

**DECLARATION OF COVENANTS AND RESTRICTIONS**  
**FOR THE WILLISTON MILE, AN UNRECORDED SUBDIVISION**

**CHARCOAL LLC, an Ohio Corporation** (Declarant) the Owner of all tracts in **THE WILLISTON MILE** located in Levy County, Florida, does hereby declare these Covenants and Restrictions for **THE WILLISTON MILE**.

WITNESSETH:

WHEREAS, the Declarant is the Owner all Tracts in **THE WILLISTON MILE** as described in attached **Exhibit A**, and as shown on the map which is attached as **Exhibit B** (the Property); and

WHEREAS, the Declarant desires to provide for the preservation and enhancement of the property values and the improvements thereon, and, for this reason, desires to subject the subject Property to the covenants, restriction, easements, charges and liens in this Declaration, each and all of which is and are for the benefit of such property and each Owner thereof.

NOW, THEREFORE, the Declarant declares the Property, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth in this Declaration which shall run with real property and be binding on all parties having any right, title or interest in the subject property; their heirs, personal representatives, successors and assigns.

**ARTICLE I**

**Definitions**

The following words when used in the Declaration shall have the following meanings:

- (a) "ARB" shall mean and refer to Declarant, or the Architectural Review Board as designated in Article VIII.
- (b) "Association" shall mean and refer to **THE WILLISTON MILE LANDOWNER'S ASSOCIATION, INC.**, its successors and assigns.
- (c) "Common Areas" shall mean and refer to those areas of land described herein, which are intended for the common use and enjoyment of Owners of Tracts in the Property, which include without limitation, Private Roads, easements for roads, walkways, paths, Equestrian Trails or Equestrian Easements, utilities, and all improvements now or hereafter constructed thereon including, without limitation, streets, lighting systems, signage, structures, and landscaping thereon. All personal property and real property, including easements, licenses, leaseholds, or other real property interests, including the improvements thereon, owned by the Association or maintained by the Association for the common use and enjoyment of the Owners, are to be devoted to and intended for the common use and enjoyment of the Owners, Members of the Association, and their families, guests, and persons occupying Tracts on a guest or tenant basis and any other permitted users, and to the extent authorized by this Declaration or by the Board of Directors.
- (d) "Common Expenses" shall mean the actual and estimated costs of ownership, maintenance, managements, operation, insurance, repair, reconstruction and replacement of the Common Area (including unpaid Special Assessments and including those costs not paid by

the Owner responsible for the payment), and the costs associated with the Track; any costs incurred in exercising the rights of the Association granted in this Declaration, the costs of all utilities; the costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees, agents or independent contractors; the costs of all utilities, gardening and other services benefiting the Common Areas and /or Track, the costs of fire, casualty and liability insurance, Workmen's Compensation insurance, and other insurance covering or connected with the Common Areas and Track; costs of bonding the officers, agents, and employees of the Association; costs of errors and omissions liability insurance for officers, employees and agents of the Association; taxes paid by the Association, including real property taxes for the Common Areas and Track; amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Areas or Track or any portion thereof, and the costs of any other item or items so designated by, or in accordance with other expenses incurred by, the Association for any reason whatsoever in connection with the Common Areas or Track or for the benefit of the Owners.

(e) "Declarant" shall mean and refer to **CHARCOAL LLC, an Ohio Corporation**, which may also be referred to as Developer.

The rights and status of Declarant are assignable to any other entity and continues until Declarant owns less than four (4) lots within the subject property. When such ownership ends the rights and status of Declarant ends.

(f) "Declaration" means this Declaration of Covenants and Restrictions for **THE WILLISTON MILE**, an unrecorded subdivision.

(g) "Easement Areas" shall mean and refer to those areas of land described in attached **Exhibit A** as private Roads, and as shown on the attached map prepared by Daniel M. Croft, (**Exhibit B**), or identified in this Declaration as the Track, Private Roads, Equestrian Trail Equestrian Easement, and all improvements now or hereafter constructed thereon.

(h) "Equestrian Trail" or "Equestrian Easement" shall mean and refer to: (i) all of the private roads in the property; (ii) an area 20 feet in width over all Tracts adjacent to the Track Parcel, being the 20 feet around the boundary of the Track Parcel; and (iii) an area being 10 feet on either side of the common boundaries between and among the tracts. Utilities may also be installed in the equestrian trail or easement, and emergency vehicles and track maintenance vehicles and equipment may use the Equestrian Trail or Equestrian Easement. If an Owner owns two or more contiguous Tracts, the Equestrian Trail or Equestrian Easement shall be released or eliminated as to the common boundary between the two or more Tracts in common ownership, during the period of time of common ownership of the adjacent Tracts or portions thereof.

(i) "Member" of the Association shall mean and refer to Declarant and all Owners of a Tract in the subject property.

(j) "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 Tract located within the property, but shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(k) "Private Road" shall mean and refer to the private roads, as described in the attached Exhibit A, and as shown on the map prepared by Daniel M. Croft, attached as Exhibit B. The Owners of Tracts 10-14 are hereby informed and by acceptance of a deed

acknowledge that “legal” access to each of those Tracts is via the Private Road herein described which connect each of those Tracts to the existing County Road. Actual access to each of those Tracts shall be by the private road.

(l) “The Property” shall mean and refer to the property which is subject to this Declaration under the provisions of Article II hereof and which is described in attached Exhibit A and depicted on the attached map prepared by Daniel M. Croft.

(m) “Residence” shall mean and refer to any building situated upon a Tract designed and intended to be used and occupied as a single-family residence. “Dwelling Unit” shall have the same meaning as “Residence”.

(n) “Surface Water or Storm Water Management System” shall mean and refer to a system, temporary or permanent, which is or may be designated or constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, inhibit, treat, use, or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution, or otherwise affect the quantity and quality discharges from the system, as permitted pursuant to the provisions of the Florida Statutes and Chapters 40C-4, 40C-40, or 40C-42 of the Florida Administrative Code. The Surface Water or Storm Water Management System may 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. No “Surface Water or Storm Water Management System” currently exists.

(o) “Track” shall mean the Track Easement containing the horse-training racetrack at the center of the Property designated as the “Track” in attached Exhibit A and in the attached map prepared by Daniel M. Croft, attached as Exhibit B. The Track is not a Tract as defined herein.

(p) “Tract” shall mean and refer to any tract of land designated by a Tract number in attached Exhibit A and in the map prepared by Daniel M. Croft attached as Exhibit B, or designated by a Tract number in any conveyance by Declarant. The word Tract shall also include the residence located thereon when one has been constructed on the Tract. The word “Lot” shall be deemed interchangeable with “Tract” herein. The Track is NOT a Tract.

## ARTICLE II

### **Property Subject to this Declaration, Additions, Amendments, Annexation**

**Section 1, The Property.** The property, as described Exhibit A, as heretofore defined and any improvements now or hereafter constructed thereon shall be held, transferred, sold, conveyed, and occupied subject to this Declaration.

**Section 2, Additions, Annexation.** Additional land adjacent to the Property may be annexed to the Property by the Declarant without the consent of the Owners provided that if any Mortgage encumbering any Tract is guaranteed or insured by the Federal Housing Administration (FHA) or the Veterans Administration (VA), then consent of the FHA and/or the VA to such annexation must be obtained, and provided the annexation does not change the general nature or character of the subdivision. Upon annexation of said additional land, the Owners of Tracts within the land so annexed for all intents and purposes shall be deemed to be Members of the Association in accordance with the provision of this Declaration, with the right to use the Common Areas identified herein, or identified within the

supplemental declaration referred to hereafter, upon the same terms and conditions as initial Members of the Association. The Owners of the Tracts shall be subject to its rules, regulations, Articles and Bylaws in the same manner and with the same effect as the original Owners, and shall have the same rights and obligations granted by this Declaration as the original Owners. When land is annexed, the Declarant shall file a supplemental declaration in the Public Records of the County, which supplemental declaration shall reference this Declaration and shall contain the legal description of the land annexed. In the event of annexation as set forth herein any portion of the Property than owned by the Declarant or Association may be designated as Common Areas for the use and benefit of the Members. For example, upon annexation the Declarant may convert a Tract within the original Property, or a portion thereof, to be a Common Area to provide ingress and egress to the land annexed. Notwithstanding any provision of this Section 2, Declarant shall be permitted to annex not more than an additional one hundred twenty (120) acres of land, and any additional lands so annexed may be divided into not more than five (5) additional Tracts. This limitation on annexation of additional lands set forth in the immediately preceding sentence cannot be amended without an amendment to this Declaration joined in and consented to by 100% of the Owners of Tracts subject to this Declaration.

**Section 3, Amendments by Declarant.** Except as expressly and specifically limited elsewhere in this Declaration, Amendments to this Declaration may be made by Declarant at any time Declarant owns any more than 3 Tracts (or if the Declarant no longer owns more than 3 Tracts, then as set forth in Article XI) and shall not require the consent of any person or entity, including, without limitation, any mortgagee of a tract.

