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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR CALABAY PARC AT TOWER
LAKE**

This instrument was prepared by
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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR CALABAY PARC AT TOWER LAKE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made and executed as of the 14th day January, 2005, by **WESCOTT - TOWER LAKE, LLC.**, a Florida limited liability company (hereinafter referred to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Polk County, Florida, known as **Calabay Parc at Tower Lake - Phase I**, the same being more particularly described in the schedule attached hereto as **Exhibit "A"** (hereinafter referred to as the "Property");

WHEREAS, Declarant desires to create a residential community in multiple phases to be known as **Calabay Parc at Tower Lake**, with the community to be designed to allow and facilitate the use of the residences therein on a short-term rental basis;

WHEREAS, in order to further facilitate a vacation-intensive use, the homeowners association shall provide services not traditionally found in single-family residential communities in order to alleviate many maintenance, repair and upkeep responsibilities for the owners, tenants and residents of the Lots, thereby assuring a consistent standard of maintenance and upkeep and thereby insuring an esthetically pleasing environment; and

WHEREAS, Declarant will establish a not-for-profit corporation to be known as **Calabay Parc at Tower Lake Homeowners Association, Inc.** which will own, operate and/or maintain the Common Areas herein described and which will likewise provide the Exterior Maintenance Services as likewise defined herein.

NOW, THEREFORE, Declarant hereby declares that the Property described herein shall be held, sold, conveyed, leased, encumbered and otherwise dealt with subject to the easements, restrictions, covenants, and conditions, reservations, charges and lien rights hereinafter set forth, all of which are for the purpose of protecting the value, desirability and attractiveness of, and which shall run with, said real property and be binding upon, and inure to the benefit of, all parties having or acquiring any right, title

or interest in the described properties or any part thereof, their heirs, successors and assigns.

ARTICLE I DEFINITIONS

Section 1.1. Defined Terms. The following words and phrases, when used in this Declaration or any supplemental declaration hereto, shall have the following meanings:

(a) **"Additional Property"** shall mean real property other than **Calabay Parc at Tower Lake - Phase I** which may in the future be brought within the jurisdiction of the Association and this Declaration by amendment or supplement to this Declaration, including, without limitation, the real property described in the schedule attached hereto as **Exhibit "B"**, which, when platted, will be known as **Calabay Parc at Tower Lake - Phase II**.

(b) **"Architectural Review Committee"** and **"ARC"** shall refer to the committee established and described in Article VII hereof.

(c) **"Articles"** shall mean the Articles of Incorporation of the Association as they may exist from time to time, a copy of the Articles as initially filed with the Florida Department of State being attached hereto as **Exhibit "C"**.

(d) **"Association"** shall mean **Calabay Parc at Tower Lake Homeowners Association, Inc.**, a Florida not-for-profit corporation, its successors and assigns.

(e) **"Board"** shall mean the Board of Directors of the Association.

(f) **"By-Laws"** shall mean the By-Laws of the Association as they may exist from time to time, a copy of the initial By-Laws to be adopted by this Association being attached hereto as **Exhibit "D"**.

(g) **"Common Expenses"** shall mean expenditures for maintenance, operation and other services required or authorized to be performed by the Association with respect to the Common Area, Surface Water Management Systems or otherwise.

(h) **"Common Area"** shall mean and refer to those areas of land shown on any recorded subdivision plat of the Property intended to be devoted to the common use and enjoyment of the owners of the Property, including, without limitation, the private interior roadway system; all real property, including any improvements thereon, owned by the Association for the common use and enjoyment

of the Owners; any Lot or parcel of land subsequently deeded by the Declarant to the Association for the use by the Owners; and, the Surface Water Management System.

(i) **"Conservation Easements"** shall mean dedications, if any, granted by the Declarant pursuant to the provisions of Section 170 of the Internal Revenue Code of 1986, as amended, and/or pursuant to conservation ordinances, laws, rules and regulations of applicable governmental authorities.

(j) **"Declarant"** shall mean **Wescott - Tower Lake, LLC.**, a Florida limited liability company. Wherever the term Declarant is used in this Declaration, the Articles or By-Laws, it shall be deemed to include the successors and assigns of the Declarant, but only to the extent specifically provided herein, or so identified by an instrument in writing executed and recorded by the Declarant and shall not include an Owner who has purchased a Lot from the Declarant.

(k) **"Declaration"** shall mean this *Declaration of Covenants, Conditions and Restrictions* as it may, from time to time, be amended or supplemented.

(l) **"Landscape Maintenance Services"** shall mean: (i) mowing, trimming, edging of lawns, including application of fertilizers, pesticides, herbicides, fungicides and other agents; (ii) pruning, trimming and weeding of trees, shrubs and flower beds installed by Declarant, by the Association or by or on behalf of the Owner in accordance with landscape plans approved by the Architectural Review Committee; and, (iii) operation, maintenance and replacement of all irrigation system lines, pumps, meters, timers, sprinkler heads or other apparatus, equipment or machinery.

(m) **"Institutional Lender"** shall mean the owner and holder of a mortgage encumbering a Lot when such owner and holder shall be a bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, an agency of the United States government, public or private pension fund, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a credit union, real estate or mortgage investment trust, or other lender generally recognized in the community as an institutional lender.

(n) **"Lot"** shall mean any parcel of land shown on any recorded subdivision map or plat of the Property upon which may be constructed a residential dwelling unit.

(o) **"Maintenance"** shall mean, but not be limited to, cleanup, landscaping and grounds care, upkeep of any recreational amenities, any Conservation Easement, the Surface Water Management System and other facilities within the Common Area, and repair, maintenance and upkeep of the entry features. The term "maintenance", as applied to the Surface Water Management System, shall include the

exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the Southwest Florida Water Management District, including (i) checking the inlets for accumulation of debris and sedimentation; (ii) checking for pond side slope stability by replacing dead sod and, after mowing operations, checking for disturbed side banks; (iii) cleaning sediment out of mitered end section (inflow to pond); and, (iv) checking rear lot berms for blockage and destabilization. Any repair or reconstruction of the Surface Water Management System shall be as permitted, or if modified, as approved, by the Southwest Florida Water Management District.

(p) **"Member"** shall mean all Owners who are Members of the Association as provided in this Declaration.

(q) **"Notice"** shall mean delivery to the person or entity who appears as Owner in the records of the Association of any document by mail with postage prepaid to the last known address reflected in the records of the Association. Notice to one of two or more co-owners of a Lot shall constitute notice to all Owners of such Lot.

(r) **"Owner"** shall mean the owner as shown on the records of the Association (whether it be the Declarant, one or more persons, firms or legal entities) of fee simple title to any Lot located within the Property or any Additional Property. Owner shall not mean the holder of any mortgage or lien unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure nor shall the term include any lessee or tenant of any Owner.

(s) **"Plan"** shall mean any recorded plat of any portion of the Property and Additional Property for the development of **Calabay Parc at Tower Lake**.

(t) **"Property"** shall mean the **Calabay Parc at Tower Lake - Phase I** and, when added in accordance with the terms and conditions hereof, any Additional Property which may be made subject to this Declaration in the manner provided herein.

