



This instrument prepared by  
and after recording return to:

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AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR BANYAN BAY

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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BANYAN BAY**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BANYAN BAY (this "**Declaration**") is made this 27th day of September, 2017 by BANYAN BAY MACKS, LLC, a Delaware limited liability company (the "**Declarant**") (as further defined below), whose post office address is 4750 Owings Mills Blvd., Owings Mills, MD 21117, and is joined in by BANYAN BAY STUART HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit ("**Association**"), whose post office address is McHale Property Management, LLC, P.O. Box 1699, Jensen Beach, FL 34958.

**RECITALS:**

**A.** Declarant owns the real property described in the plat for Banyan Bay P.U.D. Phase I, as recorded in Plat Book 16, Pages 75 through 82, inclusive, of the Public Records of Martin County, Florida.

**B.** The Property is a proposed residential community known as "**Banyan Bay**" (the "**Development**").

**C.** Declarant is the owner and holder of the Developer rights and interests as defined and set forth in that certain Declaration of Covenants, Conditions, and Restrictions for Banyan Bay recorded on September 12, 2008, in Official Records Book 2350, Page 1346, public records of Martin County, Florida, as subsequently amended by that First Amendment to Declaration of Covenants, Conditions, and Restrictions for Banyan Bay recorded on December 23, 2009, in Official Records Book 2429, Page 1497, public records of Martin County, Florida (collectively, "**Original Declaration**").

**D.** Declarant desires and hereby amends and restates in total the Original Declaration in accordance with the terms, provisions, conditions, and restrictions of this Declaration, and upon the recording of this Declaration in the public records of Martin County, Florida, the Original Declaration shall be deemed null and void.

**E.** Declarant has incorporated the Association, which Association will be conveyed title to certain Property, and which Association will be delegated the powers of and responsibility for maintaining and administering certain Property and Improvements, administering and enforcing this Declaration and the other Association Documents, and collecting and disbursing the monies derived from the Assessments hereafter levied.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that this Declaration encumber the Property and such Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Some of the definitions set forth in the Association Documents may contain terms, conditions, and provisions that are necessary for: (i) the proper interpretation of the Association Documents; and (ii) to fully understand the Members' rights, privileges, responsibilities, duties, liabilities, and obligations under the Association Documents and under the Association Act. Capitalized terms used above or herein that are not defined in this Article I shall have the meanings given to such terms elsewhere in this Declaration. When used above or herein in this Declaration, the following terms shall have the following meanings:

A. "**ADDITIONAL PLAT**" shall mean the plat of any Additional Property; provided a Supplemental Declaration for such Additional Property is recorded amongst the Public Records of the County in accordance with this Declaration. "**Additional Plat**" shall also mean the replat of all or any portion of the Plat or any other plat of all or any portion of the Property.

B. "**ADDITIONAL PROPERTY**" shall mean any real property (other than the Property) that may be submitted by Declarant or any third party authorized by Declarant to the terms and provisions of this Declaration by a Supplemental Declaration which shall be executed by the owner of the Additional Property and need not be joined in by any other person or Owner. No portion of any Additional Property shall be encumbered by this Declaration unless and until such property is added by a Supplemental Declaration by the fee owner thereof. In the event any Additional Property becomes encumbered by this Declaration, then, and only then in such event, the term "**Property**" as used herein shall also include the Additional Property.

C. "**AMENDMENT(S)**" shall mean any and all amendments to this Declaration, all of which shall be consecutively numbered beginning with the "**First Amendment to the Declaration of Covenants, Conditions and Restrictions for the Community**" and each of which shall be properly adopted pursuant to the terms of the Association Documents and recorded in the Public Records of the County; provided, however, the failure to so consecutively number such amendments shall not impair their validity hereunder and such amendments to the extent not otherwise numbered will be deemed to have been numbered in chronological order of their appearance in the Public Records of the County. "**Amendment(s)**" shall also mean any and all amendments to any Supplemental Declaration, as recorded in the Public Records of the County.

D. "**ANNUAL ASSESSMENTS**" shall mean and refer to the assessments levied annually by the Association pursuant to the Homeowner Association Act, Chapter 720, Florida Statutes "**Association Act**" and the "**Budget**" (as that term is defined in Section 7.03(a) of this Declaration).