### ARTICLE III

**Section 1, Owner's Easements of Enjoyment.** Every Owner shall have a non-exclusive perpetual right and easement of enjoyment in and to the Common Areas, Equestrian Trails and Equestrian Easements, Private Roads, and Track, which right and easement shall be appurtenant to and shall pass with the title to every Tract subject to the following provisions:

- (a) any limitations or conditions set forth in the deed, grant of easement, license, this Declaration, or other conveyance or agreement creating the right of the Association in and to that portion of the Common Areas or Track; and
- (b) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Association. No such dedication or transfer shall be effective unless an instrument, signed by Members representing a majority of the votes of the membership, agreeing to such dedication or transfer has been recorded; and
- (c) the right of the Association to implement reasonable rules, regulations, and restrictions which shall apply uniformly to each Owner, for the use of the Common Areas; and
- (d) the right of the Declarant to transfer and convey the Track to the Association, subject to Owners' easement right as set forth in this Declaration; and
- (e) the right of the Association to implement reasonable rules, regulations, and restrictions which shall apply to each Owner, his tenants, and invitees, for the use of the Track.

**Section 2, Maintenance Easements.** The Association shall have a non-exclusive perpetual right and easement on every Tract for the purpose of maintaining the Common Areas and providing such other services to the Owners as are authorized or permitted by this Declaration, which right and easement is assignable. The Easement granted herein shall not entitle the Association to enter any Dwelling Unit unless specifically authorized by this Declaration.

**Section 3, Easement for Access and Drainage.** The Association shall have a perpetual non-exclusive easement over all areas of the Surface Water or Storm Water Management System, if any is constructed in the future, 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 Tract which is a part of the Surface Water or Storm Water Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water or Storm Water Management System as may be required by any applicable Southwest Florida Water Management System permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water or Storm Water Management System. No person shall alter the drainage flow of any Surface Water or Storm Water Management System, including buffer areas or swales, without the prior approval of the Southwest Florida Water Management District.

**Section 4, Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Areas and facilities and Track to the members of his family, his tenants, or contract purchasers who reside on the Owner's respective Tract.

**Section 5, Construction and Sales.** There is hereby reserved to the Declarant, its designees, successors and assigns (including without limitation its agents, sales agents, representatives and prospective purchasers of Tracts), easements over the Common Areas, if any, for construction, utilities lines, display, maintenance, sales, parking and exhibit purposes in connection with the erection of improvements and sale and promotion of Tracts within the Property and for ingress and egress to and from and parking for construction sites at reasonable times, provided, however, that such use shall terminate upon the sale of all Tracts.

**Section 6, Utility Easements.** To the extent that permits, licenses and easements over, upon or under the Common Areas are necessary so as to provide utility services and roads to the Property, or for such other purposes reasonably necessary or useful for the proper maintenance and operation of the Property, each Owner and his heirs, successors and assigns, do hereby designate and appoint the Declarant (and the Association, upon termination or conversion of the Class B membership) as his agents and attorneys-in-fact with full power in his name, place and stead, to execute instruments creating, granting or modifying such easements; provided, however, that such easements shall not unreasonably interfere with the intended use of the Common Areas.

**Section 7, Equestrian Easement.** There is hereby reserved to the Declarant, and to each Owner, an easement to, over, and upon all the areas described as Equestrian Trails or Equestrian Easements as defined in Article I, Section (h) above. The Equestrian Easement, as so designated, may be used by the Declarant and Owners for horseback riding, bike riding, walking, jogging or related activities, subject to such rules, regulations and restrictions for such use promulgated by the Association. Motorized Vehicles are permitted only on the paved or graded portion of the Private Roads; Motorized vehicles are not otherwise permitted in any Equestrian Easement, except as required to perform upkeep and maintenance of the easements or Track, and except for emergency access to the Track. Any user of the Equestrian

Easement or Track, by virtue of using the easement reserved herein, agrees to indemnify, defend, and hold harmless the Declarant, Association and any Owner from any and all claims, damages, causes of action, suits or other matters arising out of, or related to, the user's use of the easement herein, or presence on the Property which his subject to this easement. All such users accept the risk of, and responsibility for, injuries, claims, and damages arising out of activities of the kind and nature contemplated hereby. Without limiting the foregoing, each Owner, by acceptance of a Deed to a Tract, agrees to, prior to making use of, or permitting any guest, tenant, invitee, or other Permitted User to make use of, the Equestrian Easement, execute or cause said Third Party to Execute a written waiver of release in form approved by the Association as a pre-condition, to use the Equestrian Easement. The Association may, in addition to promulgating a form waiver and release, also promulgate reasonable rules and regulations for use of the Equestrian Easement. Any user of the Equestrian Easement or Track, by use thereof, acknowledges receipt of the following warning.

#### **WARNING**

**UNDER FLORIDA LAW, AN EQUINE ACTIVITY SPONSOR OR EQUINE PROFESSIONAL IS NOT LIABLE FOR ANY INJURY TO, OR THE DEATH OF A PARTICIPANT IN EQUINE ACTIVITIES RESULTING FROM THE INHERENT RISKS OF EQUINE ACTIVITIES.**

**Section 8, Right to Vacate, Transfer.** Declarant retains the right to vacate, alter, or amend the Common Areas, as is necessary or advisable in Declarant's discretion to facilitate the annexation of adjacent properties, and access to adjacent property, and annexation of the same to the Property pursuant to this Declaration, or for any other purpose. When Declarant conveys the Track to the Association, the Association shall accept such conveyance, and shall manage and administer the Track as a Common Area. Such transfer shall be subject to the Owner's Enjoyment Easement provisions as set forth herein. Notwithstanding any other provision contained in this Declaration to the contrary, the Equestrian Easements shall be dedicated to and maintained as Equestrian Easements or Equestrians Trails as defined herein, in substantially the same configuration as is set forth herein, in perpetuity, and such use may not be terminated without an amendment to this Declaration joined in and consented to by 100% of the Owners of Tracts subject to this Declaration. The Declarant reserves the right to make minor alterations to the Common Areas, including the Equestrian Easements, so long as the nature and extent thereof are not substantially diminished.

**Section 9, Rights in the Easement Areas.** Every Owner, his guests, and tenants shall have a right and perpetual non-exclusive easement of enjoyment and use in and to all the Easement Areas, for the purposes for which they are created, as defined herein, and such easement shall be appurtenant to and shall pass with title to every Tract. Such easements of enjoyment and use shall include, but not be limited to, the owner's right of ingress and egress over the Private Roads and Equestrian Trail for purposes for which such were created, and rights to use the Track subject to the rules, regulations, terms and conditions set by Declarant or its successors and/or assigns from time to time, and subject to the terms of any Track management contract which Declarant and/or its assigns may enter from time to time, and subject to all covenants and restriction contained in this Declaration. The Declarant reserves the right to promulgate and enforce reasonable written or posted rules and regulations regarding the use of the Track, Private Roads and Equestrian Trail, within the Property, which right the

Declarant may assign to the Association; and which right, the Declarant automatically assigns to the Association upon the sale of the Declarant's last Tract within the Property unless Declarant has previously or contemporaneously assigned such right. The failure of any guest, tenant, or other invitee of an Owner to abide by the written or posted rules and regulations may result in the loss of that person's right or permission to use the Track, Private Roads and/or Equestrian Trail, or other Common Areas.

**Section 10, Track Easement.** Owners shall have the right to a perpetual non-exclusive easement of enjoyment and use in and to the Track. As a condition precedent to the use of the Track, an owner must provide the following: (i) proof of worker's compensation insurance for all riders or other persons using the Track; and (ii) proof of general liability insurance in the minimum amount of \$2 million, with an endorsement listing the Association as additional insured. In addition to the foregoing insurance requirements, the Association may promulgate reasonable rules and regulations for the use and operation of the Track. Rules and regulations governing use and operation of the Track must be reasonable and in accordance with industry standard for community owned shared tracks in North Florida. The requirement set forth in the immediately preceding sentence cannot be amended without an amendment to this Declaration joined in and consented to by 100% of the Owners of Tracts subject to this Declaration. The easement for the Track is restricted to thoroughbred horses owned by Owners and their tenants, and is limited to only those horses which are regularly kept and maintained on that Owner's Tract, and the such of the horses of said Owner's tenants as are regularly kept outside of the Property, except that Owners may use the Track for horses they own and may be rotating from other farms or properties on which they maintain such horses. The Track shall be used only for training and exercising thoroughbred horses, and for no other purpose, and hours of operation, scheduling and other rules regulations, and the Association shall establish management matters, in the sole reasonable discretion of the Association, from time to time. Failure of an Owner to pay the basic assessments which include assessments for the Track, or failure to abide by the rules and regulations regarding use of the Track, may result in The Association suspending such Owner's and his tenants' and invites right of access and use of the Track. This right of suspension shall be in addition to any other remedy of the Association, regarding default by an Owner as set forth in this Declaration. Notwithstanding any other provision contained in the Declaration to the contrary, the Track parcel shall be dedicated to and maintained as a horse-training track as set forth herein in perpetuity, and such use may not be terminated without an amendment to this Declaration joined in and consented to by 100% of the Owners of Tracts subject to the Declaration.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1, Creation of the Lien and Personal Obligation for Assessments.** The Declarant for each Tract within the Property, hereby covenants, and each Owner of any Tract by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay Assessments to the Association, such Assessments to be established and collected as hereinafter provided. The assessments, together with interest, costs, and reasonable attorney's fees shall be a charge on the Tract and shall be a continuing lien upon the Tract against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable

attorney's fees, shall also be the personal obligation of the person who was the Owner of such Tract at the time the Assessment fell due. The Track is not a Tract for purposes of assessments.