(u) **"Surface Water or Stormwater Management System"** shall mean a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system as permitted pursuant to Chapters 40D-4 or 40D-40, *Florida Administrative Code*.

(v) "Unit" shall mean a dwelling unit which has been constructed on a Lot and for which a certificate of occupancy has been issued by the applicable governmental authority.

Section 1.2. Interpretation. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation". This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Property by providing a common plan for the development and preservation thereof. The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

ARTICLE II EASEMENTS AND PROPERTY RIGHTS IN THE COMMON AREA

Section 2.1. Utility Easements. The Declarant reserves the right to grant easements to any public or private utility or governmental authority providing utility and other services within the Property and the Common Area over, under, upon and through the Property and Common Area. Any such easement granted by the Declarant pursuant hereto shall be given for the purpose of maintaining, installing, repairing, altering and operating sewer lines, irrigation lines, water lines, lift stations, effluent disposal lines, pipes, wires, power lines, telephone service, gas lines, cable television service, alarm systems, and like machinery, equipment and apparatus appurtenant to all of the forgoing as may be necessary or desirable for the installation and maintenance of utilities and providing services to Owners, the Property and the Common Area. All such easements shall be of such size, width and location as the Declarant, in its discretion, deems appropriate; provided, however, such discretion will be exercised in such a manner so as to not unreasonably interfere with the use of any improvements which are now, or may hereafter be, located upon the Property.

Section 2.2. Owners' Easement of Enjoyment. Except as to the Surface Water Management System which shall be operated and maintained by the Association as required by the Southwest Florida Water Management District, every Owner shall have a right and easement of enjoyment in and to the Common Areas, if any, which shall be appurtenant to and shall pass with the title to every Lot.

Section 2.3. Drainage Easements. The Surface Water or Stormwater Management System shall include those portions of the Property designated as retention areas or drainage easements or similar nomenclature (collectively "Drainage Areas") by Declarant for irrigation, drainage or beautification purposes in a manner consistent with the original design thereof by the Declarant and in accordance with the

requirements of applicable governmental authorities. The Drainage Areas shown on any Plat or conveyance shall be used for the construction, repair and maintenance of drainage facilities including, but not limited to, canals, pumps, pipes, inlets and outfall structures and all necessary appurtenances thereto. The location of the drainage pattern may not be modified or relocated without the prior written consent of the Declarant or applicable governmental authority. In the event of a dissolution or termination of the Association, the administration and maintenance of the Drainage Areas shall be transferred only to another not-for-profit corporation or dedicated to an appropriate governmental agency agreeing to accept such conveyance or dedication. The Association shall have a perpetual nonexclusive easement over all areas of the Surface Water and Stormwater Management System for access to operate, maintain or repair the System. By this easement, the Association shall have the right to enter upon any portion of any Lot which is a part of the Surface Water or Stormwater Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the System as required by the permit issued by the Southwest Florida Water Management District. Additionally, the Association shall have a perpetual nonexclusive easement for drainage over the entire Surface Water or Stormwater Management System. No person shall alter the drainage flow of the System, including buffer areas or swales, without prior written approval of the Southwest Florida Water Management District.

Section 2.4. Easements for Landscape Maintenance. There is hereby reserved for the benefit of the Association, a blanket easement over the Lots for the purpose of the performance of the services described in Article VI, of this Declaration. The Association, its officers, directors, agents, employees and contractors, shall have the right to enter any Lot at any time for the performance of such services, and shall not be liable to any Owner for inconvenience or disturbance occasioned by such entry, subject only to the terms and conditions of Article VI. No agreement on the part of the Association consenting as a waiver or amendment of this easement, nor in any way limit or restrict the rights of the Association to access the Lot for performance of services at any time or times deemed necessary by the Association.

Section 2.5. Declarant Easements. The Declarant hereby reserves to itself, its successors and assigns, and to such other persons as Declarant may from time to time designate in writing, a perpetual easement, privilege and right in and to, over, under, on and across the Common Area for ingress and egress; provided, however, that such access and use does not unreasonably interfere with the reasonable use and enjoyment of the Common Area and facilities located thereon by the Owners. The Declarant hereby further reserves to itself, its successors and assigns, and to such other persons as Declarant may from time to time designate in writing, a non-exclusive perpetual easement, privilege and right in and to, over, under, on and across the Property for ingress and egress to construct, locate and maintain any lines, cables,

conduits, pipes and other such improvements related to the infrastructure and development thereof in connection with Declarant's development of the Property or any portion thereof; provided, however, that any such construction, location, installation or development by Declarant shall not be permitted in, on, under or across houses and pools and Declarant shall be obligated to restore any disturbed area (including but not limited to fences and walls) to as close to the original condition thereof as is reasonably practical. Declarant reserves for itself, its successors and assigns, a non-exclusive easement for the installation and maintenance of security and television cables and wires within the Common Area and any easement areas referred to herein.

Section 2.6. Service Easements. Declarant hereby grants to people and entities affiliated with delivery, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities authorized by the Declarant, its successors or assigns, and to such other persons as the Declarant from time to time may designate, a non-exclusive, perpetual easement for ingress and egress over and across the Common Area for the purposes of performing their authorized services, to service the Property and to perform any investigation related thereto.

Section 2.7. Cable Utility Services; Use of Common Properties. The Declarant (or its successor or assigns) shall have the exclusive right, but not the obligation, to install a cable television system providing cable television entertainment, business, internet access, telephone and safety services to the Units within the Property. In connection with the installation, maintenance and operation of such systems the Declarant reserves access, installation and service easements over, across and under the Common Area and all Lots and Units necessary to provide such cable utility services to all Members; provided, however, such easements shall be reasonably located by the Declarant so as not to unreasonably impair the value or use of any Lot or Unit.

In furtherance of the foregoing provisions, and in order to promote the health, safety and welfare of the Owners and occupants of the Properties and provide for the maintenance and preservation of the Properties, the Declarant and the Association shall be entitled (but not obligated) to establish and enforce conditions governing the use of the Common Area by third parties, including (without limitation) parties providing utility or other services to the Property. Accordingly, all third parties utilizing the Common Area shall be required to comply with such conditions as may be determined by the Association and/or the Declarant, as applicable, to be reasonable and necessary to maintain, preserve and protect the Common Area and the Areas, and to preserve and protect the safety of persons and property from time to time located upon or within the Areas. Conditions may be imposed, in particular, on any person or

entity utilizing the Common Area for the installation, maintenance, repair or replacement from time to time of utilities or any other improvements or facilities (a "Service Provider") pursuant to any easement, permit, license, right of use or similar right or privilege granted by either the Declarant or the Association (whether or not pursuant to this Declaration, a plat of the Areas or any other agreement or instrument) in order to accomplish the foregoing purposes and in order to avoid, if possible, the installation of improvements which interfere with the use of the Common Area and/or detract from the appearance of the Common Area.

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

Section 2.8. Extent of Easements. The rights and easements of enjoyment created in this Article II shall be subject to the following:

(a) The right of the Association to suspend the rights and easements of enjoyment of any Member or any tenant of any Member for any period during which any assessment remains unpaid, and for any period for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or breach of any rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment.

