

SMUGGLER'S COVE  
DECLARATION  
OF  
COVENANTS AND RESTRICTIONS

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SANTA ROSA COUNTY, FLA

THIS DECLARATION, made this 24 day of May, A.D., 1985,  
by WM. DEJON DEVELOPERS, INC., a Florida Corporation.

WITNESSETH:

WHEREAS, Developer is the owner of real property described in Article II of this declaration and desires to create thereon a residential community, and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for its maintenance and, to this end, desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefits of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has caused to be incorporated under the laws of the State of Florida, as a corporation not for profit SMUGGLER'S COVE OWNERS ASSOCIATION, INC., for the purpose of exercising the functions aforesaid;

NOW THEREFORE, The Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I  
DEFINITIONS

Section 1. The following words when used in the Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to SMUGGLER'S COVE OWNERS ASSOCIATION, INC.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declarations, under the provisions of Article II, hereof.

(c) "Lot" shall mean and refer to Lots shown on such plat of the property described in Article II hereof as may be recorded in the public records of Santa Rosa County, Florida.

(d) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to the Lot situated upon the Properties, but, notwithstanding any applicable theory of any mortgage, shall not mean or refer to the mortgages unless and until such mortgage has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(e) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section I, hereof.

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION:  
ADDITIONS THERETO

Section 1. Existing Property. The real property which is and shall be, held, transferred, sold conveyed and occupied subject to this Declaration is located in Santa Rosa County, Florida, and is more particularly described as follows:

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The East 8 rods of the West 16 rods of the West 1/2 of the East 1/2, Section 21, Township 2 South, Range 27 West, lying South of the South right-of-way line of U.S. Highway 98, Santa Rosa County, Florida, less and except all oil, gas and other mineral rights;

The East 8 rods of the West 24 rods of the West Half of the East Half, Section 21, Township 2 South, Range 27 West, lying South of the South right-of-way line of U.S. Highway 98, Santa Rosa County, Florida.

The East 8 rods of the West 24 rods of the West Half of the East Half, Section 28, Township 2 South, Range 27 West, Santa Rosa County, Florida.

The East 8 rods of the West 16 rods of the West Half of the East Half, the East 8 rods of the West 32 rods of the West Half of the East Half of Section 28, Township 2 South, Range 27 West, containing 17 acres, more or less.

all of which included real property shall hereinafter be referred to as "Existing Property".

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee, interest in any lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those owners as defined in Section 1 with the exception of Class B members. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest or interests in any Lot all such persons shall be members, and the votes for such Lot shall be exercised as they themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B members shall be the Developer. The Class member shall be entitled to two votes for each Lot in which it holds the interest required for membership by Section 1, provided that the Class B membership shall cease and become converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
  - (b) on December 31, 1987;
- From and after the happening of these events, whichever occur earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot in which it holds the interests required for membership under Section 1.

ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer for each Lot owned by him within the Properties hereby covenants and each Owner of any Lot by acceptance of deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection, as hereinafter provided, shall

also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of providing for the improvement and maintenance of the property subject to these restrictions and for the costs of labor, equipment, materials, management, and supervision thereof. The Association shall own, operate, manage and maintain the roads in the subdivision, and the proposed clubhouse, swimming pool, boat ramp and tennis court located on land owned or to be owned by the Association, and shall make rules and regulations for the use thereof.

The Association shall specifically maintain the entrance areas to the Subdivision, lights, and provide such utilities as necessary to do so, and all necessary landscaping and maintenance of same on common areas owned by the Association.

Section 3. Basis and Maximum of Annual Assessments. Until the year beginning January, 1986, the annual assessment shall be no more than Fifty and no/100 Dollars (\$50.00) per lot. From and after January 1, 1986, the annual assessment may be increased by vote of the Members, as hereinafter provided, for the next succeeding year and at the end of each such year for each succeeding year thereafter.