**Section 2, Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property, and for the improvement, operation, and maintenance of the Common Areas and Track, including, but not limited to, the Surface Water and Storm Water Management System, if any, and for enforcement of the Declaration.

**Section 3, Maintenance.** The Association shall maintain the Common Areas and shall assume all of the Declarant's responsibility to the County, its governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Common Areas or the Property including, but not limited to, roads and water distribution systems, or any Surface Water or Storm Water Management System, and shall indemnify and hold Declarant harmless with respect thereto. Nothing contained herein shall obligate the Association, or otherwise make it responsible for, initial construction of improvements required by the County.

**Section 4, Fixing Common Assessment.** The Board of Directors of the Association shall be authorized to assess the Members in such amount, as they shall determine necessary to: (i) maintain, repair, improve, reconstruct, and replace the Common Areas and Track, and any Surface Water or Storm Water Management System; (ii) operate the Association, perform other maintenance, repairs, or services authorized or permitted by the Declaration; (iii) provide for the maintenance of improvements, including, but not limited to, irrigation systems and landscaping lying within public or private rights-of-way; (iv) install such safety devices and signs as the Board of Directors shall approve along any streets or walkways; (v) provide for the installation, maintenance, repair, improvement and replacement of all improvements located within the easements granted to the Association in this Declaration; (vi) otherwise achieve those purposes set forth in this Article and elsewhere in this Declaration, as determined to be necessary or advisable by the Board of Directors; (vii) provide funds necessary to pay all Common Expenses. All Owners shall also be assessed, as part of the Common Assessments, for the costs of Track maintenance, operation, upkeep, insurance, and other necessary expenses, as set forth in Article VI herein. The Common Assessment shall be allocated among the Owners, including the Declarant, on the basis of Tracts held by each Owner as a portion of the total of Tracts held by all Owners. Notwithstanding the foregoing, for so long as Declarant is a Class B Member, the Declarant shall have the option, in its sole discretion, to (i) pay Assessments on the Tracts owned by it, or (ii) not to pay Assessments on any tracts and in lieu thereof to fund any resulting deficit in the Association's operating expenses not produced by Assessments receivable from Owners other than the Declarant. The deficit to be paid under option (ii), above, shall be the difference between (i) actual operating expenses of the Association (exclusive of capital improvement costs, reserves and management fees) and (ii) the sum of all monies receivable by the Association (including, without limitation, Assessments, interest, late charges, fines, rent and incidental income) and any surplus carried forward from the preceding year(s). The Declarant may from time to time change the option stated above under which the Declarant is making payments to the Association by written notice to such effect to the Association. When all Tracts within the Property are sold and conveyed to purchasers, other than the Declarant, the Declarant shall have no further liability of any kind to the Association for the payment of Assessments,



deficits or contributions. The Common Assessment, determined and allocated as set forth above, shall be fixed at such times, and shall be payable in such installments, as the Board may approve. Common Assessments for the first two years after commencement of the assessments shall not exceed \$6,000.00 per Tract per year, payable \$500.00 monthly in advance on the first day of each month. The obligation for payment of Common Assessments for any particular Tract shall transfer to the new owner upon the conveyance of the Tract by Declarant. Fractional months shall be pro-rated.

**Section 5, Assessments for Capital Improvements.** In addition to the Common Assessment authorized above, the Board of Directors of the Association may levy, in any assessment year, an Assessment applicable to the year 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 Areas, the Track, or within the easements granted to the Association in Article 3, including fixtures and personal property related thereto. Any such Assessment must be ratified by a majority of the votes of the membership who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any such meeting shall be sent to all Members not less than fourteen (14) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to case thirty (30%) percent of the votes of the membership shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be twenty-five (25%) percent of the votes of the membership. The Association may call as many such subsequent meetings as necessary to obtain an authorized quorum. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting, without written notice.

**Section 6, Uniform Rate of Assessment.** The Common Assessment, and any Capital Improvement Assessment, must be fixed at a uniform rate for all Tracts, except as to undeveloped Tracts owned by the Declarant pursuant to Section 4 above, and may be collected on a monthly, semi-annual, quarterly or annual basis as determined by the Board of Directors.

**Section 7, Date of Commencement of Assessments, Due Dates.** The Assessments provided for in this Article shall commence as to all Tracts on the day of the conveyance of the first Tract to an Owner other than Declarant. Written notice of the Common Assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Tract have been paid. A properly executed certificate of the Association as to the status of Assessments on a Tract is binding upon the Association as to third parties as of the date of its issuance.

## ARTICLE V.

### **COLLECTION OF ASSESSMENTS**

#### **Monetary Defaults and Collection of Assessments.**

**Section 1, Late Fees and Interest.** If any Assessment is not paid within ten (10) days after the due date, the Association shall have the right to charge the defaulting Owner a late fee of ten (10%) percent of the amount of the Assessment, or Ten (\$10.00) Dollars, which ever

is greater, plus interest at the highest rate of interest allowable by law from the due date until paid. If there is not due date applicable to any particular Assessment, then the Assessment shall be due ten (10) days after written demand by the Association.

**Section 2, Acceleration of Assessments.** If any Owner is in default in the payment of any Assessment owed to the Association for more than thirty (30) days after written demand by the Association, the Association upon written notice to the defaulting Owner shall have the right to accelerate and require such defaulting Owner to pay the Association Assessments for the next 12 (twelve) month period, based upon the then existing amount and frequency of assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the Common Assessments, for all Special Assessments, and for all other Assessments payable to the Association.

**Section 3, Lien for Assessments.** The Association has a lien on each Tracts for unpaid Assessments owed to the Association by the Owner of such Tract, and for late fees and interest, and for reasonable attorneys fees incurred by the Association incident to the collection of the Assessments or enforcement of lien, and all sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances in order to preserve and protect the Association's lien. The lien is effective from and after recording a lien in the public records in the County, stating the legal description of the Tract, the name of the record Owner, and the amount due as of the recording of the claim of lien. A recorded claim of lien shall secure all sums set forth in the claim of lien, together with all Assessments or other monies owed to the Association by the Owner until the lien is satisfied. The Lien is in effect until all sums secured by it have been fully paid or until law bars the lien. The claim of lien must be signed and acknowledged by an officer or agent of the Association. Upon payment in full of all sums secured by the lien, the person making the payment is entitled to a satisfaction of the lien.

**Section 4, Collection and Foreclosure.** The Association may bring an action in its name to foreclosure a lien for Assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The applicable Owner shall be liable to the Association for all costs and expenses incurred by the Association in connection with the collection of any unpaid Assessments, and the filing enforcement, or foreclosure of the Associations lien, including reasonable attorney's fees and all sums paid by the Association for taxes and on account of any other mortgage, lien, or encumbrance in order to preserve and protect the Association's lien. The Board is authorized to settle and compromise the Association's lien if the Board deems a settlement or compromise to be in the best interest of the Association.

**Section 5, Subordination of Lien.** The lien of the Association for Assessments or other monies shall be subordinate and inferior to the lien of any first mortgage of record held by an institutional lender. An institutional lender shall refer to any bank, bank holding company, trust company, or subsidiary thereof, savings and loans association, savings bank, federal national mortgage association, insurance company, union pension fund, mortgage company, an agency of the United State government, or the Declarant. Any person who obtains title to a Tract pursuant to the foreclosure of a first mortgage of record held by an institutional lender, or any Mortgagee who accepts a deed to a Tract in lieu of foreclosure of the first mortgage of record held by an institutional lender shall not be liable for any Assessments or for other monies owed to the Association which are chargeable to the former Owner of the Tract and which became due prior to acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the payment of such funds is secured by a claim of lien recorded prior to

the recording of the foreclosed or underlying mortgage. The unpaid Assessments or other monies are Common Expenses collectable from all of the Owners, including such acquirer and his successors and assigns. The new Owner, from and after the time of acquiring such title, shall be liable for payment of all future Assessments as may be assessed to the Owner's tract. Any person who acquires a Tract, except through foreclosure of a first mortgage of record or acquiring title by sale, gift, devise, operation of law or by purchase at a judicial tax sale, shall be liable for all unpaid Assessments and other monies due and owing by the former Owner to the Association; provided, however, that this obligation shall not be applicable to loans insured by the Federal Housing Administration or guaranteed by the Veterans Administration, if the applicable statutes, rules or regulations of the FHA or VA prohibit such liability.