E. "**ARCHITECTURAL REVIEW BOARD**" or "**ARB**" shall mean the committee created pursuant to Article VIII hereof.

F. “**AREA(S) OF COMMON RESPONSIBILITY**” shall mean and refer to any land or Improvement located in or near the Property which is not intended to be owned by the Association, but which is intended to be improved, maintained, or operated by the Association in the manner and to the extent determined from time to time by the Board. Areas of Common Responsibility may be designated by this Declaration, any Supplemental Declaration, a contract entered into by the Association, or by a decision of the Board. The following are hereby designated as Areas of Common Responsibility:

(1) **Rights of Way and Entrance Area.** Subject to limitations imposed by any Governmental Authority, the Association shall maintain, repair and replace to the extent determined by the Board, the signs; lighting fixtures; electrical equipment; drainage improvements in accordance with the Permit; irrigation lines and equipment; landscape materials and features; and other improvements from time to time located within the unpaved rights-of-way and unpaved medians in any rights-of-way as shown on any recorded Plat;

(2) **Street Lighting.** The Association may arrange for and assess the Owners for the fixture rental, electrical usage and other costs of Street lighting for the Property and any Areas of Common Responsibility; and

(3) **Easements.** The Association shall maintain, repair and replace any walls, signs, lighting fixtures, electrical equipment, drainage improvements (in accordance with the Permit), irrigation lines and equipment, landscape materials and features, and other improvements from time to time located within all wall and landscape easements created in favor of the Association as shown on any recorded Plat. Notwithstanding the foregoing, the Owner of each Lot encumbered by a wall easement shall maintain all landscaping lying between the wall and that Owner’s Home, and said Owner shall maintain the paint or other surface finish, if any, on the vertical surface of the wall which faces the Owner’s Home, failing which the Association shall perform the required maintenance and may levy an Individual Assessment to cover the costs thereof.

The foregoing duties and prerogatives of the Association are subject to the terms of Article IV, hereof, regarding potential implementation of one or more MSTU/MSBU or similar mechanisms to assume responsibility for and collect the funds necessary to pay the costs of any of the foregoing or any other services that would otherwise be the responsibility of the Association under this Declaration or otherwise.

G. “**ARTICLES**” shall mean the Articles of Incorporation of the Association which have been filed in the Office of the Secretary of State of the State of Florida, a true copy of which is attached hereto as **Exhibit “B”** and incorporated herein by this reference, as such Articles may be amended from time to time.

H. “**ASSESSMENTS**” shall mean and include: (i) Annual Assessments or charges; (ii) “Special Assessments” (as that term is defined in Section 7.04(a) of this Declaration); (iii) “Individual Assessments” (as that term is defined in Section 7.04(b) of this Declaration); (iv) if required to be paid pursuant to the terms hereof or hereafter required by the Board from time to time, a one-time only start-up assessment (“**Start-Up Assessment**”); (v) assessments or amenity

fees permitted pursuant to the Association Act; and (vi) any interest and late charges that may be imposed by the Board at its discretion, and the cost of collection of any of the foregoing, including, without limitation, court costs and expenses/fees and reasonable attorneys' and paralegals' fees before trial, at trial, and on appeal.

I. **"ASSOCIATION"** shall mean and refer to BANYAN BAY STUART HOMEOWNERS ASSOCIATION, INC., a not-for-profit Florida corporation, formerly known as Banyan Bay Property Owners Association, as established by the Original Declaration, its successors and assigns, pursuant to the Articles filed in the Office of the Secretary of State of the State of Florida, as amended by any amendments thereto, and which Association is responsible for the maintenance, preservation and architectural control of the Community as provided in this Declaration.

J. **"ASSOCIATION DOCUMENTS"** shall mean in the aggregate this Declaration, the Articles and the Bylaws, the Plat, the Additional Plat, if any, and all of the instruments and documents referred to therein, including, but not limited to, any Amendment(s) and Supplemental Declaration(s).

K. **"ASSOCIATION PROPERTY"** shall mean such portions of the Property which are not included in any Lot, except those areas dedicated to the public by the Plat or Additional Plat, if any, and which are or shall be owned or maintained by the Association, as set forth in this Declaration, for the common use and enjoyment of the Owners within the Community, together with landscaping and any other Improvements thereon, including, without limitation, the Stormwater Management System, the Utility Systems, all structures, gatehouses, open spaces, private streets, asphalt bike paths, horse trails, sidewalks, irrigation facilities, decorative street lights, perimeter fence, entry or other lighting, if any, and entrance features, buffer tracts, monument walls, site walls, gazebos, retaining walls, fountains, littoral plantings and decorative street signs, but excluding any public utility installations thereon.