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser or greater amount.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only for the purpose of defraying, in whole or part, the costs of any improvements or maintenance required but not adequately provided for in the annual assessments, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Maximum of Annual Assessments. Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may change the maximum assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) per cent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 4 and 5, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on the first day of March of each year unless fixed by the Board of Directors of the Association on a different date.

The first annual assessments shall be made for the pro-rated period commencing on the date of assessment and ending on the last day of the subsequent February and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of March of said year.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each lot for each assessment period at least thirty (30) days in advance of such date or period and shall at

that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing setting forth whether said assessment of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payments of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eight per cent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property, but not from the lien of any such subsequent assessment.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all properties exempted from taxation by the laws of the State of Florida, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, and land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

Section 12. Assessments on Improved/Unimproved Lots. In authorizing assessments, as provided herein, the Association or its Board of Directors, shall make diligent effort to separate the costs incurred or to be incurred by the Association as same relates to amenities to be used and enjoyed only by residents of the subdivision from those incurred as general expenses applicable to all lots in the subdivision. For this purpose, the proposed clubhouse, tennis courts, and swimming pool expenses shall be deemed to be for the use and benefit of only current residents of the subdivision; all other expenses shall be considered as general expenses applicable to all lots in the subdivision.

Expenses incurred for current residents only, shall be divided among only those owners upon whose lot a residential structure is located in substantially complete condition as of the January 1 immediately preceding the date of assessment. For this purpose the tax assessor's determination as to improved status shall be controlling. All general expenses shall be equally divided among all lots. The division of expenses and determination of the proportion to be paid by undeveloped/developed lots owners shall be within the discretion of an Board of Directors, and its decision shall be final. Any owner of an undeveloped lot may, notwithstanding the foregoing, elect to pay a proportionate share of all expenses and be then entitled to use of all proportionate share of all expenses and be then entitled to use of all amenities. No owner, his family, or invitees shall be permitted use of

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se amenities unless payment is made of that lots proportionate share of  
l expenses.

All owners of improved lots shall pay their proportionate share of  
penses for the proposed clubhouse, swimming pool and tennis court,  
gether with their proportionate share of general expenses.

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ARTICLE V  
PROHIBITED AND LIMITED ACTIVITIES SANTA ROSA COUNTY, FLA.

Section 1. All lots and building plots in said subdivision shall  
known and used as residential lots and plots only, and no structures  
any kind shall be erected, altered, placed or permitted to remain on  
y residential building lot or plot, other than one single family  
esidence not to exceed two stories in height, together with a private  
arage for no more than three automobiles. The garage may have attached  
it a tool room, laundry room, or room or room for domestic help. All  
ans and specifications for the construction of a residence, garage,  
omestic help room, tool room, laundry room, porch or any additional  
tructures must be submitted to Jon W. Sponheimer or Wm. DeJon  
velopers, Inc., a Florida Corporation and approved in writing by  
dorsement thereon before construction of such improvements shall  
mmence. All garages and other out buildings shall be of a type of  
nstruction which shall blend with the main residence to be constructed.

Section 2. Every residence constructed on any lot in said  
ubdivision shall set back at least thirty-five (35) feet from the center  
f the street on which the lot or building plot abuts and at least ten  
10) feet from the side boundary line of such lot or plot, and at least  
irty (30) feet from the rear boundary line of such lot or plot. No  
esidence, garage or other structure or building or any kind shall be  
nstructed or permitted within ten (10) feet of any adjoining owner's  
oundary line. There is excepted herefrom lots 1-36 as to the side  
oundary setback line, as such lots are anticipated to have patio homes  
hich may have zero lot line setbacks.

Section 3. Each single story residence constructed on lots 1-36 in  
aid subdivision shall have no less than 1,100 square feet of living  
rea, exclusive of garages, carports, porches, and outside utility  
uilding. Each two story residence constructed on any lot or building  
lot in said subdivision shall have not less than 550 square feet of  
iving area on the first floor exclusive of carports, porches, and  
outside utility buildings.