**Section 6, Unpaid Assessments Certificate.** Within fifteen (15) days after written request by any Owner or any Mortgagee holding or making a mortgage encumbering any Tract, the Association shall provide the Owner or Mortgagee a written certificate as to whether or not the Owner or Mortgagee a written certificate as to whether or not the Owner of the Tract is in default with respect to the payment of Assessments or with respect to compliance with the terms and provisions of this Declaration, and any person or entity who relies on such certificate in purchasing or in making a mortgage loan encumbering any Tract shall be protected thereby.

**Section 7, Application of Payments.** Any payments made to the Association by any Owner shall first be applied towards any sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances which may have been advanced by the Association in order to preserve and protect its lien; next toward reasonable attorney's fees incurred by the Association incidental to the collection of Assessments and other monies owed to the Association by the Owner or for the enforcement of its lien; next towards interest on any Assessments or other monies due to the Association, as provided herein; and next towards any unpaid Assessments owed to the Association in the inverse order that such Assessments were due.

**Section 8, NonMonetary Default.** In the event of a violation by any Owner or any tenant of an Owner, or any person residing with them, or their employees, guests, or invitees, (other than the non-payment of any Assessment or other monies) of any of the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, or the rules and regulations of the Track, the Association shall notify the owner and any tenant of the Owner of the Violation, by written notice. If such violation is not cured as soon as practicable and in any event within fourteen (14) days after such written notice, or if the violation is not capable of being cured within such fourteen (14) day period, if the Owner or tenant fails to commence and diligently proceed to cure completely such violation as soon as practicable within fourteen (14) days after written notice by the Association, or if any similar violation is thereafter repeated, the Association may, at its option take any one or all of the following actions:

- (a) Impose a fine against the Owner or tenants as provided in this Article;
- (b) Commence an action to enforce the performance on the part of the Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief;
- (c) Commence an action to recover damages.

(d) Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or change which has not been approved by the Association, or performing any maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the correction of any failure, plus a penalty charge of ten (10%) percent of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable attorney's fees, shall be assessed against the applicable Owner as a Special Assessment and shall be due upon written demand by the Association. The Association shall have a lien for any such Special Assessment and any interest, costs or expenses associated therewith, including attorney's fees incurred in connection with such Special Assessment, and the Association may take such action to collect such Special Assessment or foreclose said lien as in the case and in the manner of any other Assessment as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the Public Records of the County.

**Section 9, Fines.** The Amount of any fine shall be determined by the Board, and shall not exceed One Hundred Dollars (\$100.00) per violation. For continuing violations each day the violation in existence may be considered a separate violation. In such event, the fine may be levied on the basis of each day of the continuing violation, with a single notice and opportunity for hearing, except that no such fine for a continuing violation shall exceed Fifty (\$50.00) Dollars a day (with no cap on the aggregate amount of said fine). Any fine shall be imposed by written notice to the Owner or tenant signed by an officer of the Association, which shall state the amount of the fine, the violation for which the fine is imposed, and shall specifically state that the Owner or tenant has the right to contest the fine by delivering written notice to the Association within fourteen (14) days after receipt of the notice imposing the fine. If the Owner or tenant timely and properly objects to the fine, the Board shall appoint a committee of at least three (3) members who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or the sister of an officer, director or employee of the Association, to conduct a hearing within thirty (30) days after receipt of the Owner's or tenant's objection and shall give the Owner or tenant not less than fourteen (14) days written notice of the hearing date. At the hearing, the committee shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and that the fine imposed is appropriate. The Owner or tenant shall have the right to attend the hearing and to produce evidence on its behalf. The committee shall ratify, reduce or eliminate the fine and shall give the Owner or tenant written notice of its decision. Any fine shall be due and payable within fourteen (14) days after written notice of the imposition of the fine, or if a hearing is timely requested within fourteen (14) days after written notice of committees decision. Any fine levied against an Owner shall be deemed a Special Assessment, and if not paid when due all for the provision of this Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within fourteen (14) days after same fine is due, the Association shall have the right to evict the tenant pursuant to this Article.

**Section 10, Negligence.** An Owner shall be liable and may be assessed by the Association for the expense of any maintenance, repairs, or replacement rendered necessary by his act, neglect or carelessness, but only to the extent that such expense is not met by the proceeds of

insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Tract or Dwelling Unit or the Common Areas.

**Section 11, Responsibility of an Owner for Occupants, Tenants, Guests and Invitees.** Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Dwelling Unit, and for all employees, guests, and invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas or Tract, or any liability to the Association, the Owner shall be assessed for the same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, of the Articles, or the Bylaws, or rules and regulations, by any resident of any Dwelling Unit, or any guest or invitee of an Owner or of any resident of a Dwelling Unit shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

**Section 12, Right of Association to Evict Tenants, Occupants, guests, and Invitees.** With respect to any tenant or any person present in any Dwelling Unit or any portion of the Property, other than an Owner and the members of his immediate family permanently residing with him in the Dwelling Unit, if such person shall materially violate any provision of the Declaration, the Article or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the Property, or shall willfully damage or destroy any Common Areas or personal property of the Association, then upon written notice by the Association such person shall be required to immediately leave the Property and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Property and, where necessary, to enjoin such person from returning. The expense of any such action, including attorney's fees, may be assessed against the applicable Owner as a Special Assessment, and the Association may collect such Special Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association.

**Section 13, No Waiver.** The failure of the Association to enforce any right, provision, covenant, or condition which may be granted by this Declaration, the Articles or the Bylaws, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant, or condition in the future.

**Section 14, Rights Cumulative.** All rights, remedies and privileges granted to the Association pursuant to any terms, provision, covenants, or conditions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association thus exercising the same from executing such additional remedies, rights or privileges as may be granted or as it might have by law.

**Section 15, Enforcement By or Against other Persons.** In addition to the foregoing, Declarant or the Association may enforce this Declaration, by any procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this Declaration shall be borne by the person against whom enforcement is sought, provided such

proceeding results in a finding that such person was in violation of this Declaration. In addition to the foregoing, any Owner shall have the right to bring an action to enforce this Declaration against any person violating or attempting to violate any provision herein, to restrain such violation or to require compliance with the provisions contained herein, but no Owner shall be entitled to recover damages or to enforce any lien created herein as a result of a violation or failure to comply with the provisions contained herein by any person, and the prevailing party in any such action shall be entitled to recover its reasonable attorney's fees.

## ARTICLE VI

### MAINTENANCE

**Section 1, Maintenance by the Owner.** (a) Each Owner is responsible for maintenance in good order, condition and repair of the interiors and exteriors of residences, barns, fences, other structures, and of all mechanical equipment, plumbing and electrical facilities located on a Tract servicing the Residence or other structures thereon, and any pool, hot tub, spa, or similar facility located on a Tract and any equipment and appurtenances. The Owner shall promptly perform such maintenance so as to keep the Residence, other structures, and Tract in a good state of repair. No Owner shall in any way maintain, modify, or improve any areas for which the Association has the responsibility for maintenance without the prior written consent of the Association. Each Owner grants the Association an easement to enter onto a Tract to maintain and repair it if the Owner fails to perform required maintenance within ten (10) days of Association's written demands that the Owner perform maintenance. Each Owner agrees to hold Association, its employees and agents harmless for any maintenance action taken. Each Owner agrees to reimburse the Association for its costs associated with Tract maintenance. Each Owner agrees that, if not paid within ten (10) days, the cost of Tract maintenance shall constitute a lien against the Tract enforceable in accordance with the provision in this Declaration. In addition, failure to maintain the Tract in good condition, as determined by the ARB, shall constitute a Non-Monetary Default, entitling the Association to levy a fine. In addition to the foregoing, the Association shall have the right, but not the duty, to provide maintenance to any exterior areas visible from the roads or adjacent Tracts, including repairs to walls and roofs, painting, landscaping and lawn maintenance. The Association shall have the right to make reasonable repairs and perform reasonable maintenance in its sole discretion, after ten (10) days written notice to an Owner to perform maintenance and failure by the Owner to perform said maintenance. And the Owner shall pay out any and all costs incurred by the Association in performing any and all maintenance repairs under this Section. If the Owner fails to pay, then the Association shall have the right to impose a Special Assessment against said Owner to pay for the cost of repairs and replacements. Such Assessment shall in every respect constitute a lien on the Tract, as would any other Assessments by the Association.

