more fully provided in the Declaration, each member is obligated to pay to the Association assessments which are secured by a continuing lien upon the property against which the assessment is made. Assessments shall be paid not less frequently than quarterly in the discretion of the Board. Assessments shall be collected against lot owners in the proportions as provided in the Declaration. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall earn interest from the date of delinquency at the highest rate as allowed by law. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. The owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his/her lot.

Section 2. Bank Accounts. The Association shall maintain its accounts in such financial institutions in the State of Florida as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government Securities, and other similar investment vehicles.

Section 3. Budget. The Board shall, prior to the end of the fiscal year, adopt an annual budget for common expenses for the next fiscal year. A copy of the budget and notice of

meeting shall be mailed to or served on all the lot owners not less than fourteen (14) days prior to the meeting at which the budget will be adopted. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications and other items as provided in Chapter 718 of the Florida Statutes.

Section 4. Reserves for Capital Expenditures and Maintenance. In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing. The amount to be reserved shall be computed by a formula based upon estimate life and replacement cost of each item, and such formula shall be set forth on the proposed budget. These reserves shall be funded unless the members subsequently determine by majority vote of those present in person or by proxy at a duly called meeting to fund no reserves or less than adequate reserves for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the lot owners as required above. Reserves funded under his/her Section shall be used only for the specific purpose for which they were reserved, unless their use for other purposes is first approved by a majority of the voting interests present and voting at a duly called members' meeting.

Section 5. General Maintenance Reserves. In addition to the statutory reserves provided above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts for general operating expenses, repairs, minor improvements or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.

Section 6. Fidelity Bonds. The Treasurer, and all other officers who are authorized to sign checks, and all Directors and employees of the Association handling or responsible for Association funds, shall be bonded in such amounts as may be required by law or otherwise determined by the Board. The premiums on such bonds shall be paid by the Association.

Section 7. Financial Information. Not later than sixty (60) days after the close of each fiscal year, the Board shall cause to be prepared a financial statement showing in reasonable detail the financial condition of the Association as of the close of its fiscal year and an income and expense statement for the year, detailed by accounts and as required by Chapter 718 of the Florida Statutes. Copies of these statements shall be furnished to each member. If called for by a majority of the voting interest present at any meeting, the Board shall present a full and clear statement of the business and condition of the Association.

Section 8. Application of Payments and Co-Mingling of Funds. All sums collected by the Association may be co-mingled in a single fund or divided into two or more funds, as determined by the Board. All payments on account by a unit owner shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, and general or special

assessments, in such manner and amounts as the Board may determine, subject, however, to the Declaration.

#### **ARTICLE X** **CORPORATE SEAL**

The Association shall have a seal in circular form having with its circumference the words RIO VILLA LAKES HOMEOWNERS ASSOCIATION, INC., a Florida Corporation, non profit, and the year 2004.

#### **ARTICLE XI** **AMENDMENTS**

Section 1. These By-Laws may be amended at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

#### **ARTICLE XII** **TRANSFER OF ASSOCIATION CONTROL; DEVELOPERS RIGHT**

Section I. Members' Rights to Elect Board. When owners other than the Developer own fifteen percent (15%) or more of the lots, the owners other than the Developer shall be entitled to elect one-third (1/3) of the members of the Board. Lot owners other than the Developer are entitled to elect a majority of the members of the Board upon the first of the following events or occur:

- a. Three (3) years after fifty percent (50%) or more of the lots have been conveyed to purchasers;
- b. Three (3) months after ninety percent (90%) or more of the lots have been conveyed to purchasers;
- c. When all of the lots have been completed, some of the lots conveyed to purchasers and none of the others are being offered for sale by the Developer in the ordinary course of business;
- d. When some of the lots have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business whichever occurs first, the Developer shall be entitled to elect at least one member of the Board as long as it holds for sale in the ordinary course of business at least five percent (5%) of the lots.



Section 2.     Developer's Rights.             So long as the Developer holds lots for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

- a. Any amendment to the Homeowners Association Documents which would adversely affect the Developer's rights;
- b. Any action by the Association that would be detrimental to the sales of lots by the Developer. However, an increase in assessments for common expenses shall not be deemed to be detrimental to the sales of lots.