L. **"BOARD"** shall mean the governing board of director body of the Association.

M. **"BUILDER"** or **"HOMEBUILDER"** shall mean and refer to any person or legal entity that has acquired or that acquires title to any Lot expressly in furtherance of: (1) the business of developing the Lot for eventual construction of Homes thereon in the ordinary course of such person's or entity's business; or (2) the business of constructing Homes thereon, in the ordinary course of such person's or entity's business, for later sale to bona fide Third-Party Purchasers that is not a Builder or an affiliate of a Builder. After the Turnover occurs, Declarant shall be considered and deemed a Builder with regard to or concerning any Lot(s) that Declarant then owns or thereafter acquires title to, and with Declarant, as a Builder, automatically being deemed to and having all rights, powers, benefits, easements, and reservations afforded to a Builder under the Governing Documents or that may be delegated to a Builder by Declarant under the Governing Documents.

N. **"BYLAWS"** shall mean the Bylaws of the Association, which have been or will be adopted by the Board, an initial copy of which is attached hereto as **Exhibit "C"** and incorporated herein by this reference, as such Bylaws may be amended from time to time.

O. **“COMMUNITY DEVELOPMENT DISTRICT”**: As defined in Chapter 190 of the Florida Statutes.

P. **“COMMON AREA(S)”** or **“COMMON PROPERTY”** shall mean and refer to the real and personal property from time to time owned or intended to be owned by the Association and devoted to the use and enjoyment of all Members of the Association, all at Common Expense. Without limiting the generality of the foregoing, the Common Area tracts depicted or defined in the Plat shall be Common Property. Common Property shall include, but not be limited to, easement areas which are held by the Association as grantee. Additional Property may contain Common Property, but no commitment is made that any Additional Property will in fact contain Common Property. The definition of **“Common Area”** and **“Common Property”** shall also include the definition of **“common area”** defined in the Association Act.

Q. **“COMMON EXPENSE”** shall mean and refer to the actual and estimated expense of operating the Association and meeting the costs to be incurred by the Association in performing its duties and in exercising its prerogatives, including, without limitation, costs incurred for operation, management, administration, maintenance, repairs, replacement, insurance and improvement of the Common Property and Areas of Common Responsibility, and for any reserves from time to time established to be set aside by the Board. Except as may be expressly set forth herein, all undertakings or activities of the Association concerning the Property, the Community, the Common Property, the Areas of Common Responsibility, and enforcing the provisions of the Association Documents, shall be done at Common Expense.

R. **“COMMUNITY”** shall mean that planned residential development planned to be developed in stages on the Property in the County, which encompasses the Property and is intended to comprise approximately two hundred thirty-five (235) residential Homes or other residential unit types, as may be approved by the County and also encompasses the Association Property. The Community will consist of the land set forth in **Exhibit “A”**, attached hereto and made a part hereof, and may be expanded by the recording of one or more Supplemental Declaration(s).

S. **“CONDOMINIUM ASSOCIATION”** shall mean any association created or to be created to administer specific portions of the Property or common elements lying within such portions pursuant to a declaration of condominium affecting such portions of the Property.

T. **“CONDOMINIUM ASSOCIATION DECLARATION”** shall mean a Declaration of Condominium encumbering a portion of the Property at such time as each declaration is recorded in the public records of Martin County.

U. **“CONSERVATION EASEMENT”**: As defined in Article IV, Section 4.09 hereof.

V. **“CONSERVATION EASEMENT AREA(S)”** shall mean and refer to any areas or portions of the Property from time to time included within, or subjected to, a Conservation Easement pursuant to the provisions of Article IV, Section 4.09 hereof.

W. **"COUNTY"** shall mean Martin County, Florida.

X. **"DECLARANT"** shall mean and refer to BANYAN BAY MACKS, LLC, a Delaware limited liability company, and any successor or assign thereof to which Declarant specifically assigns all or part of the rights of Declarant hereunder by an express written assignment, recorded in the Public Records of the County. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Property such assignment is applicable. In any event, any subsequent Declarant shall not be liable for any default or obligations incurred by any prior Declarant, except as may be expressly assumed by the subsequent Declarant, and any prior Declarant shall not be liable for any subsequent default or obligations incurred by any subsequent Declarant. An Owner shall not, solely by the purchase of a Home and/or Lot, be deemed a successor or assign of Declarant under the Association Documents unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.