(b) **Swale Maintenance.** The Declarant may in the future, have constructed on Tracts Declarant owns, a Surface Water or Storm Water Management System, which may include a drainage swale, upon certain of Declarant's Tracts for the purpose of managing and containing the flow of excess surface water, if any, found upon such Tracts from time to time. Each subsequent Owner of any Tract upon which a portion of the Surface Water or Storm Water Management System, may be located shall be responsible for maintenance, operation, and

repair of any drainage swales on such Owners Tract. Maintenance, operation, and repair shall be the exercise of practices such as mowing and erosion control, which allows the swales to provide drainage, water storage, conveyance or other storm water management capabilities as permitted by the water management district. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales, including by accumulation of grass clippings or other debris, is prohibited. No alteration of the drainage swales shall be authorized and any damage to any swale, whether caused by natural or human induced phenomena, shall be repaired, and the drainage swale returned to its former condition as soon as possible by the Owner of the Tract upon which the drainage swale is located. Prohibited activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; construct or alter any water control structure; or any other construction to modify the Surface Water Management System Facilities. If the Property includes a wetland mitigation area, as defined by the Southwest Florida Water Management District, or wet detention pond, no vegetation in those areas shall be removed, but, trimmed, or sprayed with herbicide without specific written approval from the Southwest Florida Water Management District. Construction and maintenance activities, which are consistent with the design and permit conditions approved by the Southwest Florida Water Management District and any Environmental Resource Permit maybe conducted without specific written approval from the Southwest Florida Water Management District.

(c) Vacant Tracts. The grassy areas of any vacant Tracts shall be kept regularly mowed and trimmed, and all areas of vacant Tracts shall be kept free of trash, debris, and unsightly or noxious weeds or underbrush. The Association shall have the right, but not the duty, to provide such maintenance to vacant Tracts, after ten (10) days notice to the Owner of a vacant Tract to perform such maintenance and failure by the Owner to perform said maintenance. The Owner shall pay any and all costs incurred by the Association in performing maintenance under this Section, and payment may be enforced as provided in this Article.

**Section 2, Maintenance by the Association.** The Association shall be responsible for maintenance and repair as follows:

(a) Private Roads. The Association shall maintain and repair the private road as described in Exhibit A and as shown on the Daniel M. Croft Survey attach as Exhibit B. In the event any such Private Roads are damaged as a result of the negligence of an Owner, or his family, guest, licensee, invitee, or tenant, the Association may repair or replace such damage and demand reimbursement from such Owner by delivery of written notice thereof.

(b) Equestrian Trail. The Association shall maintain and care for that portion of the Equestrian Trail, which shares and is located upon and over the Private Roads. The Association may choose to maintain that portion of the equestrian trail, which is located, contiguous to the various Tracts and not in the Private Roads. If the Association does not do so, maintenance shall be the responsibility of the Owner of each Tract, which that portion of the Equestrian Trail occupies.

(c) Track. The Association shall be responsible to assure maintenance of the Track to insure proper training conditions, according to industry and community standards. The Track will be graded not fewer than two times a year, conditioned daily and shall be watered as needed by water truck, and not by sprinklers. The Association shall have the right from time to time to establish, post and enforce reasonable rules and regulations governing use of the Track, as set forth in this Declaration.

(d) Insect, Fire Control, and Trash Removal. In order to implement effective insect, reptile, rodent, and fire control, the Association and its agents shall have the right, but not the duty, to enter upon any Tract, such entry to be made by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, grass or other unsightly growth, which in the opinion of the Association detracts from the overall beauty, setting and safety of the Property. Such entrance for the purpose of mowing, cutting, clearing, or pruning shall not be deemed a trespass but shall be deemed a license coupled with an interest. The Association and its agents may likewise enter upon such Tract to remove any trash that has collected on such a Tract or Dwelling Unit without such entrance and removal being deemed a trespass. The provisions in this section shall not be construed as an obligation on the part of the Association to mow, clear, cut or prune any Tract nor to provide garbage or trash removal services. The Costs incurred by the Association in exercising its right under this Section shall constitute a Special Assessment against the Owner of the Tract or Dwelling Unit and shall in every respect constitute a lien on the tract or Dwelling Unit, as would any other assessment by the Association. No such entry shall be made without prior written notice mailed to the last known address of the Owner advising him that unless corrective action is taken within ten (10) days the Association will exercise its right to enter the Tract pursuant to this Section.

### Section 3, Association.

(A.) Voting; Membership; Transition of Association Control

1. Membership in Association. Every Owner of a Tract, which is subject to assessment, shall be a Member of the Association.

Membership shall be appurtenant to and may not be separated from ownership of any Tract, which is subject to Assessment.

2. Voting Rights in Association. The Association shall have two (2) classes of Voting Membership.

Class A. Class A. Members shall be all Owners, with the exception of, until conversion from Class B. Membership, the Declarant, and shall be entitled to one vote for each Tract Owned. When more than one person hold an interest in any Tract, all such persons shall be Members. The vote for such Tract shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Tract.

Class B. Class B. Members shall be the Declarant who shall be entitled to Fifteen (15) votes for each Tract Owned. The Class B Membership shall cease and be converted to Class A Membership one (1) month after 75% of all Tracts in all phases of **THE WILLISTON MILE** that will be ultimately be operated by the Association have been conveyed to Owners other than the Declarant. At such time the Class B Member shall be deemed a Class A member entitled to one (1) vote for each Tract in which it holds the interest required for Membership under this Declaration.

3. Board; Officers. The Association Board of Directors shall consist of 5 members. The Association officers shall be President, Vice President, Secretary and Treasurer. Board Members may also serve as officers.

(B) Association May Contract for Services. The Association may contract for the management of all or part of the Property for purposes of carrying out any portion of the Associations responsibilities in this Declaration. The Association may contract with public or private utility companies, including without limitation, a management company to manage all or part of the association's duties; a private



utility company with which Association is affiliated or controls, for purposes of supplying utility services to the Private Roads. Said management company shall have the right from time to time to establish, post and enforce reasonable rules and regulations governing use of the Private Roads, Equestrian Trails, and Common Areas.

## ARTICLE VII

### Restrictive Covenants.

The following shall apply to all Tracts, but not the Track, unless otherwise specified:

**Section 1, Building Type, Construction and Schedule.** No building shall be erected, altered, placed, or permitted to remain on any Tract other than one detached single family dwelling of not less than 2,000 square feet of enclosed, heated and cooled living area (exclusive of garage, porches or patios), together with an enclosed garage (minimum 450 square feet) accommodating not less than 2 motor vehicles. Each single family dwelling must include a storage closet or room, accessible directly from the outside of the dwelling of at least 100 square feet, designed for the storage of lawn equipment, tools, trash cans, etc. Although still encouraged, this storage closet or room is not required if the garage is a minimum of 550 square feet or greater. Any construction commenced on any Tract shall be completed within one year from the date of first delivery of any construction materials to the Tract or within such other greater or lesser time frame as approved by the Declarant or ARB (as more fully described in Article VIII hereinafter). All construction must be of a design similar to or in keeping uniform with the general appearance of existing structures on the property, in the reasonable discretion of the ARB. If approved by the ARB as to size, use, location and architectural design, accessory building may be constructed, which may include a detached barn, garage, storage area, manager's apartment and/or servants quarters. Accessory buildings may be constructed prior to the construction of the residence only with the approval of the ARB and only if the future location or site of the residence has been designated to the satisfaction of the ARB and (except for the barn) shall be constructed of the same or similar materials as the main residence. All construction shall be subject to any and all County zoning ordinances, laws, or regulations. Mobile homes and modular homes are prohibited. No more than fifty- (50) horse stalls shall be permitted on any Tract. All exterior construction and landscaping of any Dwelling Unit shall be completed before any person may occupy the same. All construction on any Dwelling Unit shall be completed within twelve (12) months from the issuance of the building permit for that Dwelling Unit. All construction on any Tract shall be at that Tract Owner's risk and that Tract Owner shall be responsible for any damage to Common Areas, utilities, Private Roads, sidewalks, or curbing resulting from construction on such Tract. Repairs of construction damage must be made within thirty- (30) days.

**Section 2, Setbacks.** All Residences and structures shall be subject to a minimum setback of 50 feet from all property lines. If one person owns two or more adjacent Tracts, then the owner may elect to have all such Tracts combined and treated as one Tract for the purpose of this restriction.

**Section 3, Dwelling Quality.** The ARB shall have final approval of all exterior building materials and appearance. The use of imitation brick or other imitation material for exterior finish is not permitted except with the specific approval of the ARB.

**Section 4, Roofs.** Flat roofs and built up roofs shall not be permitted. All roofs shall be painted residential-type metal, tile, shingle, asphalt shingle (provided such shingle is a minimum of 235 pounds per 100 square feet of roof), cedar shake shingle or slate construction. Minimum roof pitch shall be 4/12. All roofing materials must be approved by the ARB.