(b) The right of the Association to give, dedicate, mortgage or sell all or any part of the Common Area (including leasehold interests therein) to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be determined by the Association. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Area, prior to the recording in the Public Records of Polk County, Florida thereof. Such certificate shall be conclusive evidence of authorization by the Members.

(c) The right of the Association to grant use rights in and to all or any part of the Common Area to any persons or entities for such purposes, for such consideration and subject to such conditions as may be determined by the Association, in its sole and absolute discretion, including, but not limited to, use rights with respect to recreational facilities or amenities constructed or to be constructed on the Common Property.

**ARTICLE III
RULES AND REGULATIONS**

Section 3.1. Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried on therein; provided, however, the lease or rental of a Unit shall not constitute a violation of this covenant. However, any tenant will be subject to this Declaration and the rules and regulations of the Association, so long as they occupy a Unit. Short-term rental of units is permitted in **Calabay Parc at Tower Lake**. For purposes of this Section 3.1, a "short-term rental" is defined as a dwelling unit which is made available more than three (3) times a year for periods of fewer than thirty (30) days for use, occupancy or possession by the public.

Section 3.2. Antennas. No television antennas may be erected and maintained on a Lot if cable television is available to serve the Property; however, satellite dishes no larger than one (1) meter in diameter which are affixed to the side or rear of a Unit shall be permitted if allowed by FCC regulations, subject to ARC approval of the location of same.

Section 3.3. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in the Common Area which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area shall be committed by any Owner or any Tenant or invitee of any Owner; and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from any such damage or waste caused by him or his Tenants or invitees, to the Association or other Owners. No noxious, destructive or offensive activity shall be permitted on any Lot or in the Common Area, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any other person at any time lawfully residing on the Property.

Section 3.4. Signs Prohibited. No sign on any kind shall be displayed to the public view on any Lot or the Common Area without the prior written consent of the Association, except customary name and address signs and no more than one (1) yard sign of not more than four and one-half (4 ½) square feet in size (or such lesser amount as may be required by applicable governmental regulations) advertising the property for sale or rent, provided the same are otherwise in accordance with rules and regulations adopted by the Association.

Section 3.5. Parking. No truck or van, boat, trailer, recreational vehicle, commercial vehicle or other types of non-passenger vehicles, equipment, implements or accessories shall be parked, stored or otherwise kept on any portion of the Property unless the same are fully enclosed within the garage constituting an integral part of

a Unit. The term "commercial vehicle" shall include, without limitation, all autos, trucks, vans and other vehicular equipment, which bear signs or shall have printed thereon any reference to a commercial undertaking or enterprise or which are otherwise reasonably obvious as to their intended use. Vehicles regulated by this Section which are in the process of loading or unloading shall not be considered to be "parked" so long as such vehicles shall not be kept on the Property overnight. Further, the Association may promulgate further rules and regulations affecting the parking of any vehicles on the Lot which appear in the best interests of all Owners. Anything contained herein to the contrary notwithstanding, the phrase "truck or van" is not intended to apply to minivans and sport utility vehicles used for domestic purposes and possessing no commercial markings or signage.

Section 3.6. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or the Common Area, except that dogs, cats, and other customary household pets may be kept on Lots subject to the limitation that no more than a total of two (2) domestic cats or dogs may be maintained on any Lot and further subject to rules and regulations adopted by the Association, provided that they are not kept, bred, or maintained for any commercial purpose. Each Owner shall be responsible at all times for the prompt collection and proper removal and disposal of all excrement from their pets. The Association may prohibit the keeping of any pet anywhere upon the Property which the Association reasonably determines may constitute a threat to the safety or health of persons lawfully upon the Property. All Owners at all times shall comply with all rules, regulations, ordinances, statutes, and laws adopted, promulgated, or enforced by any public agency having jurisdiction of the Property and relating to animals, and shall at no times allow such animals to constitute a nuisance within any portion of the Property.

Section 3.7. Trash and Garbage. No trash, garbage, or other waste material shall be kept or permitted upon any Lot or the Common Area except inside the improvements on each Lot or in containers (equipped with lids) concealed from view and otherwise in accordance with rules and regulations adopted by the Association. All trash receptacles must be kept in the garage, or adjacent to the side of the residence but hidden behind a fence or wall enclosed on two sides (front and side) and may be placed at the curb for collection only (i) after dusk on the evening before, or (ii) on the morning of, the day upon which trash is to be collected. All costs associated with trash collection shall be borne by the Owners.

Section 3.8. Provisions Are Inoperative As to Initial Construction. Nothing contained in this Declaration shall be interpreted or construed to prevent the Declarant, its transferees, or its or their contractors, or sub-contractors, from doing or performing on all or any part of the Property owned or controlled by the Declarant, or its transferees, whatever they determine to be reasonably necessary or advisable in

connection with the completion of the construction of improvements on the Lots and the Common Area, including, without limitation:

(a) erecting, constructing, and maintaining thereon such temporary structures otherwise conforming with applicable zoning regulations of the City of Haines City as may be reasonably necessary for the conduct of Declarant's business of completing such construction and establishing the Property as a residential community and disposing of the same in parcels by sale, lease, or otherwise; or

(b) maintaining such sign or signs thereon conforming with applicable zoning regulations of the City of Haines City as may be reasonably necessary in connection with the sale, lease, or other transfer of the Property in parcels.

As used in this Section and its sub-sections, the term "its transferees" specifically does not include purchasers of Lots improved as completed residences.

Section 3.9. Municipal Service Taxing Units. The City of Haines City may require or permit the Declarant to form one or more municipal service taxing units for maintenance and operation of street lights to be installed on the Properties or maintenance of stormwater drainage and retention systems on the Properties. All Lots shall be encompassed within any such taxing unit which may be established and shall be subject to the restrictions, limitations and assessments as may be imposed upon the property within any such taxing unit. All Owners shall be bound by any agreement or resolution creating a taxing unit and all Owners shall join in and execute any instrument which may be required in connection with the establishment of such taxing unit.

Section 3.10 Swimming Pools. Any swimming pool (including the location, lighting, screening or fencing) to be constructed on any Lot shall be subject to the approval of and the requirements of the ARC, which shall include, but which shall not be limited to, the following:

(a) above-ground swimming pools shall not be allowed;

(b) materials, design and construction shall meet standards generally accepted by the industry and shall comply with applicable governmental regulations; and

(c) no high-intensity exterior lighting shall be allowed.

Section 3.11. Air Conditioning Equipment. Heating and cooling of Units with systems of active or passive solar, wind and other forms of energy other than gas or electric may be approved by the ARC. Components of such systems that are affixed to the exterior of a residence shall not be permitted unless the design thereof shall

have first been approved by the ARC. Exterior components of any cooling or heating system (or a combination thereof) shall be substantially screened from view from the street fronting the residence.

Section 3.11. Transmission Facilities. No radio or television signals nor any other form of electromagnetic radiation shall be permitted to originate from any Lot which interferes with the reception of television or radio received upon any other Lot.