Y. **"DECLARATION"** shall mean this instrument as it may be amended from time to time, together with any Supplemental Declaration(s) or Amendments thereto, which may be recorded amongst the Public Records in accordance with this Declaration.

Z. **"DIRECTOR"** shall mean a member of the Board.

AA. **"DISTRICT"** shall mean the South Florida Water Management District.

BB. **"DRAINAGE PERMIT"** shall mean and refer to any permits, and any successor permits, issued by the District or the County for the construction, operation, and maintenance of the Stormwater Management System on the Property.

CC. **"GOVERNMENTAL AUTHORITY(IES)"** shall mean and refer to any federal, state or local authority, court, department, division, legislature or instrumentality having authority, control or jurisdiction over or concerning the Development, the Property, the Community, the Areas Common Responsibility, the Association, the Members and/or the Owners, including, but not limited to, the local government.

DD. **"HOME"** shall mean a residential Home unit constructed within the Community.

EE. **"IMPROVED LOT"** shall mean a Lot on which the construction of any Home has been completed and for which Home a certificate of occupancy or equivalent therefor has been issued by the appropriate governmental agency.

FF. **"IMPROVEMENT"** shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within the Community, including, without limitation, buildings, walkways, horse trails, berms, fountains, sprinkler pipes, gatehouses, roads, driveways, fences, retaining walls, underground footers and other foundation supports, stairs, landscaping, hedges, plantings, poles, swings, tennis courts, swimming pools, covered patios, screen enclosures, jogging, bicycling and walking paths, basketball backboards and hoops, signs, site walls, gazebos, benches, mailboxes, decorative street lights and signs.

GG. “**INSTITUTIONAL MORTGAGE**” shall mean a mortgage held by an Institutional Mortgagee on any Property within the Community.

HH. “**INSTITUTIONAL MORTGAGEE OR INSTITUTIONAL LENDER**” shall mean any lending institution owning a first mortgage encumbering any Home or Lot within the Community, which owner and holder of said mortgage shall either be a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof, licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any “**secondary mortgage market institution**,” including the Federal National Mortgage Association (“**FNMA**”), Government National Mortgage Association (“**GNMA**”), Federal Home Loan Mortgage Corporation (“**FHLMC**”) and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; any and all lenders, and the successors and assigns of such lenders, which have loaned money to Declarant and which hold a mortgage on any portion of the Property securing any such loan; any pension or profit-sharing funds qualified under the Internal Revenue Code; the Veterans Administration, the Federal Housing Administration or the Department of Housing and Urban Development or such other lender as is generally recognized in the community as an institutional lender; or Declarant, its successors and assigns.

II. “**INTEREST**” shall mean the maximum non-usurious interest rate allowed by law on the subject debt or obligation, and if no such rate is designated by law, then eighteen percent (18%) per annum.

JJ. “**LEGAL FEES**” shall mean reasonable fees for attorney and paralegal services incurred in connection with: (i) negotiation and preparation for litigation, whether or not an action is actually begun, through and including all trial and appellate levels and post-judgment, bankruptcy and probate proceedings, and (ii) collection of past due Assessments including, but not limited to, preparation of notices and liens; and shall also include court costs through and including all trial and appellate levels and post-judgment, bankruptcy and probate proceedings.

KK. “**LIMITED COMMON AREA**” means any and all real and personal property, easements, improvements, facilities and other interest, if any, as more particularly described in Article IV, Section 4.04 hereof, which are reserved for the use of Owner(s) of certain Lots to the exclusion of other Owner(s) and/or other Lots.

LL. “**LIMITED COMMON EXPENSE(S)**” shall mean and refer to Common Expenses with respect to any Limited Common Area.

MM. “**LOT**” shall mean and refer to any parcel of land within the Community as shown on the Plat or any Additional Plat upon which a Home is permitted to be constructed, together with the Improvements thereon, and any portion of the Property within the Community that is declared to be a Lot by a Supplemental Declaration and is not subsequently withdrawn from the provisions of this Declaration by a Supplemental Declaration.