Section 3.     Transfer of Association Control.     Prior to, or not more than sixty (60) days after, the time that lot owners other than the Developer are entitled to elect a majority of the directors of the Association, the Developer shall relinquish control of the Association, and the lot owners shall accept control. Simultaneously, the Developer shall deliver to the Association all property of the lot owners and of the Association held or controlled by the Developer and all items and documents that the Developer is required to deliver or turn over to the Association under Florida law. The Developer may turn over control of the Association to lot owners other than the Developer prior to the above mentioned dates, in its sole discretion, by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of lot owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days notice of Developer's decision to cause its appointees to resign is given to lot owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations even if lot owners other than the Developer refuse or fail to assume control.

### **ARTICLE XIII** **MISCELLANEOUS**

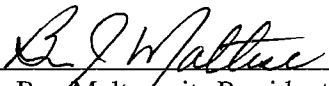
Section 1.     The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year or determined from time to time by the Board, except that the first fiscal year shall begin on the date of incorporation.

Section 2.     Internal disputes arising from the operation of the Association among lot owners, the Association, their agents and assigns may be resolved by voluntary binding arbitration.

Section 3.     The Board may levy reasonable fines against lot owners whose owners commit violations of the Association, the provisions of the Association documents or Association rules and regulations, or condone such violations by their family members, guests or lessees. The procedures to levy such fines are provided for in Section 23 of the Declaration.

IN WITNESS WHEREOF, the undersigned being the President of RIO VILLA LAKES HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, affirms that these By-Laws were approved and adopted by the Board of Directors of the Association as of this date and has hereunto set his hand this 5<sup>th</sup> day of March, 2004.

RIO VILLA LAKES  
HOMEOWNERS ASSOCIATION, INC.,  
a Florida not-for-profit corporation

By:   
Ben Maltese, its President

N04000002759

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

mc 3/17

LAW OFFICES OF  
DEAN HANEWINCKEL, P.A.

(941) 473-2828  
FAX (941) 473-2868  
INFO@DEAN-LAW.COM

2650 SOUTH MCCALL ROAD  
ENGLEWOOD, FLORIDA 34224

March 8, 2004

Corporate Records Bureau  
Division of Corporations  
Department of State  
P.O. Box 6327  
Tallahassee, FL 32314

Re: Rio Villa Lakes Homeowners Association, Inc.

Ladies/Gentlemen:

Enclosed you will find original and copy of Articles of Incorporation for the above-named corporation, together with Certificate Designating Registered Agent, and our check in the amount of \$78.75 representing the following:

Filing Fee	\$35.00
Certificate Designating Registered Agent	\$35.00
Certified Copy	\$ 8.75

We request that the Articles be filed and the enclosed copy certified and returned to this undersigned.. Thank you for your prompt attention to this request.

Sincerely,



Dean Hanewinckel

DH/dl  
Enclosures

cc: Mr. Ben Maltese (letter only)

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**ARTICLES OF INCORPORATION  
OF  
RIO VILLA LAKES HOMEOWNERS ASSOCIATION, INC.,  
a Florida Corporation Not For Profit**

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to the provisions of Chapters 720 and 617, Florida Statutes, the undersigned person, competent to contract, acting as incorporator of a corporation not for profit, hereby adopts the following Articles of Incorporation.

**ARTICLE I  
NAME**

The name of this corporation shall be RIO VILLA LAKES HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, and its principal place of business shall be 9696 Bonita Beach Road, Suite 210, Bonita Springs, Florida 34135. Said corporation shall hereafter be referred to herein as the "Association."

**ARTICLE II  
PURPOSE**

The general nature, object and purpose of the Association are the following:

- (1) To protect and promote the property, health, safety and welfare of the owners of RIO VILLA LAKES, a subdivision located in Charlotte County, Florida (the "Subdivision").
- (2) To provide, maintain and repair streets, landscaping, lawns, trees and shrubs; to maintain and repair common areas, structures and improvements in the Subdivision for which the obligation to maintain and repair has been delegated to the Association.
- (3) To provide for utility services and other services for the common good of the owners of lots in the Subdivision.
- (4) To purchase and maintain such policies of insurance as delegated to the Association by the members, or as set forth in the Declaration of Restrictions applicable to the

Subdivision or as may be deemed necessary or desirable by the Board of Directors of the Association.