Section 3.12. Maintenance of Lots. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or other waste. All trash, garbage, and other waste shall be kept in sanitary containers except during pickup, if required to be placed on the curb. All containers shall be kept within an enclosure or underground receptacle which the ARC shall require to be constructed with each home, which enclosures shall be located out of sight from the front or side streets. There shall be no burning of trash or any other waste material, except within the confines of an incinerator, the design and location of which shall be approved by the ARC.

Section 3.13. Mailboxes. All mailboxes shall meet the requirements of the United States Postal Service for multiple mailboxes and shall otherwise conform with the other applicable criteria of the as to type of mailboxes allowed and the specific distance needed in the recovery area of the street system. No mailbox shall be permitted within any dedicated public right of way.

Section 3.14. Inoperative Vehicles and Repair. No inoperative cars, trucks, trailers or other types of vehicles shall be allowed to remain on the Property for a period in excess of two (2) days unless within a fully enclosed garage. There shall be no major maintenance, repair or restoration performed on any motor vehicle on or adjacent to any Lot in the Property; provided, however, such maintenance, repair or restoration may be done if solely within an enclosed garage. All vehicles shall have current license plates. Moreover, no stripped, unsightly, offensive, wrecked, junked, or dismantled vehicles or portions thereof, shall be parked, stored or located upon any Lot at any time unless within a fully enclosed garage. No driveway or exterior parking area shall remain soiled or discolored with excessive or unusual oil or petroleum product stains for more than seven (7) days after such staining may occur.

Section 3.15. Garage Doors. Each residence shall be equipped with garage doors which shall remain operational at all times. All garage doors of any home shall remain closed at all times when not in use for entry and exit.

Section 3.16. Outbuildings. Outbuildings shall be located behind the plane of the rear wall of the residential structure on a Lot and then only when the entire rear yard is fully enclosed by a fence or wall approved by the ARC as provided in Article

VII. An outbuilding shall be constructed in such a manner that the interior contents shall not be visible from the outside of the structure. The exterior of any outbuilding shall be painted or otherwise finished in conformity with approval of the ARC and any portion of the structure otherwise visible above the fence or wall must be further screened from view by use of a seventy-five percent (75%) opaque landscape buffer. As used herein, the term "outbuildings" shall mean a structure detached from the primary residential structure and used for storage or play, such as storage sheds, whether built commercially or site-built, or children's' playhouses or structures large than thirty-six (36) square feet with a vertical height in excess of five (5) feet. The term "outbuildings" shall not include detached garages, parking canopies or other car-cover structures that are not constructed as an enclosed garage component of the primary residential structure, nor shall the term apply to temporary facilities essential to the development of the Property or to the construction, marketing and sale of housing facilities to be constructed on Lots, provided the same are otherwise in compliance with applicable governmental regulations.

Section 3.17. Screened Enclosures. In addition to the requirements noted herein, enclosures that are appurtenant to the primary residential structure will be allowed subject to the following conditions:

(a) Any roof structure must have a minimum pitch of at least 3 to 12 and shall be finished with shingles similar or comparable to those on the primary residential structure. Aluminum roofing may be allowed if constructed by a licensed aluminum or screen enclosure contractor and if properly permitted by the applicable governmental agency. The aluminum roof and all associated support and decorative components must be colored so as to be compatible with the color of the primary residence to which it is appurtenant, as determined by the ARC.

(b) Any screen panels will require finishing in anodized bronze or other finish approved by the ARC and all screen fabric shall be tinted.

Section 3.18. Maintenance of Lakefront Lots. Owners may remove all vegetation and other organic material within the wetlands and/or upland buffers adjacent to Tower Lake within an area not to exceed 50 feet in width or 50 percent of their lake frontage, whichever is less. In addition, if otherwise permitted, Owners may construct private docks within the cleared area that are exempt pursuant to Rule 40D-4.051(12)(c), *Florida Administrative Code*. Otherwise, no Owner may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, buffer areas, and drainage easements described in the approved permit and recorded plat of the Property unless prior written approval is received from the Southwest Florida Water Management District, Bartow Service Office. This

restriction includes, but is not limited to the construction of seawalls, upland retaining walls, and the placement of rip-rap or other shoreline reinforcements.

Section 3.19. Rules and Regulations. No Owner shall violate the rules and regulations for the use of the Lots and the Common Area, as the same are from time to time adopted by the Association. The prohibitions and restrictions contained in this Article shall be self-executing without implementation by further rules and regulations; provided, however, the foregoing shall not be construed as an implied prohibition preventing the Association from extending the scope of such prohibitions and restrictions from time to time by adopting further rules and regulations not inconsistent with this Declaration. The rules and regulations which may be adopted by the Association may specifically provide for fines to be imposed for violation of the rules, said fines to be enforceable in the same manner as hereinafter provided in Section 5.10 relating to the nonpayment of assessments.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 4.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

Class A. Class A Members shall be all Owners, with the exception of the Declarant, each of whom shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant who shall be entitled to three (3) votes for each Lot owned by the Declarant which has been platted or approved for platting pursuant to the applicable ordinances and regulations of the City of Haines City. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) On January 1, 2010.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual, special and other assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot on the date when the assessment became due. The personal obligation for delinquent assessments shall not pass to a successor in title unless expressly assumed by such successor; provided, however, in no event shall assumption by a successor relieve the former Owner of any personal liability arising hereunder. In the case of co-ownership of a Lot, all such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Section 5.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of the Lots, their guests, lessees and business invitees; for the improvement, repair, replacement and maintenance of the Common Area and the improvements located thereon; for payment of all taxes assessed to the Association, if any, in respect to the Common Area, or the improvements or personal property thereon, or both; and, for the general purpose of enabling the Association to perform and fulfill its authorized or required rights, powers, duties and obligations, including, without limitation, the obligation of the Association with respect to landscape maintenance as provided in Article VI.

Section 5.3. Annual Assessments. The Association shall have the power to levy annual assessments against the Lots and the Owners thereof in the manner and for the purposes provided herein. The Association shall have the further right to require the payment of annual assessments in monthly, quarterly or semi-annual installments as the Association may deem necessary and appropriate.

Section 5.4. Individual Assessments. The Association may impose an individual assessment upon any Owner whose use or treatment of the Common Area, any Lot or the improvements on any Lot is not in conformity with the standards adopted by the Association or which increases the maintenance cost to the Association above that which would result from compliance by the Owner with such use restrictions imposed by this Declaration. The maximum amount of such

assessment shall be equal to such cost incurred plus ten percent (10%) to cover the cost of administration and may be enforced in the manner provided for other assessments.

Section 5.5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto.

Section 5.6. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots; provided, however, Lots owned by the Declarant shall not be subject to annual or special assessments for so long as Declarant shall obligate itself to pay any operating deficit incurred by the Association during such time as Lots owned by the Declarant are not subject to assessment. Notwithstanding the foregoing, any Lots from which the Declarant derives any rental income shall be assessed at the same rate as is herein above established for Lots owned by other Members of the Association, prorated as of, and commencing with, the first day of the month following the execution of the rental agreement.