NN. “**MEMBERS**” shall mean and refer to all of the Owners who are also members of the Association, as provided herein.

OO. “**MONETARY OBLIGATION**” shall mean and refer to any monetary obligations, including, but not limited to, Assessments, due to the Association by any Member pursuant to the Governing Documents, the Rules and Regulations, or under the Association Act.

PP. “**OWNER**” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot within the Community, and includes Declarant for as long as Declarant owns fee simple title to a Lot within the Community, but excluding therefrom those having such interest as security for the performance of an obligation.

QQ. “**PARTY WALL**” shall mean and refer to a structural, fire rated wall between two adjacent Villas located within the same Villa Building, which provides structural support for each of the Villas sharing the Party Wall. Damage to a Party Wall could impair the structural integrity of more than one Villa.

RR. “**PERMIT**” shall mean and refer to General Environmental Resource Permit issued by the District.

SS. “**PLAT(S)**” shall mean the recorded Plat of Banyan Bay P.U.D. Phase I, as recorded in Plat Book 16, Pages 75 through 82, inclusive, of the Public Records of Martin County, Florida. In the event an Additional Plat is recorded in the Public Records of the County, then the term “**Plat**” as used herein shall also mean the Additional Plat or Plats.

TT. “**PROPERTY**” shall mean the real property more particularly described in Exhibit “A” attached hereto and incorporated herein (“**Initial Property**”) and the Additional Property, if any, which is submitted to, and encumbered by this Declaration.

UU. “**PUBLIC RECORDS**” shall mean the public records of the County.

VV. “**RULES AND REGULATIONS**” shall mean the use restrictions, rules, and regulations governing the use of and activities on the Lots and the Association Property, as they may be amended from time to time. The initial Rules and Regulations as of the date hereof are set forth in **Exhibit “D”** attached hereto and made a part hereof.

WW. “**SERVICE AREA**” shall mean and refer to each group of Villa Lots and Villas that share a common continuous building structure connected by Party Walls or containing Villas constructed on such Villa Lots. If applicable, Service Area may also refer to the Villa Lots and Villas located in a Block.

XX. “**SPECIAL ASSESSMENT**” shall mean the assessment set forth in Section 7.04(a) hereof.

YY. “**STREETS**” shall have meaning set forth in Section 5.01(D).

ZZ. “**STORMWATER MANAGEMENT SYSTEM**” shall mean and refer to a system which is designed and constructed or implemented to control discharges which are

necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapter 62-330, F.A.C.

AAA. “**SUPPLEMENTAL DECLARATION**” shall mean any instrument executed by the owner of any Property, which, when recorded in the Public Records of the County, shall commit such Property to the provisions of this Declaration, and shall be the only method of committing such Property to the provisions of this Declaration. Property not owned by the Declarant may not be committed to the provisions of this Declaration by Supplemental Declaration without the prior express written authorization of the Declarant. A Supplemental Declaration may also add additional restrictions, declare certain properties to be or not to be Association Property, or withdraw properties from the Property and the provisions of this Declaration. The Association shall join in the execution of any Supplemental Declaration at the request of Declarant, but such joinder shall not be required to make any such Supplemental Declaration effective, unless expressly provided herein. The Owners shall not be required to join in the execution of any Supplemental Declaration but shall nevertheless be bound thereby. Supplemental Declarations shall be numbered consecutively beginning with the Second Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions for Banyan Bay Stuart Homeowners Association, Inc.

BBB. “**THIRD PARTY PURCHASERS**” shall mean a purchaser that is not a Builder or a successor Declarant of a Lot or Home in the Community.

CCC. “**TURNOVER**” shall mean and refer to the transition of control of the Association by Declarant pursuant to Section 720.307 of the Association Act.

DDD. “**TURNOVER MEETING**” shall mean and refer to the meeting at which Members other than Declarant elect a majority of the Directors pursuant to Section 720.307 of the Association Act.

EEE. “**UNIT**” shall mean and refer to any condominium unit in any building that may be erected on any lot of land within the Property, which land is designated by Declarant by recorded instrument to be subject to this Declaration (and to the extent Declarant is not the Owner thereof, then by Declarant joined by the Owner thereof).