**Section 5, Driveways.** All driveways, which connect to the Private Roads of **THE WILLISTON MILE**, shall be constructed in the following manner:

- a. A paved driveway of stable and permanent construction of concrete, brick, stone or asphalt from the street to the dwelling.
- b. No Driveway apron may be less than eighteen (18) feet wide nor more than twenty-two (22) feet wide where the same connects to the private road. No driveway may be less than ten (10) feet wide.
- c. If a culvert must be installed in the right of way ditch or swale in conjunction with driveway construction, it must conform to all County and ARB specifications. All culverts must be of proper length and must be properly installed so that they function properly and do not restrict the normal flow of water in the ditch, or drainage swale(s).
- d. If any portion of the private road or right of way, which is maintained by the Association, is damaged due to the construction of any residence or driveway entrance, the Owner of the Tract on which the residence is being constructed must repair said damage.

**Section 6, Fences.** Typical 4 board black wood horse farm type fencing is required to be installed along the perimeter of each Tract. Interior fence must be typical 3 or 4 board black wood fences, or black wood top board fence with wire. No chain oink or metal fence shall be allowed, although wire mesh may be used inside the 3 or 4 board black wood of the Tract property line if adjacent to another Tract, or 60 (sixty) feet from **THE WILLISTON MILE** perimeter boundary. No fence may encroach in to the Equestrian Trail or Equestrian Easements. All fences bounding on Equestrian Easements must be maintained in good repair, continuous with no gaps, and with no open gates. No wall, fence or hedge shall be erected, placed, altered, maintained, or permitted to remain on any Tract unless and until the height, type, location, and surrounding landscaping have been approved by the ARB in accordance herewith. Declarant has installed, or will install, 4-board black wood fencing in locations determined by Declarant. All fencing installed by the Declarant shall be left in its existing color and location, and maintained in good condition, repaired and replaced as necessary. Any gates installed by the Declarant for driveway access to a Tract may be relocated by the Owner of the Tract, at said Owners sole expense, but only after written approval by the ARB. All fencing installed by the Declarant in Common Areas must be maintained by the Adjacent Tract Owner in first class condition, and may not be removed without the consent of the ARB. Without limiting the foregoing, fencing installed by the Declarant adjacent to, or parallel to, any Private Roads, Equestrian Trails, or other Common Areas, shall be maintained solely by the adjacent Tract Owner.

**Section 7, Landscaping.** The Owner shall maintain landscaping on the Tracts, in a neat and attractive manner consistent with the overall development of **THE WILLISTON MILE**.

**Section 8, Utility Connections.** All connections for all utilities including, but not limited to, water, sewage, electricity, gas, telephone and television shall be run underground.

**Section 9, Exterior Equipment.** All pumps, compressors, tanks and like exterior mechanical equipment shall be enclosed within a structure or otherwise screened from view. No stationary wire, clotheslines, or clothes racks are permitted. Any satellite dishes or antennas may not exceed a diameter of three (3') feet. All visible structures including flagpoles require ARB approval.

**Section 10, Temporary Structures.** No structure of a temporary character, mobile or manufactured home, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Tract at any time as a residence either temporarily or permanently. Notwithstanding the forgoing, nothing herein shall be construed to prohibited guest or employee quarters in barns or related permanent outbuildings otherwise approved under these restrictions. Recreational vehicles may be occupied on a parcel for not more than 30 days per year.

**Section 11, Garbage and Trash Disposal; Manure, Barn Waste, Shavings Bins.** No Tract 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 and, kept inside the dwelling, storage room or garage at all times, except it may be placed outside at the proper collection location no more than 12 hours before the trash collection time and all trash cans must be returned to the storage areas within 12 hours after trash collection time.

It is intended by the Declarant and acknowledged by all future owners that **THE WILLISTON MILE** is an equestrian community. Manure and barn waste shall be properly disposed of which may include the use of a dumpster type container where manure and barn waste are temporarily stored pending removal and disposition, or use of industry standard manure pits. Dumpsters or other manure or barn waste containers must be routinely and frequently emptied and must be shielded by vegetation, structures or otherwise not openly and directly visible from any other Tract in the Property. Not more than thirty- (30) days accumulation of manure shall be permitted. Shaving bins are permitted to receive the delivery of and for the temporary storage of clean shavings which must be routinely and frequently emptied and must be shielded by vegetation, structures or otherwise not openly and directly visible from any other Tract in the property. Any manure, barn waste and shavings bins or dumpsters must be located on any Tract so that they are farther away from the private road than the main residence. Owner must remove all manure and barn waste from the Tract. The Declarant or the Association may elect to provide a designated area for manure, where Owners can dump manure, subject to reasonable charges established by Declarant or the Association.

**Section 12, Animals.** No animal shall be kept or maintained on any Tract except conventional household pets (dogs, cats, birds, or fish) and only in such number as not to constitute a hazard, nuisance or annoyance to the Owners of adjoining Tracts, and horses only in such numbers that do not result in overgrazing or overcrowding of all or any portion of the Tract, but in no event more than fifty (50) horses per Tract. Pigs, sheep, cattle, goats and other livestock are prohibited, except there shall be allowed not more than two (2) such animals per Tract as pets or for personal use. The ARB shall have the exclusive authority to determine whether the number and manner of keeping conventional household pets constitutes a hazard, nuisance, or annoyance to the Owner of adjacent Tracts and to determine whether the number and manner of keeping horses has resulted in overgrazing or overcrowding of a Tract. Such permitted animals shall be kept on the Owners Tract and shall not be allowed off the premises of the Owners Tract except under physical restraint and in the company of the Owner, a member of the Owners family or servant. No permitted pet shall be allowed to make noise in a manner of the or of such volume

as to annoy or disturb other Owners. For purposes of this Section a mare and foal, or cow and calf, shall be deemed one animal until the foal or calf is weaned. At all times, animals shall be the responsibility of the Tract Owner.

**Section 13, Cars, Boats, Campers, Horse Trailers and Farm Equipment, Other Vehicles and Repair.** No inoperative motor vehicles or trailers, or other types of vehicles shall be allowed to remain either on or adjacent to any Tract for a period excess of thirty (30) days; provided, however, this provision shall not apply to any such motor vehicles or trailers being kept in an enclosed garage. This is an equestrian community as mentioned in Section 11 above. Horse trailers, farm tractors and farm equipment may be stored outside of the dwelling, accessory building or barn mentioned in Section 1.

**Section 15, Swimming Pools, Spas, Tennis and Other Court Game Structures.** No swimming pools, spas, tennis or other court game structures shall be constructed except as approved by the ARB. No above ground pools are permitted within the Property. However, pools may have a wall-out-of-ground not to exceed a maximum of sixteen (16") inches in height. All in-ground pools shall include a paved patio extending from the Dwelling Unit and completely surrounding the pool and shall be located in the Rear Yard. All pool enclosures, including screening, must be approved by the ARB.

**Section 16, Outdoor Lighting.** All outdoor lighting shall be shaded and directed so that the light there from is directed to fall only within the Tract from which the light source emanates so as to not encroach on the privacy of adjacent Tracts. All exterior lighting on any Tract or Dwelling Unit must be designated and erected as to avoid annoyance to any other Owner, and to avoid unreasonable illumination of any other portion of the Properties except the Tract upon which the lighting is erected. The ARB shall have sole authority to determine whether exterior lighting constitutes an annoyance or unreasonably illuminates other portions of the Property. This provision shall not apply to street lighting installed by the Declarant, the Association or any governmental entity. All utilities existing on or across a Tract shall be underground.

**Section 17, Leases.** All leases of a Dwelling Unit shall be restricted to residential use. All leases shall be in writing and shall provide that the Declarant shall have the right to terminate the lease upon default by the tenant in observing any provisions of this Declaration. Each lease shall contain the following provision:

*The lessee hereby acknowledges that this lease is subject to the Declaration of Covenants and Restrictions for **THE WILLISTON MILE**, that lessee has read the same and agrees to be bound thereby, and that failure to comply with the same may result in certain remedies being applicable to lessee including, without limitation, termination of this lease without further notice, and personal liability of lessee and lessor for damages, including reasonable attorneys fees.*

(In the event the foregoing language is not contained in any such lease, then the foregoing language is hereby incorporated therein by reference.) In the event a lessee or a lessees invitee, guest, or licensee of a Dwelling Unit occupies the same without a written lease, the occupancy thereof shall constitute an acceptance of the Declaration and agreement to be bound thereby subject thereto. The Declaration shall have the right to collect attorney's fees against any occupant or tenant and the Owner of the Dwelling Unit in the event that legal

proceedings must be instituted against such occupant or tenant for his eviction or for enforcement of the Declaration. The Declarant is exempt from the provisions of this section.