Section 5.7. Initiation Assessment. In addition to the annual, special and individual assessments provided for hereunder, the Association shall have the right to collect a one-time initiation assessment in an amount equal to the then applicable annual assessment rate. The initiation assessment shall be due and payable at the time of the conveyance of the Lot to the initial purchaser of the Lot; provided, however, if the initial purchaser is a Builder, as that term is hereinafter defined, the Builder shall have the express right to obtain reimbursement of such initiation assessment from the initial third-party purchaser of a Lot which has been improved by the construction of a single family residence thereon. This right shall be self-operative and need not be expressly set forth in any purchase agreement. Except as otherwise provided herein, the initiation assessment shall neither apply to, nor be otherwise collectible from, subsequent conveyances of a Lot to a subsequent Owner. As used herein, the term "Builder" shall mean the Declarant or any party who has contracted to purchase three (3) or more Lots in **Calabay Parc at Tower Lake** for the purpose of constructing homes for third-party purchasers. At the time of payment of the initiation assessment provided herein, the Owner shall likewise pay to the Association that portion of the Annual Assessment provided in Section 5.3 prorated from the date of purchase through the end of the then current calendar year.

Section 5.8. Date of Commencement of Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on such date as shall be determined by the Board in conformity with the provisions of this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates of periodic installments shall be established by the Board. The Association shall, upon request, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.9. Determination of Allocation of Assessments. The number of Lots used for the calculation of the annual assessments shall be determined as of the ownership of record thirty (30) days prior to the commencement of the fiscal year of the Association and when so determined shall be controlling for the entire fiscal year.

Section 5.10 Effect on Nonpayment of Assessments. Remedies of the Association. If any assessment is not paid on the date due as determined in the manner provided in this Article V, then such assessment shall become delinquent and shall, together with accrued and accruing interest and costs of collection as herein provided, become due and payable and be a continuing lien on such Lot which shall bind such Lot and the then Owner. The Association may record a notice of lien for delinquent assessments in the Public Records of Polk County, Florida, and foreclose the lien in the same manner as a mortgage. Upon recording, the lien shall secure the amount of delinquency stated therein and all unpaid assessments, interest and costs of collection accruing thereafter until satisfied of record. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the highest rate allowed under the State of Florida, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, there being added to the amount of such assessment interest at the aforesaid rate and all costs of collection, including reasonable attorneys' fees incurred in connection therewith at trial and all appellate levels.

Section 5.11 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an Institutional Lender encumbering a Lot; provided, however, such subordination shall apply only to the assessments with respect to such Lot to the extent they have become due and payable prior to a sale or transfer of such Lot

pursuant to a foreclosure judgment or in any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from the liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. An Institutional Lender shall, upon request, be entitled to written notification from the Association of any default of an Owner of any obligation hereunder which is not cured within sixty (60) days. Furthermore, the Association may provide such notice without receiving a request from an Institutional Lender.

Section 5.12 Reserves. The Association shall include within the annual budget and assessment amount (but not be limited by the matters for which reserves may be collected as otherwise herein provided), sums to be collected as reserves for replacement, repair and/or maintenance of the Surface Water and Stormwater Management System and other improvements situate upon or within the Common Area, including, without limitation, the private interior roadway system. Such reserve amounts will be based on a schedule approved and prepared by the Board on an annual basis and shall be based on the cost of the improvements and their estimated life. This section shall not abrogate, modify, amend or supersede the provisions of any other section of this Article.

ARTICLE VI LANDSCAPE MAINTENANCE SERVICES

Section 6.1. Common Maintenance. Calabay Parc at Tower Lake has been established as a community in which the Association provides certain Landscape Maintenance Services for the residents as part of its normal function in order to create a life-style for the Owners providing freedom from the burden of such maintenance responsibilities and to facilitate the use of the dwelling units as vacation residences. The expense of such maintenance services is included in the Common Expenses of the Association.

Section 6.2. Owners' Obligations. Each Owner shall be exclusively responsible for performance of all maintenance obligations for their Unit that are not specifically assumed by the Association pursuant to this Declaration, including, without limitation, repair and replacement of all interior and exterior elements of the Unit, all garage doors, entry/exit doors, window screens, glass surfaces and windows, all swimming pools, pool equipment and machinery, swimming pool screen enclosures, swimming pool decks, patios, walkways and driveways, outbuildings or other improvements.

Section 6.3. Liability for Actions. Each Owner shall be liable for the expense incurred by the Association for any maintenance, repair or replacement of any real or personal property made necessary by the act, neglect or carelessness of the Owner or Owner's tenants or any member of their families, or their guests, employees or agents (normal wear and tear excepted) but only to the extent that such expense is

not met by the proceeds of insurance carried by the Association. Each Owner shall also be liable for any personal injuries caused by his negligent acts or those of his tenants or any member of their families or their guests, employees or agents. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

Section 6.4. Scheduling and Control. The Association shall have the exclusive right to control the timing of performance of the services describe herein, including the hours of the day and days of the week on which such services will be performed, as well as the schedule of irrigation and application of fertilizers, pesticides, herbicides, fungicides and other agents. No Owner shall interfere with the performance of the services by the Association or its contractors, agents or employees, or alter the schedule of irrigation established by the Association.

Section 6.5. Indemnification. The Association covenants and agrees that it will indemnify and save harmless Declarant and its officers and directors from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about any Unit or elsewhere within the Property, and from and against all costs, legal fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. Included in the foregoing provisions of indemnification are any expenses that Declarant may incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants continued in this Declaration to be kept and performed by the Association.

Section 6.6. Exculpation of Declarant. The Declarant shall have no obligation whatsoever for the performance of any service described in this Declaration, or for the failure or refusal of the Association to perform such services.

ARTICLE VII ARCHITECTURAL CONTROL

Section 7.1. Establishment of Architectural Review Committee. There is hereby established an Architectural Review Committee (the "ARC") which shall consist of three (3) or more persons designated and appointed by the Declarant. At such time as the Declarant no longer owns any Lot within the Property (or earlier at the option of the Declarant), the Declarant shall assign to the Association all rights, powers duties and obligations of the ARC, whereupon the Board shall appoint the members of the ARC and shall provide for the terms of the members of the ARC. Members of the ARC need not be officers, directors or Members of the Association.

Section 7.2. ARC Authority. The ARC shall have full authority to regulate the use and appearance of the Property and all improvements constructed thereon to assure harmony of external design and location in relation to surrounding improvements and topography and to protect and preserve the value and desirability of the Property as a residential community. The power to regulate shall include the power to prohibit those exterior uses or activities deemed inconsistent with the provisions of this Declaration, or contrary to the best interests or the Association in maintaining the value and desirability of the Property as a residential community, or both. The ARC shall have authority to adopt, promulgate, rescind, amend and revise rules and regulations in connection with the foregoing; provided, however, such rules and regulations shall be consistent with the provisions of this Declaration and, in the event the Board has not constituted itself as the ARC, such rules and regulations shall be approved by the Board prior to the same taking effect. Violations of the rules and regulations of the ARC shall be enforced by the Board, unless such enforcement authority is delegated to the ARC by resolution of the Board.

