

**DECLARATION OF LANDSCAPE RESTRICTIONS
FOR TARA GOLF VILLAS**

THIS DECLARATION is made and executed as of this 1st day of September, 2001, by LEE WETHERINGTON HOMES, INC., a Florida Corporation ("Wetherington") and Towne Development of Tara, Inc, a Florida Corporation ("Towne"), hereinafter Wetherington and Towne shall be jointly referred to as the "Declarant".

WITNESSETH:

WHEREAS, Wetherington and Towne each have an option to purchase, in stages, five hundred twenty-one (521) single-family lots of which approximately 232 of the 521 lots are forty-five (45) foot single family residential lots located within a five hundred and forty-eight (548) acre tract of land lying and being in the County of Manatee, State of Florida, more commonly referred to as the Preserve at Tara, hereinafter referred to as the "Property"; and

WHEREAS, Wetherington and Towne, each have exercised their option to purchase certain forty-five (45)-foot single-family residential lots located on the Property, as more particularly described on **Exhibit "A"** attached hereto and by this reference herein incorporated and hereinafter referred to as the "Lots"; and

WHEREAS, the usage and shared maintenance of the Common Property of the Property is provided through a Community Development District ("CDD"); and

WHEREAS, the Lots comprise a portion of the neighborhood commonly referred to as the Preserve at Tara ("Neighborhood"); and

WHEREAS, Declarant desires to provide for the shared maintenance of the Lots through an association consisting of the owners of the Lots; and

NOW, THEREFORE, Wetherington and Towne as the Declarant, do hereby declare that the Lots shall hereafter be subject to the following provisions, restrictions, reservations, covenants, conditions and easements:

1. PROPERTY SUBJECT TO DECLARATION.

(a) Existing Lots. The Lots which initially are subject to this Declaration are described on **Exhibit "A"**, attached hereto and made a part hereof.

(b) Additional Lots. The Declarant may from time to time, subject other real property to the provisions hereof by recorded Supplemental Declarations (which shall not require the consent of then existing owners of the Lots, the Association (as hereinafter defined) or any mortgagee other than that, if any, of the land intended to be added) and thereby added to the Lots. To the extent that such additional real property shall be made a part of the Lots, reference herein to the Lots shall be deemed to be reference to all of such additional property where such reference is intended to include property other than that legally described above. The Supplemental Declaration shall extend the operation and effect of this Declaration to the property described therein. The Supplemental Declaration

may contain complimentary additions and modifications hereto as may be determined by Declarant, provided that such additions and modifications are not substantially inconsistent with this Declaration.

2. **ASSOCIATION.** Except as may be otherwise provided by the terms hereof, responsibility for maintaining the landscaping of the Lots (as hereinafter provided) shall be vested in an incorporated association known as THE GOLF VILLAS LANDSCAPE ASSOCIATION I, INC., a Florida corporation not for profit, hereinafter called the "Association". The primary purpose of the Association shall be to maintain the landscaping of the Lots as hereinafter provided, enforce the provisions of this Declaration wherever applicable and appropriate, and perform such other duties as may be assigned to it under the terms hereof or under its Articles of Incorporation and Bylaws. All persons including the Declarant owning a vested present interest in the fee title to any of the Lots, which interest is evidenced by a proper instrument duly recorded in the Public Records of Manatee County, shall automatically be a member of the Association and be deemed to have accepted all rights, privileges and obligations of membership, and their respective memberships shall terminate as their vested interest in the fee title terminates. A copy of the Articles of Incorporation of the Association which shall be filed with the Secretary of the State of Florida is attached hereto as **EXHIBIT "B"** ("Articles"). A copy of the Bylaws governing the operation of the Association is attached hereto as **EXHIBIT "C"** ("Bylaws"). The Association shall have all of the rights and powers provided by the Florida corporation statutes, the Articles, the Bylaws, and this Declaration.

3. **VOTING RIGHTS.** The Association shall have two categories of voting membership, i.e. Regular Membership and Declarant Membership.