**Section 18, Signs.** No signs of any kind shall be displayed to the public view on any Tract except one sign of the customary size and nature by local standards, for the purpose of (i) displaying the name and address of the Owner or the farm; (ii) advertising the property for sale whether by Owner or Broker; or (iii) signs used by a builder, general contractor or financial institution for the purpose of advertising construction sale.

**Section 19, No Access.** No portion of any Tract shall be used as a pedestrian or vehicular easement, or as a roadway or otherwise used as a means of access, ingress or egress from any Tract within the Property to any property outside, with the exception of uses of the Equestrian Easements, Equestrian Trails, and Private Roads, as provided in this Declaration.

**Section 20, Business Prohibited.** No Trade, business, service, profession or manufacturing shall be conducted on any Tract except, raising, breeding, boarding, selling or training horses or the cultivation and sale of hay. However, home offices are allowed for business activities other than horse raising, breeding, boarding, selling or training, provided they are not visited more than the lesser of: a) two (2) visits per day by individuals who are not related by blood or marriage to the Tract Owner; or b) twenty (20) visits per month by individuals who are not related by blood or marriage to the Tract Owner. An entire Tract may be leased only with prior approval of Declarant, and or its assigns.

**Section 21, Nuisances.** It shall be the responsibility of each Tract Owner to prevent the development or existence of any unclean, unsightly or unkempt condition of any improvements or ground of their Tract, which would decrease the attractiveness, and/or livability of the properties or any part thereof. In order to implement an attractive overall appearance, the Declarant, its legal representatives and agents, successors and assigns, reserve unto themselves the right to enter any Tract on which a dwelling has not been constructed; such entry may be for the purpose of removal of any debris which may have collected on such Tract, without such entrance and removal being deemed a trespass. This paragraph shall not be construed as an obligation on the part of the Association to provide garbage or trash removal services. In the event that it shall be necessary for the purpose of removing trash or otherwise policing and maintaining said Tract for the purpose of implementing the attractive overall appearance of the Property, the Owner agrees to pay costs therefore. This provision shall be enforceable as a special assessment hereunder. No offensive activity shall be carried out upon any Tract, nor shall anything be done thereon tending to cause annoyance or nuisance to the neighborhood or neighbors. There shall not be maintained any plants, poultry, animals or device or thing of any sort and nature whose normal activities or existence is in any way dangerous, unsightly, unpleasant or of a nature that may diminish or destroy the enjoyment of other Tracts in **THE WILLISTON MILE**.

**Section 22, Subdividing Tracts.** No Trace or Tracts at **THE WILLISTON MILE** including the TRACK shall be subdivided or divided into any parcels, Tract or tracts smaller in size than that which was originally conveyed by Declarant to the initial purchasers.

**Section 23, Storage of Materials.** No scrap metal, junk, or salvage materials, items, or articles, used appliances, used furniture, used equipment, used building materials, etc., shall be stored, placed, or maintained outside any structure on any Tract. The Owner grants the

Association an easement to enter onto the Owners Tract to remove stored materials if the Owner fails to perform required removals within ten (10) days of Associations written demand that the Owner removed stored materials. The Owner agrees to hold Association, its employees and agents harmless for any removal actions taken and to reimburse Association for its costs associated with removal of stored materials. The Owner agrees that, if not paid within ten (10) days, the cost of removal shall constitute a lien against the Tract enforceable in accordance with the provisions of this Declaration.

## ARTICLE VIII

### ARCHITECTURAL REVIEW

**Section 1. Composition of Architectural Review Board.** The Declarant, acting in his own name or Declarant's appointed agent, shall constitute the Architectural Review Board (referred to herein as "ARB"). At such time as Declarant in his sole and absolute discretion shall determine, Declarant may, in lieu of continuing to serve as the ARB, transfer the authority to serve in that capacity to the Association. At such time Declarant in his sole and absolute discretion transfers such authority to the Association, the Association shall create a committee, which shall thenceforth be, and constitute the ARB.

**Section 2. Scope of Review.** No building, fence, wall, outbuilding, landscaping or other structure or improvement shall be erected, altered, added onto or repaired upon any portion of the Property without the prior written consent of the ARB provided however that improvements erected, altered, added onto or repaired by Declarant, and improvements on the Tract, shall be exempt from the provision of this Article. Nothing contained herein shall require that the ARB approve improvements of the interior structures which improvements are not visible or apparent from the exterior of the structure. The ARB's approval shall include, but not be limited to, assuring that the improvements comply with individual Tract guidelines established by the ARB.

**Section 3. Submission of Plans.** Prior to the initiation of construction upon any Tract, the Owner thereof shall first submit to the ARB a complete set of plans and specifications for the proposed improvement, including site plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, approximate ground floor elevation in relations to the existing (natural) grad, specifications of materials and exterior colors, and any other information deemed necessary by the ARB for the performance of its function. In addition the Owner shall submit the identity of the individual or company intended to perform the work and a projected commencement and completion date.

**Section 4. Plan Review.** Upon receipt by the ARB of all of the information required by this Article, the ARB shall have thirty- (30) days in which to review said plans. The proposed improvements will be approved if, in the reasonable opinion of the ARB (i) the improvements will be of an architectural style and material that are compatible with the other structures in the Property; (ii) the improvements will not violate any restricted covenant or encroach upon any easement or building set back line; (iii) the improvements will not result in the reduction in property value or use of adjacent property; (iv) the individual or company intended to perform the work is acceptable to the ARB; and (v) the improvements will be substantially completed, including all cleanup, within twelve (12) months of issuance of a building

permit. The ARB's approval shall include, but not be limited to, assuring that the improvements comply with individual Tract grading guidelines established by the ARB. In the event that the ARB fails to issue its written approval within thirty- (30) days of its receipt of the last of the material or documents required to complete the Owners submissions, the ARB's approval shall be deemed to have been granted without further action.

**Section 5. Contingent Approval.** In the exercise of its sole discretion the ARB may require the Owner to provide assurances that the improvements will be completed in accordance with the approved plans.

**Section 6. Maintenance.** All buildings, fences, walls, outbuildings, landscaping, or other structures or improvements approved by the ARB shall be maintained in accordance with the Plans submitted to the ARB, and in good conditions as determined by the ARB. Without limiting the foregoing, all landscaping shall be maintained in a healthy condition. Any failure to maintain any such buildings, fence, wall, outbuilding, landscaping, or other structures or improvements in accordance with the approval obtained from the ARB, and in reasonable condition as determined by the ARB, shall constitute a Non-Monetary default hereunder pursuant to this Declaration, entitling the Association to pursue the remedies set forth herein.

**Section 7. Nonconforming Structures.** If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article to the same extent as if erected without prior approval of the ARB. The Association, ARB or any Owner may maintain an action at law or in equity for the removal or correction of the nonconforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

**Section 8. Immunity of ARB Members.** No individual member of the ARB, nor Declarant, shall have any personal liability to any Owner or any other person for the acts or omissions of the ARB if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ARB or any member thereof arising from acts or omissions of the ARB committed in good faith and without malice. Any approval given by the ARB, whether written, spoken, or implied, shall not constitute or imply compliance with this Declaration or any governmental regulations. Without limiting the foregoing, each Owner is hereby informed that any construction of impervious areas on a Tract (including Residences, barns, driveways, sidewalks, etc.) In excess of 12,770 square feet may require separate approvals from the County and the Southwest Florida Water Management District, in addition to standard governmental approvals.

**Section 9. Address of Notice.** Requests for approval or correspondence with the ARB shall be addressed to the attention of "THE WILLISTON MILE", 480 Congress Park Drive Centerville, Ohio 45459, and mailed or delivered to the principal office of the Declarant at that address, or such other address as may be designated from time to time by the ARB and/or the Declarant. No correspondence or requests for approval shall be deemed to have been received until actually received by the ARB in form satisfactory to the same.

**Section 10. Variances.** The ARB may authorize variances in compliance with the architectural provisions, and all of the use restrictions, of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may

require. Any variance granted for the use restriction set forth in **Article VII (Restrictive Covenants)** unless granted by Declarant before a separate ARB is formed, must before becoming effective, be approved by a two-thirds (2/3) vote of the Membership of the Association. Such variances must be evidenced in writing. If such variances are granted in writing and approved in writing by the ARB, no violation of the covenants, conditions, and restrictions contained in the is Declaration shall be deemed to have occurred with respect to the matters for which the variances were granted. The granting of such a variance shall not, however, operated to waive any of the terms or provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owners obligations to comply with all governmental laws and regulations affecting it s use of the premises including, but not limited to, zoning ordinances and setback requirements and requirements imposed by any governmental or municipal authority.

**Section 11. Attorneys Fees and Costs.** For all purposes necessary to enforce or construe this Article, the ARB and the Declarant, shall be entitled to collect reasonable attorneys fees, costs, and other expenses from the Owner whether or not judicial proceedings are involved. If such fees, costs or expenses are not paid by the Owner to the Declarant within fifteen (15) days of Declarant providing to Owner a written notice thereof, the Declarant may levy a special assessment in the amount of said fees, costs, and expenses against such Owner which special assessment shall constitute a lien on the Owners Tract and shall be collectible as set forth in this Declaration.