FFF. “**UTILITY SYSTEMS**” shall mean and refer to any and all Property, real and otherwise, utilized to furnish potable water, non-potable water, sanitary sewer, and reuse water, if so provided, to the Owners and residents of the Property, in addition to the Association Property and common areas within the Property. Utility Systems shall include all mechanical and electronic equipment and systems utilized to provide water and sewer services to the Property, including but not limited to piping, lift stations, water treatment plants, sewer treatment plants and sprayfields, and reuse facilities; provided, however, Utility Systems shall not include any portion of any system to provide utilities that is located within the boundaries of an individual Lot, from the terminus of the meter(s) for the individual Lot. The Utility System shall stop on each Lot at the exit flow from the meter(s) for such Lot.

GGG. "**VILLA**" shall mean a Home (as defined in Section 1.0(BB)) constructed with in a Villa Building.

HHH. "**VILLA ASSESSMENT**" shall mean the assessment imposed only upon Villa Lots as set forth in Section 7.04(c).

III. "**VILLA BUILDING**" shall mean and refer to the common continuous building structure with shared roof and other common structural elements, constructed on a group of Villa Lots and all structural components thereof. Each Villa Building is or will be partitioned, by the means of Party Walls, so that an individual Villa within the subject Villa Building is located on each Villa Lot.

JJJ. "**VILLA LOT**" shall mean a Lot upon which a Villa is constructed.

KKK. "**VILLA OWNER**" shall mean any Owner (as defined in Section 1.0(NN)) of a Villa Lot.

## ARTICLE II

### **DESCRIPTION OF THE COMMUNITY**

**Section 2.01. Initial Property.** The Initial Property is and shall be owned, improved, held, controlled, transferred and occupied subject to this Declaration.

**Section 2.02. Additional Property.** Declarant shall have the right, but not the obligation, to bring within the scope of this Declaration, as Additional Property, lands lying adjacent to or in the vicinity of the Initial Property, at any time and from time to time within twenty (20) years after the Effective Date (the "**Potential Additional Property**"). Unless and until annexed, this Declaration shall not encumber or bind in any way any of the Potential Additional Property. Except as provided in Article XIV hereof, annexation of any or all of the Potential Additional Property as Additional Property may be accomplished by Declarant without the consent of the Association, the Owners, the Members, any mortgagee or other lien holder, or anyone else.

**Section 2.03. Method of Annexation.** Additions authorized under this Article II shall be made, if at all, by recording a Supplemental Declaration extending this Declaration to the Additional Property. The Supplemental Declaration shall describe that portion of the Potential Additional Property annexed as Additional Property and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing the Potential Additional Property to this Declaration and extending the jurisdiction of the Association to such Additional Property. The Supplemental Declaration may contain additional terms not inconsistent with this Declaration to reflect the different character, if any, of the Additional Property then being annexed, or of the housing or development approaches being implemented with respect to such Additional Property. Upon the recordation of any Supplemental Declaration in the Public Records, the Owners shall also have: (i) a right and non-exclusive easement of use and enjoyment in and to the Common Property, if any, located on the Additional Property, and (ii) the obligation, as a Common Expense, to contribute to the cost of operating, management, maintaining, repairing, operating, administrating, replacing, insuring and improving: (a) the additional Common Property located within the Additional Property; and (b) any additional Areas of Common

Responsibility located within the vicinity of the Additional Property. Any Supplemental Declaration recorded in the Public Records in accordance with the terms hereof shall be conclusive in favor of all persons who rely on such Supplemental Declaration in good faith. From and after recordation of any Supplemental Declaration in the Public Records, the Additional Property described therein shall be subject to the provisions of this Declaration and to the jurisdiction of the Association.

**Section 2.04. Withdrawal.** Declarant reserves the right to unilaterally amend this Declaration at any time and for any reason for the purpose of removing any portion of the Property (including, without limitation, Lots and Common Property) without notice and without the consent of any person or entity whatsoever, other than the owner of the portion of the Property to be withdrawn or the District, if consent by the District is required; provided, however, that no such withdrawal may impair vehicular or other access to any Lot as established by the applicable recorded Plat.