(5) To supervise and control the specifications, architecture, design, appearance, elevation and location of all buildings, structures and improvements of any type, including dwelling units, walls, fences, driveways and pavements, grading, drainage, disposal systems and all other structures constructed, placed or permitted to remain in the Subdivision as well as the alteration, improvements, addition or changes thereof, including the landscaping surrounding the same.

(6) To provide such services as may be deemed necessary or desirable by the Board of Directors of the Association and to acquire the capital improvements and equipment related thereto.

(7) To purchase, acquire, replace, improve, maintain and repair such buildings, structures and equipment related to the health, safety and social welfare of the members of the Association as the Board of Directors of the Association, in its discretion, determines to be necessary or desirable.

(8) To own, acquire, operate and maintain the Common Surface Water Management System (as defined in the Declaration of Restrictions applicable to the Subdivision). Operation and maintenance and reinspection reporting shall be performed in accordance with the terms and conditions of the Environmental Resource Permit.

(9) To carry out all of the duties and obligations assigned to it as a Homeowners Association under the terms of the Declaration of Restrictions applicable to the Subdivision.

(10) To operate without profit and for the sole and exclusive benefit of its members.

(11) To contract for services to provide for operation and maintenance of the surface

water management system facilities if the association contemplates employing a maintenance company.

(12) To create a method of assessing funds and collecting the assessed funds by the association for the operation of the association and for the operation, maintenance and replacement of the surface water management system facilities.

### **ARTICLE III** **GENERAL POWERS**

The Association shall have the following powers:

(1) To have all the powers granted a corporation not for profit as enumerated under the laws of the State of Florida except as prohibited herein.

(2) To establish a budget and to fix assessments to be levied against the owners of lots in the Subdivision for the purpose of defraying expenses and costs incurred by the Association and expenses and costs of effectuating the objects and purposes of the Association and to create reasonable reserves for such expenses.

(3) To purchase and maintain such policies of insurance as delegated to the Association by the members, or as set forth in the Declaration of Restrictions applicable to the Subdivision for which the obligation to maintain and repair has been delegated to the Association.

(4) To collect such assessments as provided herein. To place liens against any property in the Subdivision for delinquent and unpaid assessments and to bring suit for the foreclosure of such liens or to otherwise enforce the collection of such assessments for the purpose of obtaining revenue in order to carry out the purposes and objectives of the Association.

(5) To delegate power or powers of the Association where such is deemed to be in the best interest by its Board of Directors.

(6) To charge recipients for services rendered by the Association and to charge the user for use of Association property where such is deemed appropriate by its Board of Directors.

(7) To purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of real and personal property; to enter into, make, perform or carry out contracts of every kind with any person, firm, corporation or association; to do any and all acts necessary or expedient for carrying on any and all of the activities and pursuing any and all of the objects and purposes set forth in the Articles of Incorporation and not forbidden by the laws of the State of Florida.

(8) To hold funds solely and exclusively for the benefit of the members of the Association for purposes set forth in these Articles of Incorporation.

(9) To promulgate, adopt, amend, modify, enforce and repeal rules, regulations, covenants, restrictions and agreements to effectuate the purposes for which the Association is organized.

(10) To propose, adopt, change, amend and repeal Bylaws for the management and government of the Association and the exercise of its corporate powers.

(11) To pay all taxes and other charges or assessments, if any, levied against the property owned, leased or used by the Association.

(12) To enforce by any and all lawful or equitable means the provisions of these Articles of Incorporation, the Bylaws of the Association which may be hereafter adopted, and the terms and provisions of the Declaration of Restrictions applicable to the Subdivision.

#### **ARTICLE IV**

#### **MEMBERS**

The membership of the Association shall be as follows:

(1) Members - The members of the Association shall consist of all the record owners of lots in the Subdivision and all record lot owners are required to be members of the



Association. Owners of such property shall automatically become members upon acquisition of the fee simple title of the lots in the Subdivision.

(2) Change of Membership - Change of membership in the Association shall be established by the recording in the Official Records of Charlotte County, Florida, of a deed or other instrument establishing a change of record title to a lot in the Subdivision and by delivery to the Association of a copy of such recorded instrument. The owner designated by such instrument thereby shall become a member of the Association and the membership of the prior owner is thereby terminated.