- a) Regular Membership. Regular Members shall be entitled to one (1) vote for each Lot owned by a Regular Member.
- b) Declarant Membership. The Declarant Member (s) shall at all times have the number of votes equal to three times the total number of votes then attributable to Regular Members, plus one. If there is more than one Declarant Member, they shall cast their votes as they may among themselves determine. The Declarant Membership shall cease and terminate when all the Lots ultimately to be included within the Property have been sold and conveyed by Declarant to the purchasers of the Lots located thereon or sooner at the sole election of Declarant (where upon the Regular Members shall be obligated to elect the Association's Board of Directors ("Board") and assume control of the Association).
- c) Directors of the Association shall be elected and removed and vacancies on the Board shall be filled as provided in the Bylaws.
- d) During the time that Declarant has more votes than the Regular Members, Declarant shall have the right to designate, elect and remove the members of the Board, and the Directors so designated by Declarant need not be members.

4. **COMMON EXPENSES.** All costs and expenses that may be duly incurred by the Association through its Board from time to time in carrying out its duties and responsibilities as provided by this Declaration and by its Articles and Bylaws shall constitute "common expenses" of the Association. Funds for the payment of the common expenses shall be collected by the Association through assessments against the Lots in accordance with the provisions of Paragraph 7. By way of illustration and not as a limitation, the common expenses shall include:

- (a) costs of management and administrative costs of the Association, including professional fees and expenses;
- (b) costs of water and sewerage service, electricity, and other utilities furnished to the Lots that are not metered separately to the individual Lots;
- (c) labor, material, and supplies incurred by the Association in fulfilling its maintenance obligations under the provision of this Declaration;
- (d) damages in excess of insurance coverage;
- (e) compensation for a manager or managers and their assistants, as shall be determined by the Board of the Association;
- (f) premium costs of all property and liability insurance procured by the Association pursuant to the terms hereof;
- (g) other costs incurred by the Association in fulfilling its maintenance obligations under any provisions of this Declaration;

5. **MAINTENANCE, REPAIRS AND REPLACEMENTS.** The respective obligations of the Association and the Lot owners to maintain, repair, and replace the landscaping of the Lots shall be as follows:

(a) **By Association.** The Association, through its Board, shall maintain, repair, and replace as part of the common expenses:

(1) the irrigation system serving the Lots, including wells, equipment and utilities, whether located within Lots or outside of the Lots if not the responsibility of the Master Association; and;

(2) all sod, shrubs, and other landscaping installed by the Declarant ("Initial Landscaping") and or replaced by the Association located within the Lots.

The Association shall provide at a minimum the maintenance service set forth on Exhibit "D" attached hereto. The Association shall have the irrevocable right to have access to each Lot from time to time during reasonable hours as may be necessary for the maintenance and upkeep of Initial Landscaping, as discussed herein, and during any hours for performing such emergency repairs or procedures therein as may be necessary to prevent damage to one dwelling or Lot arising from an emergency condition on an adjacent Lot or property. If the Board determines that any maintenance, repair, or replacement required to be made by the Association was necessitated by the carelessness, negligence, or intentional act of a Lot owner, his or her lessees, invitees, or guests, the cost of such maintenance, repair, or replacement shall be assessed against the Lot owner and shall be payable by such Lot owner within 30 days after delivery of written notice of the assessment.

(b) **By the Lot Owners.** Each Lot owner shall maintain, repair, and replace all improvements located upon the owner's Lot excluding the Initial Landscaping installed by Declarant or replaced by the Association and the yard irrigation system. The Association must approve any changes in the Initial Landscaping. It is the intent hereunder that the Association shall maintain only the Initial

Landscaping of Lots which is installed by Declarant or replaced by the Association and irrigation systems and that the Lot owner shall be responsible for the cost of irrigation water usage and all other maintenance and repairs, including without limitation the maintenance of any additional landscaping, which has been approved by the Association and installed by said Lot owner.

In the event a Lot owner fails to fulfill the maintenance obligations as set forth above, or any new landscaping is added to a Lot, without the prior approval of the Association, the Association, at the discretion of the Board, may undertake such maintenance and make such repairs, including the removal of any new landscaping, as the Board may deem necessary, and the cost thereof shall be assessed against such defaulting Lot owner and shall be payable within 30 days after delivery of written notice of the assessment.

6. **INSURANCE, DESTRUCTION, AND RECONSTRUCTION.** The Association shall obtain and maintain property and liability insurance with a responsible insurance company in the amounts and coverage as the Board may determine. The premiums for such insurance coverage shall be a part of the common expenses. The Association shall have the authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. Each Lot owner will be responsible for obtaining such insurance coverage as the owner sees fit for any improvements located upon that owner's Lot. Each Lot owner will be responsible for procuring and maintaining public liability insurance covering losses which may occur in and about that owner's Lot.