Section 7.3. ARC Approval. No building, fence, hedge, wall, walk, dock, pool, planting, sign, or enclosure or addition to any improvement located upon a Lot shall be constructed, erected, removed, planted or maintained nor shall any addition to, or any change or alteration thereof, be made until the plans and specifications showing the nature, kind, shape, height, materials, color scheme and location of same shall have been submitted to, and approved in writing by, the ARC. Any change in the exterior appearance of any improvement, including, without limitation, repainting in the same or different color, exterior refinishing, re-roofing, or the addition of architectural details, decorative sculptures or wrought iron grills, construction of fences or other enclosures, shall likewise require written approval of the ARC before any such work is commenced. The ARC shall have the right to refuse approval of plans, specifications or locations upon any grounds, including purely aesthetical considerations, which the ARC, in its sole and absolute discretion, deems appropriate.

Section 7.4. Submissions of Plans and Specifications. As part of the application process to the ARC, two (2) complete sets of plans and specifications prepared by an architect or other person found to be qualified by the ARC and two (2) site plans shall be submitted for approval by written application on such form as may be provided, required or approved by the ARC. In addition, the anticipated commencement date and estimated time for completion shall be included in the application to the ARC. In the event the information submitted to the ARC is, in its opinion, incomplete or insufficient in any manner, it may request and require the submission of additional or supplemental information.

Section 7.5. Standards. No approval shall be given by the ARC pursuant to the provisions of this Article unless the ARC determines that such approval shall (i)

assure harmony of external design, materials, and location in relation to surrounding improvements and topography within the Property; (ii) shall protect and conserve the value and desirability of the Property as a residential community; (iii) shall be consistent with the provisions of this Declaration; and, (iv) shall be in the best interests of the Association in maintaining the value and desirability of the Property as a residential community. The ARC may deny any application upon the ground that the proposed alteration will create an undue burden of maintenance upon the Association. In the event additional maintenance may be required, then the ARC shall require an agreed method of payment for such maintenance cost and require security for the payment of same. The ARC may condition the approval of any application upon the Owner providing reasonable security that the contemplated work will be completed substantially in accordance with the plans and specifications therefore submitted to the ARC.

Section 7.6. Drainage. All plans submitted to the ARC shall contain a drainage plan which shall be consistent with the master drainage plan for the Property or, in the alternative, contain an affirmative statement that none of the work contemplated by the plans will have any effect on the drainage of the Lot. In all events, each Owner shall be and remain fully liable for any and all damage caused directly or indirectly by any change in the design or function of drainage on or from any Lot, or the grade of any Lot, in connection with the construction, installation or maintenance of any approved changes by the Owner. In the event of any change to the drainage design, function or grade, the Association may, but shall not be required to, restore the drainage design, function or grade and may charge the Owner for all reasonable costs incurred in connection therewith plus ten percent (10%), said charge to constitute a lien on the Property of such Owner. In connection with any such restoration, the Association may exercise powers granted to it under Section 5.4.

Section 7.7. Tree Planting. All plans submitted to the ARC for approval of initial construction of improvements on a Lot shall include, in addition to the regular landscape plans, a plan for compliance with any arbor requirements of the City of Haines City, Florida as may be in effect from time to time. The additional trees shall be planted and maintained in accordance with sound industry practices, including watering, and shall be replaced with equivalent stock if such trees expire within six (6) months from the date of planting. If the Owner fails or refuses to install or replace any such additional trees, the Association, upon thirty (30) days written notice and under general authority granted to it under Section 5.4 of Article V, shall have the right to replace such trees at the cost of the Owner of the Lot and shall be further entitled to charge such Owner an additional fee of \$500.00 to cover the administrative expense of such replacement.

Section 7.8. Completion. All improvements for which approval of the ARC is required and has been obtained pursuant to the terms and provisions of this Declaration shall be completed within the time period specified in such approval. In the event the improvements are not completed within the required time, the Association may, thirty (30) days following written notice from the ARC to the Owner, complete such improvements at the sole expense of the Owner in accordance with the plans and specifications previously approved by the ARC and may charge the Owner for the expenses incurred in connection therewith plus ten percent (10%), said charge to constitute a lien on the Property of the Owner. In connection with any such construction, the Association may also exercise powers granted to it of Section 5.4.

Section 7.9. Right of Entry. There is specifically reserved to the Association and the ARC, the right of entry and inspection upon any Lot for the purpose of determining and/or correcting the existence of any activity or condition which violates the terms of any approval given by the ARC or the terms of this Declaration. The ARC is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to enforce the terms of this Declaration, or to remove any improvements which have not been approved by the ARC or have not been constructed in conformity with approval granted by the ARC, the prevailing party shall be entitled to recover all costs, expenses and reasonable attorneys' fees in connection therewith. The Association shall indemnify and hold the ARC and its members harmless from any and all costs, expenses and liabilities, including reasonable attorneys' fees, incurred by virtue of service as a member of the ARC.

Section 7.10. Violations. In each instance where improvements have been constructed, or the construction thereof is substantially advanced, in such manner that the same violates the restrictions contained in this Declaration, including, activities carried out which are not consistent with plans and specifications approved by the ARC, the ARC (if it has knowledge of such violation) shall notify the Board in writing and the Board may thereafter direct the violating Owner to immediately remove any/or cure such violation. For purposes hereof, all Owners specifically consent and agree to comply with the provisions of this Section as of the time such Owner shall become vested with title to any portion of the Property.

Section 7.11. Waivers. The ARC shall have the right, but not the obligation, to grant waivers for minor deviations and infractions of the covenants, conditions and restrictions contained herein. The granting of any waiver may be given or withheld in the sole discretion of the ARC and any prior grant of a similar waiver shall not impose upon the ARC the duty to grant new or additional waivers for like or similar conditions.

Section 7.12. Disclaimer of Liability. The Association, the Declarant, the ARC and all officers, employees, directors or members thereof shall in no way be liable to any person or persons submitting plans and specifications for approval by reason of mistake in judgment, negligence or non-feasance arising out of, or in connection with, the approval, disapproval or failure to approve any such plans and specifications. Each person who submits plans and specifications for approval agrees, by submission thereof, that it will not bring any action or suit whatsoever against the Association, the Declarant, the ARC, or any officer, employee, director or member thereof.

ARTICLE VIII ANNEXATION OF ADDITIONAL PROPERTY

Section 8.1. Annexation without Association Approval. Additional Property may be annexed in whole or in part by the Declarant and made subject to the governing provisions of this Declaration without the consent of Class A Members of the Association. The Lots and the improvements thereon, together with the rights and obligations of the Declarant and other Owners thereof, with respect to such Property or the portion thereof to be annexed shall become subject to the provisions of this Declaration upon recording of an appropriate supplement or amendment hereto executed by the Declarant without the consent of the Class A Members.

ARTICLE IX RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 9.1. Maintenance. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management, control, operation and maintenance of the Surface Water or Stormwater Management System, the private interior roadway system and other parts and parcels of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, substantial, attractive, and sanitary condition, order, and repair. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the Southwest Florida Water Management District.