Each single story residence constructed on lots 37-52 in said  
ubdivision shall have no less than 1,400 square feet of living area,  
exclusive of garages, carports, porches, and outside utility building.  
ach two story residence constructed on any lot or building plot in said  
ubdivision shall have not less than 700 square feet of living area on  
he first floor exclusive of carports, porches, and outside utility  
uildings.

Each single story residence constructed on lots 53-78 in said  
ubdivision shall have no less than 1,800 square feet of living area,  
exclusive of garages, carports, porches, and outside utility building.  
Each two story residence constructed on any lot or building plot in said  
ubdivision shall have not less than 850 square feet of living area on  
he first floor exclusive of carports, porches, and outside utility  
uildings.

Each single story residence constructed on lots 79-81 in said  
ubdivision shall have no less than 2,800 square feet of living area,  
exclusive of garages, carports, porches, and outside utility building.  
Each two story residence constructed on any lot or building plot in said  
ubdivision shall have not less than 1,500 square feet of living area on  
the first floor exclusive of carports, porches, and outside utility  
uildings.

Section 4. No structure of a temporary character, trailer, " "  
basement, tent, shack garage, barn or other outbuilding shall be used on  
any lot at any time either temporarily or permanently.

Section 5. No noxious or offensive activity shall be carried on  
upon any lot, (nor shall anything be done thereon which would be or may  
become an annoyance or nuisance to the neighborhood.)

Section 6. No animals, livestock or poultry of any kind shall be  
raised, bred or kept on any lot, except that dogs, cats or other  
household pets may be kept provided that they are not kept, bred or  
maintained for commercial purposes. Permitted animals must be kept  
within the fenced portion of a lot, or on a leash if outside of the fence

*Amended*

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loud, persistent or obnoxious barking or other noise created by pets is prohibited.

Section 7. No sign of any kind shall be displayed to the public on any lot except one professional sign of no more than one square foot, one sign of not more than five square feet advertising the property or sale or rent, or signs which are used by a builder to advertise the property during the construction and sales period.

Section 8. Developer or its Designee reserves the right to use any of all buildings, finished or unfinished, as administrative sales, or storage buildings during construction and/or sales period.

Section 9. No lot shall be used or maintained as a dumping ground or rubbish, trash, garbage or other waste and shall not be kept except in sanitary containers. Equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

Section 10. The storing, repairing or overhauling of automobiles or other vehicles, on the premises, other than operable vehicles owned by the owner, shall be deemed detrimental to the residential use of the property and is hereby prohibited.

Section 11. All fences shall be constructed or maintained along or near boundary line of any lot or building plot and shall be six (6) feet in height as a minimum and eight feet (8') in height as a maximum. The kind and structure of all fences constructed on any lot or building plot must be approved in writing by Wm. DeJon Developers, Inc., a Florida Corporation. All fences must be placed at or behind the rear wall of the structure. Any decorative fences in front of any home are to be approved. No fence shall be closer than ten feet (10) from any lake located within the subdivision. *Approved*

Section 12. All disposal containers and outside utility tanks must be located either underground or at such location that the same shall not be visible to neighbors and occupants of other property in said subdivision.

Section 13. Any septic tanks or water tanks used on a temporary basis only, must be first approved in writing by Wm. DeJon Developers, Inc., a Florida Corporation and Jon W. Sponheimer, and shall be used only until permanent facilities of such kinds are available for use, provided, however, that this provision shall not apply to water pumps for air conditioning purposes, or lawn maintenance.

Section 14. No exploration, drilling or refining of oil, gas or other minerals, of any kind shall be permitted or allowed on any property in said subdivision.

Section 15. No greenhouses, sheds, boats, trailers, motor homes, campers, or recreational vehicles are allowed to be located on any road, driveway, or yard where they may be visible from the street. Any such property must be located behind the fence and below the fence level. *Approved*

Section 16. No visible satellite receivers or television antennas shall be allowed. Installation of either will be approved by Wm. DeJon Developers.