7. **ASSESSMENTS.** The common expenses of the Association shall be payable quarterly and special assessments may be levied by the Board against all Lots in the Neighborhood as determined to be reasonable and necessary by the Board. The Board shall approve annual budgets of anticipated income and common expenses for each fiscal year and thereupon shall levy an annual assessment against each lot, payable quarterly. The assessment shall be collected in the manner provided in the Bylaws. The Board shall have the power to levy special assessments against the Lots as prescribed in the Bylaws. Payment of any special assessment levied by the Board shall be due upon not less than 30 days written notice thereof on the date and in such installments as the Board may specify.

(a) **Assessments.** Each Lot shall be subject to an equal assessment, provided, however until such time as Manatee County issues a certificate of occupancy on a given Lot, quarterly assessments on that Lot shall be at a reduced rate established by the Declarant.

(b) **Commencement of Assessment.** Each Lot owner shall be liable for payment of the quarterly or special Neighborhood assessment or installments thereof commencing on the date of transfer of title from the Declarant to a third party. The Declarant shall never be liable for a special Neighborhood assessment otherwise due on a Lot or Lots owned by the Declarant.

(c) **Delinquent Assessments.** Any assessment, including an assessment made pursuant to the provisions of Paragraphs 4 and 5, which is not paid when due shall be subject to a late charge of ten percent (10%) of the amount of the assessment, or such other late charge as may be established by resolution of the Board, and shall bear interest from the due date until paid at the rate of eighteen percent (18%) per annum/or at such other rate as may be established by resolution of the Board up to the maximum rate allowed by law. If any assessment is payable in installments and a Lot owner defaults in the payment of an installment, the remaining installments of such assessment may be accelerated by the Association to maturity by giving the defaulting Lot owner 10 days written notice of intent to accelerate unless all delinquent sums are paid within that time.

(d) **Personal Obligation of Lot Owner.** Each owner by acceptance of title to a Lot

agrees that every assessment levied by the Board shall be the personal obligation of the owner of the Lot against which the assessment is levied, ownership being determined as of the date of such levy and such assessment shall remain the personal obligation of such owner notwithstanding that such owner may no longer own the Lot. If any such assessment is not paid within 10 days after the same is due, then the Association may bring suit against the owner on the owner's personal obligation, and there shall be added to the amount of such assessment the aforementioned late charge and interest and all costs and reasonable attorneys' fees incurred by the Association in preparation for and in bringing such action, including reasonable attorneys' fees for appellate proceedings. The personal obligation shall not, however, pass to the successors in title of an owner unless expressly assumed by such successors.

8. **ASSOCIATION LIEN RIGHTS.** To provide an additional means to enforce the collection of any assessment, including assessments made pursuant to the provisions of Paragraphs 4 and 5, the Association shall have a continuing lien against each Lot and all improvements thereon. The lien of every such assessment, together with interest and late charges thereon and cost of collection thereof as herein provided, shall attach and become a charge and a continuing lien on each Lot and all improvements thereon upon the recording of this Declaration.

In the event any assessment is not paid within 30 days after the same is due, the Association shall have the right to file a claim of lien in the Public Records of Manatee County. The lien may be enforced by the Association by foreclosure suit in the same manner as a mortgage foreclosure or in such other manner as may be permitted by law. In the event the Association files a claim of lien against any Lot, the Association shall be entitled to recover from the owner of such Lot the late charge and interest described in Paragraph 7 (c) and all costs and reasonable attorneys' fees incurred by the Association in preparing, filing, and foreclosing the claim of lien, including reasonable attorneys' fees for appellate proceedings. All such late charges, interest, costs, and attorneys' fees shall be secured by the lien of the assessment.