Section 9.2. Right of Entry. The Association, through its employees, contractors and agents, is hereby granted a right of entry into and upon each Lot to the extent reasonably necessary to discharge the Association's performance of any duty imposed, or exercise of any right granted, by this Declaration, including, the discharge of any duty of maintenance or replacement, or both, imposed upon any Owner. Such right to entry shall be exercised in a peaceful and reasonable manner at reasonable times and upon reasonable notice whenever the circumstances permit.

Entry into any improvement upon any Lot shall not be made without the consent of the Owner or occupant thereof except when such entry is reasonably necessary for the immediate preservation or protection of the health or safety of any person lawfully upon the Property or of any such person's property. An Owner shall not arbitrarily withhold consent to such entry for the purpose of discharging any duty or exercising any right granted by the foregoing Sections of this Article, provided such entry is upon reasonable notice, at a reasonable time, and in a peaceful and reasonable manner.

Section 9.3. Services of Association. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems appropriate and advisable, together with such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it may contract. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration.

Section 9.4. Services for Owners. The Association may contract, or otherwise arrange, with any person or entity to furnish water, trash collection, sewer services, maintenance, replacement, and other common services to all Lots. Any Owner additionally may voluntarily contract with the Association for the Association to perform, or cause performance of, any services benefitting such Owner's Lot at the cost and expense of such Owner. All sums due the Association pursuant to such contact shall be added to and become a part of the assessment against such Owner's Lot. Notwithstanding the foregoing, the Association may not contract with any Owner to provide any service at such Owner's expense which it is the duty of the Association to provide at its own expense under any provision of this Declaration.

Section 9.5. Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

Section 9.6. Rules and Regulations. The Association may from time to time adopt, alter, amend, and rescind rules and regulations further governing the use of the Lots and of the Common Area, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

Section 9.7. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles, or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege granted herein or reasonably necessary to effectuate the exercise of any right or privilege granted herein.

Section 9.8. Restriction on Capital Improvements. Except for replacement or repair of those items installed by the Declarant, and except for personal property related to the maintenance of the Common Area, the Association may not authorize capital improvements to the Common Area without consent of the Declarant so long as the Declarant is the owner of a Lot which has been platted or approved for platting pursuant to the applicable ordinances and regulations of the City of Haines City. At all times hereafter, all capital improvements to the Common Area, except for replacement or repair of those items installed by the Declarant and except for personal property related to the maintenance of the Common Area, shall require approval of the Board.

**ARTICLE X
RECONSTRUCTION OR REPAIR AFTER CASUALTY**

Section 10.1 Damage to Common Area. In the event that any portion of the Common Area is damaged or destroyed by casualty, it shall be repaired or restored by the Association to substantially its condition prior to the damage or destruction. Repair or reconstruction of the Common Area shall be substantially in accordance with the plans and specifications pursuant to which the same was originally constructed. All insurance proceeds shall be applied to the restoration and repair. If the insurance proceeds are insufficient, the deficit shall be assessed against all Owners as a special assessment. If there is a surplus of insurance proceeds, it shall become the property of the Association.

Section 10.2 Damage to the Lots. In the event of damage or destruction to any portion of the improvements on a Lot, the improvements shall be repaired or restored in accordance with the provisions of the applicable insurance requirements. In the event the Owner is unable to rebuild the improvements on the Lot, such Owner shall clear the debris and have the Lot leveled and restored within sixty (60) days from the date of destruction or damages.

**ARTICLE XI
GENERAL PROVISIONS**

Section 11.1 Enforcement. The Declarant, the Association, the Phase 2 Property Owner or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by, or pursuant to, the provisions of this Declaration; and the party enforcing the same shall have the right to recover all costs and expenses incurred, including reasonable attorneys' fees. In the event any such party enforces the provisions hereof against any Owner, the costs and expenses of such enforcement, including reasonable attorneys' fees, may be assessed against such

Owner's Lot as a special assessment pursuant to the provisions hereof. Failure by any such party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so at any time. If these restrictions are enforced by appropriate proceedings by any such Owner or Owners, such Owner or Owners may be reimbursed by the Association for all or any part of the costs and expenses incurred, including reasonable attorneys' fees, in the discretion of the Board.

In addition to the foregoing, the Southwest Florida Water Management District shall have the right to enforce, by proceedings at law or in equity, the provisions contained in the Declaration as they may relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System.

Section 11.2 Assignment of Rights and Duties. Any and all of the rights, powers and reservations of the Association and Declarant maybe assigned to any person, corporation or association which will assume the duties of the Association or Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such consent and assume such duties, it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Association or Declarant. Furthermore, the Association or Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may designate.

Section 11.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 11.4 Duration and Term. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended and renewed for successive ten (10) year periods.

Section 11.5 Amendment. This Declaration may be amended by a majority of the votes entitled to be cast at any meeting at which a quorum is present as provided in the By-Laws when written notice of such meeting specifies the proposed amendment and amendments to be considered at such meeting. If an amendment is approved by the Members in the foregoing manner, the President and Secretary of the Association shall execute an Amendment to this Declaration which shall set forth the amendment, the effective date thereof, the date of the meeting of the Association at

which such amendment was adopted, the date upon which notice of such meeting was given, the number of votes required to constitute a quorum at such meeting, the number of votes necessary to adopt the amendment, the total number of votes cast in favor of the amendment, and the total numbers of votes cast against the amendment. Anything contained herein to the contrary notwithstanding, there shall be no amendments to the Declaration that materially or adversely affect rights granted or reserved herein to the Declarant without its written consent. All amendments to this Declaration shall be recorded in the Public Records of Polk County, Florida.

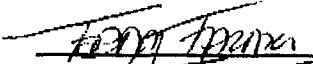
In addition, the Declarant expressly reserves the right, so long as it is a Class B Member, to amend this Declaration without the necessity of concurrent action or approval of the Class A Members so long as such amendment does not materially or adversely affect the interests of the Owners.

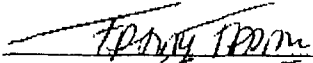
Anything contained herein to the contrary notwithstanding, any amendment to this Declaration which would tend to alter or affect the Surface Water or Stormwater Management System must require prior written approval of the Southwest Florida Water Management District.

Section 11.6 Effect of Recording. Any Lot situated within the Property shall be deemed to be "subject to assessment", as such term is used in this Declaration, the Articles or the By-Laws, upon recording of this Declaration; and, any Additional Property annexed pursuant to the provisions hereof shall be deemed "subject to assessment" upon recording of the appropriate supplement or amendment to this Declaration annexing the same.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be duly executed as of the day and year first above written.


Signed, sealed and delivered
in the presence of:


Name: Fanny Palmer


Name: Fanny Palmer

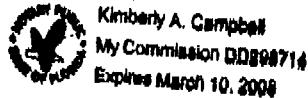
WESCOTT - TOWER LAKE, LLC, a
Florida limited liability company

By: 
Joseph Kantor, Managing Member

By: 
Moshe Ziv, Managing Member

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing *Declaration of Covenants, Conditions and Restrictions* was acknowledged before me this 25 day of January, 2005, by *Joseph Kantor* and *Moshe Ziv*, as a Managing Members of *Wescott - Tower Lake, LLC*, a Florida limited liability company, who is personally known to me.