Section 17. No visible clothes line(s) shall be allowed in the subdivision.

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ARTICLE VI  
GENERAL PROVISIONS

SANTA ROSA COUNTY, FLA.

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then-Owners of two-thirds of the lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

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

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**Section 3. Enforcement.** Enforcement of these covenants and restrictions shall be by and proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 4. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 5. Reservation of Easement.** In addition to any recorded easement affecting the properties, there is hereby reserved unto the Developer, its successors and assigns, an easement for the placement and maintenance of any and all existing utilities servicing the properties together with the right of reasonable ingress and egress to maintain and service such utilities.

**Section 6. Reservation of Right to Amend.** The Developer reserves for his behalf and that of the Association the right to amend any portion of these restrictions if required in order to satisfy any rule or regulation of the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or other similar government or private entity, if same is required in order to qualify the properties for financing either provided, guaranteed, underwritten or purchased by any such entity.

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**ARTICLE VII**  
**DUTY TO REBUILD OR REPAIR**

OF SANTA ROSA COUNTY, FLA.

**Section 1.** In the event of damage to or destruction of any improvement on any Lot by fire, windstorm, water or any other cause whatsoever, the Owner shall, within a reasonable time, cause said improvement to be repaired or rebuilt so as to place the same in as good and tenable condition as it was before the event causing such damage or destruction, and failure to do so shall constitute a breach of these covenants and restrictions subject to priority in favor of any mortgagee under a mortgage clause. All insurance proceeds for loss or damage to any improvement upon any Lot shall be used to assure the repair or rebuilding of any such improvement, subject to priority of any mortgagee.

**Section 2.** Unless prohibited by governmental order of decree, in the event of damage or destruction of any improvement on any lot by fire, windstorm, water or any other cause whatsoever, the Association shall have the right, subject to the right of any mortgagee, to file suit to specifically enforce the provision of Section 1 above, and in the event the Owner fails or refuses to remove debris resulting from such damage or destruction the Association shall have the power to enter upon and remove same, and restore the premises to vacant lot status, and the reasonable costs of such removal and restoration shall be a lien upon the land in favor of the Association. Nothing contained herein shall obligate the Association to perform the tasks allowed.

**ARTICLE VIII**  
**ARCHITECTURAL CONTROL COMMITTEE**

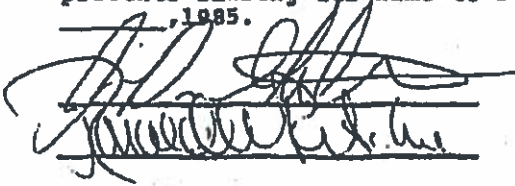
**Section 1. Review by Developer or Designee.** No residence building, fence, wall or other structure or landscaping shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by Jon W. Sponheimer or Wm. DeJon Developers, Inc., a Florida Corporation, or by the designee thereof. In the event said developer or its designee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with.

**Section 2.** The Developer or its designee shall have the right to waive violations of these restrictions by written instrument upon its determination that the violation waived is minor, does not adversely

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affect the value, utility or enjoyment of any other lot in the subdivision, and does not constitute a hazard to anyone.

IN WITNESS WHEREOF, Wm. DeJon Developers, Inc., has executed these presents causing its name to be affixed hereto this 8 day of May, 1985.



WM. DEJON DEVELOPERS, INC.

By:



President

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 8 day of May, 1985 by Jon W. Sponheimer, as the President of WM. DEJON DEVELOPERS, INC., a Florida corporation on behalf of the corporation.



Notary Public

My Commission Expires: 7-23-86

PREPARED BY:  
Ronald W. Ritchie  
Ritchie & Kellar  
4400 Bayou Blvd., Suite 20  
Pensacola, Florida 32503

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