9. **SUBORDINATION OF ASSOCIATION LIEN TO MORTGAGES.** The lien of all assessments provided for herein which accrue and become due and payable with respect to any Lot after a mortgage is recorded thereon, but prior to the conveyance of title as a result of a foreclosure or a conveyance in lieu of foreclosure, shall be subordinate to the lien of such mortgage, and the owner acquiring title to such Lot as a result of such foreclosure or conveyance in lieu of such foreclosure shall not be liable for the assessments pertaining to such Lot becoming due within such period. Such unpaid assessment shall be deemed a common expense collectible from all owners, including the person or institution acquiring title to such Lot through such foreclosure or conveyance in lieu thereof. Nothing contained herein shall, however, relieve an owner from the personal obligation for such unpaid assessments for the period of time said owner owned such Lot. Any assessment against a Lot accruing prior to the recordation of a mortgage or after the acquisition of title as a result of a foreclosure or deed in lieu of foreclosure shall be a lien against such Lot in the manner generally provided for herein.

10. **RIGHTS OF DECLARANT.** To the extent permitted by applicable Florida Statutes, the Declarant hereby reserves the right to appoint, remove, and replace from time to time the directors of the Association in accordance with the provisions of the Association's Articles and Bylaws. Except as otherwise limited by Florida Statutes, the Declarant may terminate such right by relinquishing control of the election of the Board to the Lot owners at any time and, as long as Wetherington and/or Towne hold Lots in the Property for sale in the ordinary course of business, this Declaration shall not be amended nor the provisions of this Declaration terminated without the written consent of Wetherington and Towne.

At the time of recording this Declaration, construction of all of the Lots and improvements in the Neighborhood has not been completed. Declarant reserves all rights and easements

necessary or desirable with respect to the Property to complete such construction and to effect the sale or lease of all of the Lots. As long as either Wetherington or Towne hold Lots in the subdivision for sale in the ordinary course of business, Wetherington and Towne shall have the right to exhibit such signs and sales materials on the Property as may be desirable to effect such sales and may use one or more of the Lots for offices, models, and other uses appropriate for the promotion of sales and for the development and management of property in the Neighborhood.

11. **EASEMENTS GRANTED TO THE ASSOCIATION.** There is hereby granted to the Association a perpetual non-exclusive easement across each Lot for the purposes of removing any additions to the Initial Landscaping not approved by the Association and for repairing, maintaining and upkeeping the Initial Landscaping and irrigation systems within all of the Lots.

The use of any easement granted under the provisions of this paragraph shall not include the right to disturb any building or structure on the Property, and any damage caused to same shall be repaired at the expense of the party causing such damage. In the event a party's use of an easement granted pursuant to the terms hereof causes a disturbance of the surface of the land, then the roadways, grass, landscaping, and other improvements which are disturbed shall be restored promptly by such party as nearly as possible to their prior condition.

12. **MANAGEMENT AGREEMENT.** The Association, acting through its Board, is authorized to enter into an agreement with any person or legal entity, including, Wetherington, Towne or an affiliated company of Wetherington or Towne to act as managing agent to handle the administrative affairs and maintenance obligations of the Association upon such terms and conditions as the Board may deem to be in the best interests of the Neighborhood and the Lot owners. The Board shall, however, retain at all times the power to adopt budgets, levy assessments, promulgate rules, and otherwise determine matters of a non-ministerial character.

13. **REMEDIES FOR DEFAULT.** In addition to the remedies provided by statute and common law and the remedies elsewhere provided herein, a default by the owner, tenant, or occupant of any Lot in complying with the provisions and requirements of this Declaration, the Articles, the Bylaws, and such regulations and rules as may be promulgated by the Board shall entitle the Association to injunctive relief or money damages or both. In any such legal or equitable action or proceeding in which the Association is the prevailing party, the Association shall be entitled to recover its costs and reasonable attorneys' fees, including reasonable attorneys' fees for appellate proceedings.

14. **DURATION.** The provisions of this Declaration shall run with and bind all of the Lots and shall inure to the benefit of and be enforceable by Declarant, the Association, and each Lot owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 99 years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of 10 years each, unless prior to the commencement of any such 10 year period: (1) Lot owners holding at least two-thirds of the total votes of the Association membership approve the termination of the provisions of this Declaration, and (2) a written instrument certifying that such approval has been obtained is signed by the president and secretary of the Association and recorded in the Public Records of Manatee County.

15. **AMENDMENTS.** The provisions of this Declaration may be amended by affirmative vote of Lot owners holding at least two-thirds of the total votes of the Association membership, except that provisions relating to sharing of common expenses, rights of Declarant, rights of institutional first mortgagees, and voting rights of Lot owners may be amended only with the written consent of all persons or entities adversely affected thereby. Amendments to the Association's Articles and Bylaws may be

made in the manner provided therein and shall not be subject to the requirements set forth herein for amendments to the provisions of this Declaration.