Kimberly A. Campbell
Notary Public, State of Florida

JOINER AND CONSENT

The undersigned, as owner and holder of that certain *Mortgage and Security Agreement* dated as of February 10, 2004, filed February 17, 2004, and recorded in Official Records Book 5675, Page 101, of the Public Records of Polk County, Florida, does hereby join in, and consent to, the foregoing *Declaration of Covenants, Conditions and Restrictions*, as the same may hereafter be amended, which shall be subordinate to said Declaration.

**CNLBANK, a Florida banking
corporation**

By: _____
Name: _____
Title: Vice President

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing *Joiner and Consent* was acknowledged before me this ___ day of January, 2005, by _____, as Vice President of **CNLBank**, a Florida banking corporation, who is personally known to me or who has been identified by producing a Florida driver's license.

NOTARY PUBLIC, State of Florida

F:\RE\WESCOTT\TOWER-LAKE\HOA\CCR.FINAL

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing *Declaration of Covenants, Conditions and Restrictions* was acknowledged before me this ___ day of January, 2005, by *Joseph Kantor and Moshe Ziv*, as a Managing Members of **Wescott - Tower Lake, LLC**, a Florida limited liability company, who is personally known to me.

Notary Public, State of Florida

JOINER AND CONSENT

The undersigned, as owner and holder of that certain *Mortgage and Security Agreement* dated as of February 10, 2004, filed February 17, 2004, and recorded in Official Records Book 5675, Page 101, of the Public Records of Polk County, Florida, does hereby join in, and consent to, the foregoing *Declaration of Covenants, Conditions and Restrictions*, as the same may hereafter be amended, which shall be subordinate to said Declaration.

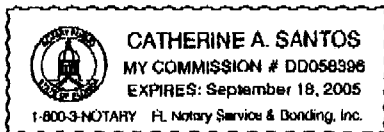
CNLBANK, a Florida banking
corporation

By: _____

Name: ROBERT LUIS CASTILLO
Title: S. Vice President

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing *Joiner and Consent* was acknowledged before me this 19th day of January, 2005, by Robert Luis Castillo, as ^SVice President of CNLBank, a Florida banking corporation, who is personally known to me or who has been identified by producing a Florida driver's license.



NOTARY PUBLIC, State of Florida

F:\RE\WESCOTT\TOWER-LAKE\HOA\CCR.FINAL

EXHIBIT "A"

DESCRIPTION OF PROPERTY

CALABAY PARC AT TOWER LAKE - PHASE I

Parcel 1

Commence at the Southeast corner of the Northwest 1/4 of the Southeast 1/4 of Section 17, Township 27 South, Range 27 East, Polk County, Florida, and run S90°00'00"W along the South boundary thereof, 540.00 feet to the Point of Beginning; thence continue S90°00'00"W, 788.80 feet; thence S89°59'22"W, 994.85 feet; thence N00°10'47"E, 1306.74 feet; thence S89°53'04"E, 559.80 feet to a point of the Southerly right-of-way line of Bates Road, said point being a non-tangent intersection with a curve concaved Northeasterly, having a radius of 406.97 feet, a chord distance of 99.42 feet and a chord bearing of S83°04'57"E; thence Southeasterly along the arc of said curve and said right-of-way line, through a central angle of 14°01'56", an arc distance of 99.67 feet to the end of said curve; thence N89°54'05"E along said right-of-way, 310.52 feet; thence N87°31'25"E along said right-of-way, 232.80 feet; thence S89°43'55"E, 160.52 feet; thence S00°10'36"W, 277.97 feet; thence S89°56'06"E, 359.86 feet; thence S00°03'54"W, 125.00 feet; thence S10°11'03"E, 40.65 feet; thence S00°03'54"W, 120.00 feet; thence S89°56'06"E, 51.22 feet; thence S00°01'24"E, 739.86 feet to the Point of Beginning. Less and Except: Commence at the Southeast corner of the Northwest 1/4 of the Southeast 1/4 of Section 17, Township 27 South, Range 27 East, Polk County, Florida; thence N89°48'00"W along the South line of said Northwest 1/4 of the Southeast 1/4 a distance of 1198.25 feet; thence N00°00'00"E, 337.11 feet to the Point of Beginning; thence continue N00°00'00"E, 141.00 feet; thence S90°00'00"W, 336.92 feet to the point of curvature of a curve concaved Southeasterly, having a central angle of 75°44'10" and a radius of 30.00 feet; thence Southwesterly along said curve, 39.66 feet to the point of reverse curvature of a curve concaved Northwesterly having a central angle of 09°26'59", a radius of 760.00 feet, a chord bearing of S18°59'20"W (S18°47'19"W field) and a chord distance of 125.20 feet; thence Southwesterly along said curve 125.35 feet; thence N90°00'00"E, 406.74 feet to the Point of Beginning.

Parcel 2-A

Commence at the Southeast corner of the Northwest 1/4 of the Southeast 1/4 of Section 17, Township 27 South, Range 27 East, Polk County, Florida and run S90°00'00"W along the South boundary thereof, 540.00 feet; thence N00°01'24"W, 739.86 feet to the Point of Beginning; thence continue N00°01'24"W, 31.69 feet; thence N89°58'36"E, 110.83 feet; thence N89°35'46"E, 40.68 feet to a non-tangent intersection with a curve concaved Southeasterly, having a radius of 55.00 feet, a chord distance of 2.94 feet and a chord bearing of N14°57'23"E; thence

Northeasterly along the arc of said curve through a central angle of $03^{\circ}04'00''$, an arc distance of 2.94 feet to the end of said curve; thence $N16^{\circ}29'24''E$, 30.22 feet; thence $S73^{\circ}30'36''E$, 111.42 feet to a non-tangent intersection with a curve concaved Southeasterly, having a radius of 200.00 feet, a chord distance of 55.04 feet and a chord bearing of $N18^{\circ}45'28''E$; thence Northeasterly along the arc of said curve through a central angle of $15^{\circ}49'08''$, an arc distance of 65.22 feet to the end of said curve; thence $N23^{\circ}27'03''E$, 50.42 feet to a non-tangent intersection with a curve concave Westerly, having a radius of 220.00 feet, a chord distance of 51.24 feet and a chord bearing of $N06^{\circ}51'49''E$; thence Northeasterly along the arc of said curve through a central angle of $13^{\circ}22'27''$, an arc distance of 51.35 feet to the end of said curve; thence $N00^{\circ}16'05''E$, 238.57 feet; thence $N89^{\circ}43'55''W$, 48.07 feet; thence $N00^{\circ}16'05''E$, 140.00 feet to a point on the South right-of-way line of Bates Road; thence $N89^{\circ}43'55''W$ along said right-of-way line, 232.54 feet; thence $S00^{\circ}10'36''W$, 276.37 feet; thence $N89^{\circ}56'06''W$, 90.01 feet; thence $S00^{\circ}03'54''W$, 125.00 feet; thence $S10^{\circ}11'03''E$, 40.65 feet; thence $S00^{\circ}03'54''W$, 120.00 feet; thence $S89^{\circ}56'06''E$, 51.22 feet to the Point of Beginning.