(3) Restraint upon Separation and Partition - The interest of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to the property which is the basis of his membership in the Association.

## **ARTICLE V** **VOTING**

Subject to the Restrictions and limitations hereinafter set forth, each member shall be entitled to one (1) vote in respect to all matters subject to being voted upon by the members of the Association for each lot owned. In the event one lot is owned by two or more owners either as joint owners, owners in common or otherwise, said owners shall be collectively entitled to only one vote.

Notwithstanding anything herein to the contrary, the developer of the Subdivision shall have the right to appoint a majority of the Board of Directors of the Association so long as it or its successors and assigns owns at least one lot in the Subdivision which is offered for sale.

**ARTICLE VI**  
**INCOME DISTRIBUTION**

No part of the income or profit of this Corporation shall be distributed to its members, no dividend shall be paid and no stock shall be issued.

**ARTICLE VII**  
**INITIAL BOARD OF DIRECTORS**

This Corporation shall have three (3) directors initially. The number of directors may be either increased or diminished from time to time in the manner provided in the Bylaws, but shall never be less than three. The names and addresses of the initial directors of the Corporation are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Ben Maltese	9696 Bonita Beach Rd., Suite 210, Bonita Springs, FL 34135

These Directors shall hold office until the first annual meeting of the members, and until their successors are elected or appointed in accordance with the Bylaws of the Association.

**ARTICLE VIII**  
**INITIAL REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the initial registered office of this Association is 2650 South McCall Road, Englewood, Florida 34224, and the name of the initial Registered Agent of this Association at that address is Dean Hanewinckel.

**ARTICLE IV**  
**INDEMNIFICATION**

Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including legal fees, reasonably incurred by or imposed upon him in connection with any proceeding or any settlement of any proceeding to

which he may be a party or in which he may become involved by reason of his being or having been a director or officer of the Association, whether or not he is a director or officer at the time such expenses are incurred, except when the director or officer is adjudged guilty of willful misfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

#### **ARTICLE X** **CORPORATE EXISTENCE**

This corporation shall exist perpetually.

#### **ARTICLE XI** **INCORPORATION**

The name and address of the incorporator to these Articles of Incorporation are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Ben Maltese	9696 Bonita Beach Rd., Suite 210, Bonita Springs, FL 34135

#### **ARTICLE XII** **AMENDMENTS**

These Articles may be altered, amended or repealed by approving a proposed amendment prepared either by resolution of the Board of Directors or by written request by ten percent (10%) of the members of the Association. Such approval must be by a majority of the Board of

Directors and not less than two-thirds of the votes of the members of the Association voting in person or by proxy; or by not less than three-fourths of the votes of the members of the Association voting in person or by proxy; provided, however, that no amendment affecting the rights of the developer of the Subdivision shall be effective without the prior written consent of the developer.

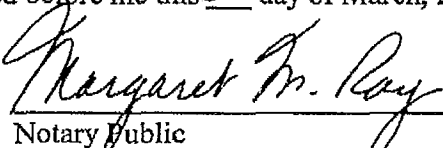
IN WITNESS WHEREOF, the undersigned subscribing incorporator has hereunto set his hand and seal this 5<sup>th</sup> day of March, 2004.

  
Ben Maltese

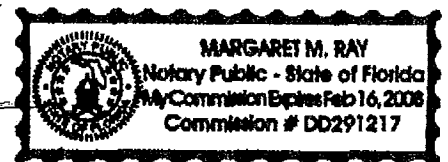
STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of March, 2004, by BEN MALTESE.

  
Notary Public

Personally known ☒ OR Produced Identification \_\_\_\_\_  
Type of identification Produced \_\_\_\_\_



**ACCEPTANCE OF REGISTERED AGENT**

I hereby agree, as Registered Agent, to accept service of process, to keep the office open during prescribed hours, to post my name (and any other officers of said not-for-profit corporation authorized to accept service of process at the above Florida designated address) in some conspicuous place in the office as required by law. I am familiar with and accept the obligations provided for in the Florida Statutes.

  
Dean Hanewinkel, Registered Agent

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TALLAHASSEE, FLORIDA