Except for amendments by Declarant as herein provided, no amendment shall be effective unless it be in writing, executed by the president or vice president and attested by the secretary of the Association with the formalities required by a conveyance of real property in the State of Florida, and recorded in the Public Records of Manatee County. Any amendment so executed and recorded shall be prima facie evidence that the amendment was duly adopted in accordance with the requirements of this Declaration and the Association's Articles and Bylaws. It shall not be necessary for the individual owners of Lots or holders of recorded liens thereon to join in the execution of any amendment, except as specifically provided herein.

To the extent allowable by Florida Statutes, for so long as Declarant holds title to any Lot in the Property or has any rights to purchase forty-five (45) foot single family residential lots located on the Property, Declarant shall have the right and irrevocable power to amend this Declaration. Any such amendment shall be executed by Declarant, and the joinder or further consent of the Association or individual owners of Lots or holders of recorded liens or other interests therein, including institutional first mortgagees, shall not be required.

All amendments shall reasonably conform to the general purpose of the covenants and restrictions set forth herein and shall take effect immediately upon recordation in the Public Records of Manatee County. No amendment to this Declaration shall impair, restrict or prove detrimental to the rights of Manatee County as provided within the Declaration, and as subsequently amended, without the joinder and consent of Manatee County.

16. **BINDING EFFECT.** All provisions of this Declaration shall be enforceable as equitable servitudes and shall run with the Property and shall be in full force and effect until a particular provision is duly amended or until this Declaration is duly revoked and terminated. Any gender used herein shall include all genders and legal entities; the plural number shall include the singular and the singular shall include the plural.

17. **SEVERABILITY.** If any provision of this Declaration of the Association's Articles or Bylaws, or any section, sentence, clause, phrase or word thereof, or the application thereof in any circumstance, is held invalid by a court of jurisdiction, the validity of the remainder of such instruments and of the application thereof in other circumstances shall not be affected thereby.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed in its name as of this 1st day of September, 2001.

WITNESSES:

Print: Cecilia Davis

Print: Sandra E. Brandt

LEE WETHERINGTON HOMES, INC.

By: _____

Leland C. Wetherington, President

[Corporate Seal]

STATE OF FLORIDA
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me by Leland C. Wetherington, President of Lee Wetherington Homes, Inc., a Florida corporation, who is personally known to me.

Witness my hand and official seal in the county and state last aforesaid this 5th day of September, 2001.



Dana Honaker
My Commission CC975810
Expires October 17 2004

Dana Honaker

Notary Public

Print Name: Dana Honaker

Commission No. CC 975810

MY COMMISSION EXPIRES: 10/17/04

WITNESSES:

Print: LAURA BL. ZANNA

Print: Andrea Gray

TOWNE DEVELOPMENT OF TARA, INC.

By: _____

Kitt ER. Kearney, Vice President

[Corporate Seal]

STATE OF FLORIDA
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me by Kitt ER. Kearney, Vice President of Towne Development of Tara, Inc., a Florida corporation, who is personally known to me.

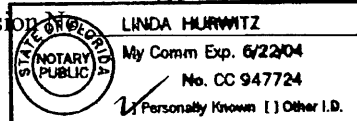
Witness my hand and official seal in the county and state last aforesaid this 5th day of September, 2001.

Linda Hurwitz

Notary Public

Print Name: Linda Hurwitz

Commission No. CC 947724



MY COMMISSION EXPIRES:

EXHIBIT A

Lots 1-3 and 5-28, Tara Phase III, Subphase B, according to plat thereof recorded in Plat Book 37, Pages 30 through 34 of the Public Records of Manatee County, Florida.

State of Florida



Department of State

I certify from the records of this office that THE GOLF VILLAS LANDSCAPE ASSOCIATION I, INC. is a corporation organized under the laws of the State of Florida, filed on September 5, 2001.

The document number of this corporation is N01000006335.

I further certify that said corporation has paid all fees due this office through December 31, 2001, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 501A00050204-090601-N01000006335-1/1, noted below.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
sixth day of September, 2001

Authentication Code: 501A00050204-090601-N01000006335-1/1



CR25022 (1-95)

Katherine Harris

Katherine Harris
Secretary of State

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