## **ARTICLE IX**

### **EASEMENT RESERVED TO DECLARANT**

**Section 1. Easement over Common Areas.** For so long as Declarant is the Owner of any Tract, the Declarant hereby reserved unto itself the right to grant easements over, upon, under and across all Common Areas and the Track, including, but not limited to, the right to use the said Common Areas to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, cable television, water or other public conveniences or utilities, drainage and the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonable necessary to provide economical and sage public convenience or utility installation or to provide for drainage and to maintain reasonable standards of health, safety and appearance and the right to locate wells, pumping stations, lift stations and tanks; provided, however, that said reservation and right shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

**Section 2. Establishment of Easements.** One or more of the following methods, to wit, as provided for in this Article, shall establish all easements:

- (a) By a reservation of specific statement provided for an easement in the deed of conveyance or a given Tract or Dwelling Unit; or
- (b) By a separate instrument, said instrument to be subsequently recorded by the Declarant.



## **ARTICLE X**

### **COVENANTS AGAINST PARTITION AND SEPARATE TRANSFER OF MEMBERSHIP RIGHTS**

Recognizing that the full use and enjoyment of any Tract is dependent upon the right to the use and enjoyment of the Common Areas, Track and improvements made thereto, and that it is in the interest of all of the Owners that the right to the use and enjoyment of the Common Areas and Track be retained by the Owners of the Tracts, it is therefore declared that the right to the use and enjoyment of any Owner in the Common Areas and easement rights in the Track shall remain undivided, and such Owners shall have no right at law or equity to seek partition or severance of such right to the use and enjoyment of the Common Areas or Track. In addition, there shall exist no right to transfer the right to the use and enjoyment of the Common Areas and Track in any manner other than as an appurtenance to and in the same transaction with, a transfer of title to a Tract. Any conveyance or transfer of a Tract shall include the right to use and enjoyment of the Common Areas and Track appurtenant to such Tract as set forth in and subject to this Declaration, whether or not such rights shall have been described or referred to in the deed by which said Tract is conveyed. The Declarant shall convey the Declarant's interest in the Common Areas to the Association.

## **ARTICLE XI**

### **Amendment**

**Section 1. Amendments by Declarant; Association.** So long as Declarant owns more than three (3) Tracts, Declarant shall have the sole and absolute right to amend this Declaration, unless expressly stated otherwise in this Declaration, and subject to the limitations of Section 4 below, and Article II, Section 2, and Article III, Sections 8 and 10 above. Thereafter, this Declaration may be amended only by the affirmative vote or written consent of the Members having not less than three-fourths (3/4) of the votes of the Membership. No amendment shall be permitted, however, which changes the rights, privileges and obligations of the Declarant without prior written consent of the Declarant. Nothing contained herein shall affect the right of the Declarant to make whatever amendments or Supplemental Declarations are otherwise expressly permitted hereby without the consent or approval of any Owner or Mortgagee.

After the Declarant no longer owns any Tracts, the Association shall have the right and power of amendment of this Declaration as set forth herein, and such amendment shall not require the joinder of mortgagees or any person other than the members of the Association. Such right to amend shall include without limitation the right (a) to amend these Covenants and Restrictions for the purpose of curing any ambiguity in or to any inconsistency between the provisions contained herein; (b) to include in any contract or deed or other instrument hereafter made any additional covenants and restrictions applicable to the Property which do not unreasonably lower standards of the Covenants and Restrictions herein contained; (c) to release any Tract from any part of the Covenants and Restrictions which have been violated if the Association, in its sole judgment determines such violation to be a minor or insubstantial violation; (d) such other amendment or other action as the Association deems desirable. After the Declarant no longer owns any Tract, any amendment by the

Association shall be taken by a ¾ vote of the Association, each Tract representing one vote, so that if one Tract Owner owns more than one Tract, that person shall have as many votes as Tracts her or she owns.

**Section 2. Notice of Amendment.** Recording of an amendment by Declarant shall be deemed notice to all Owners of the terms thereof, and all owners shall be bound by its terms.

**Section 3. Amendment of Articles and By-Laws.** The Articles of Incorporation and By-Laws of the Association shall be amended in the manner provided in such documents and shall be deemed to be in accord with these Declarations at all times. In the event of a conflict between the Articles of Incorporation or By-Laws with this Declaration, this Declaration shall control.

**Section 4. Additional Requirements for Amendments.** Any Amendment to this Declaration, which alters any future surface water or storm water management system, beyond maintenance in its original condition, including any water management provisions of the Common Areas, must have the prior written approval of the Southwest Florida Water Management District, notwithstanding any other provisions contained herein.

## ARTICLE XII

### **SURFACE WATER OR STORM WATER MANAGEMENT SYSTEM**

**Section 1. Responsibility for Surface Water or Storm Water Management System.** The Association shall be responsible for the maintenance, operation and repair of any surface water or storm water management system, which may be constructed. Maintenance of any such surface water or storm water management system(s) shall mean the exercise of practices which all the systems to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the Southwest Florida Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of any such surface water or storm water management systems, which may exist from time to time, shall be as permitted, or as modified, or as approved by the Southwest Florida Water Management District.

**Section 2. Enforcement.** The Southwest Florida Water Management District shall have the right to enforce, by proceeding a law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water or storm water management system, if any.

**Section 3. Dissolution of the Association.** If the Association is dissolved or otherwise ceases to exist, all Owners shall be jointly and severally responsible for operation of maintenance of the Surface Water Management System Facilities, if any, in accordance with the requirements of any Environmental Resource Permit, unless and until an alternative entity assumes responsibility as approved by the Southwest Water Management District.

## ARTICLE XIII

### **ENFORCEABILITY**

**Section 1. Parties Who May Seek Enforcement.** If any person, firm, or corporation, or other entity shall violate or attempt to violate any of the provision of the Declaration, it shall be lawful for the Declarant, ARB, or the Association, to initiate proceedings for the recovery of damages against those so violating or attempting to violate any such provision; or (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting to violate any such provisions for the purpose of preventing or enjoining all or any such violations or attempted violation, or seeing any other legal or equitable relief available. Should the Declarant, ARB, or the Association take action to enforce or defend the provisions hereof, its reasonable attorney fees and costs incurred whether or not judicial proceedings are involved, including attorney fees and costs incurred on appeal of such judicial proceedings, shall be collectible from the party against whom enforcement is sought. In any proceedings by the Declarant, ARB, or the Association against an Owner, collection of such attorney fees may be enforced by any method in this Declaration providing for the collection of an annual assessment or special assessment including, but not limited to, a foreclosure proceeding against he Owners Tract. 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 Declarant, ARB, or the Association 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 the same breach or violation, or as to any other breach or violation thereof occurring prior to or subsequent thereof.

**Section 2. Notice.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

#### ARTICLE XIV

**Section 1. 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 2. Duration.** The Covenants and Restrictions of the Declaration shall run with and bind the land for a term of forty (40) years from the date that this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be revoked after the initial forty- (40) years period upon the vote of not less than sixty-five (65%) percent of the Members and by Mortgagees holding first mortgages on not less than fifty (50%) percent of the Tracts. Any revocation must be recorded.

**Section 3. Right of Association to Merge.** The Association retains the right to merge with any other property owners association. This right shall be exercised by the recordation of an amendment to this Declaration recorded among the Public Records of the County, which amendment shall set forth a legal description of the Property to which this Declaration, as amended shall apply. The amendment shall

further have attached to it a resolution of this Association and the property owners association with which a merger is to take place, and such resolution shall be certified by the Association Secretary thereof and shall state:

- (a) That a meeting of the Association was held in accordance with its By-Laws.
- (b) That a two-thirds (2/3) vote of the Membership approve the merger.

The foregoing certificates, when attached to the amendment, shall be deemed sufficient to establish that the appropriate procedure was followed in connection with the merger.

**Section 4. Litigation.** In any litigation arising out of, or relating to, this Declaration, the prevailing party shall be entitled to recover its reasonable costs and attorneys fees.

**Section 5. Validity.** If any portion of this Declaration is declared enforceable or if the applicability of the Declaration against any person or in any circumstances is held invalid, the validity of the remainder and the applicability shall not be affected thereby. If any word, sentence, phrase, clause, section, article, or portion of the protective deed restrictions and covenants shall be held invalid or enforceable by a court of competent jurisdiction, such portion or word shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions hereof.

IN WITNESS WHEREOF, CHARCOAL LLC has caused this instrument to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_

Witness

\_\_\_\_\_

CHARCOAL LLC

\_\_\_\_\_

Witness

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing Declaration was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, who is personally known to me; or produced \_\_\_\_\_ as identification, and he did not take an oath.

\_\_\_\_\_ Notary Public