**Section 2.05. Supplements.** Declarant may from time to time subject other land to the provisions of this Declaration by Supplemental Declarations (which shall not require the consent of then existing Owners, the Association or any Mortgagee other than that, if any, of the land intended to be added to the Property) and thereby add to the Property. To the extent that such additional real property shall be made a part of the Property, reference herein to the Property 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. Nothing herein, however, shall obligate Declarant to add to the initial portion of the Property, to develop any such future portions under a common scheme, nor to prohibit Declarant from rezoning and changing plans with respect to such future portions. A Supplemental Declaration, including without limitation, a declaration of condominium, may vary the terms of this Declaration by addition, deletion or modification so as to reflect any unique characteristics of a particular portion of the Property identified therein; provided, however, that no such variance shall be directly contrary to the uniform scheme of development of the Property.

**Section 2.06. Villa Community.**

A. Declarant intends that a portion of the Property be approved and developed as Villas. Each Villa, will have at least one (1) Party Wall, and be located within a Villa Building.

B. BY VIRTUE OF ACCEPTING TITLE TO ANY VILLA LOT AND VILLA CONSTRUCTED OR TO BE CONSTRUCTED THEREON, EACH VILLA OWNER SHALL BE ON NOTICE THAT: (I) PUNCTURING OR OTHERWISE DAMAGING ANY PARTY WALL OR STRUCTURAL APPURTENANCE THERETO WILL IMPAIR, AT MINIMUM, THE FIRE-WALL FUNCTION OF SUCH PARTY WALL, AND MAY IMPACT, MINIMALLY OR MORE SIGNIFICANTLY, THE STRUCTURAL INTEGRITY AND GENERAL SAFETY OF THE SUBJECT VILLA BUILDING AND THE VILLAS LOCATED THEREIN; AND (II) EACH VILLA OWNER AND OCCUPANT OF A VILLA IS EXPRESSLY PROHIBITED FROM DIRECTLY OR INDIRECTLY (INCLUDING, BUT NOT LIMITED, THROUGH TENANTS, CONTRACTORS, TRADESMAN, OR OTHERWISE) PUNCTURING, PIERCING, PERFORATING, OR OTHERWISE DAMAGING IN ANY WAY ANY PARTY WALLS IN ANY MANNER WHATSOEVER, UNLESS HAVING FIRST

OBTAINED THE ASSOCIATION'S EXPRESS WRITTEN CONSENT AND THEREAFTER COMPLYING STRICTLY WITH THE TERMS, CONDITIONS, AND PROVISIONS OF ANY SUCH WRITTEN CONSENT. EACH VILLA OWNER SHALL FOREVER HOLD HARMLESS AND INDEMNIFY DECLARANT, THE BOARD, THE ASSOCIATION, AND ALL OTHER VILLA OWNERS FROM ANY AND ALL LOSS, CLAIM, LIABILITY, EXPENSES, CAUSES OF ACTION OR DAMAGES WHATSOEVER CONNECTED WITH SAID VILLA OWNER'S DIRECT OR INDIRECT PUNCTURING, PIERCING, PERFORATING, OR OTHERWISE DAMAGING, IN ANY WAY, ANY PARTY WALL IN VIOLATION OF THIS PARAGRAPH.

**Section 2.07. Reclaimed Water.** At the option of Declarant, or the Association following Turnover, reclaimed water provided for irrigation to the Villa Lots may be provided through a master meter at the Property, Villa Building, or Service Area level, controlling the flow of such reclaimed water to the entire Property, Villa Building, or Villa Lots within such Service Area, respectively, and all costs, fees, and expenses incurred by the Association for such reclaimed water service may be allocated and assessed only to the subject Villa Building or Service Areas and deemed Limited Common Expenses incurred in connection with such Villa Building or Service Areas, all as reasonably determined by the Declarant or Association from time to time, as the case may be.

### **ARTICLE III**

#### **CONVEYANCE OF ASSOCIATION PROPERTY**

**Section 3.01. Title To The Association Property.** To the extent herein provided, the Association Property is hereby dedicated to the joint and several use in common of the Owners of all Lots that may, from time to time, constitute part of the Property. Upon the completion of construction of a Home on each Lot located within the Property and any Additional Property to be added by Declarant, or at such earlier time determined by Declarant, in Declarant's sole discretion, the Declarant or its successors and assigns shall convey and transfer to the Association, by quit claim deed, the fee simple title to the Association Property free and clear of any liens, and the Association shall accept such conveyance, holding title for the Owners as aforementioned. Such conveyance shall be subject to any real estate taxes and assessments due with respect to such Association Property from and after the date of recording this Declaration; any covenants, conditions, restrictions, permits, reservations and limitations then of record; the easements herein set out; any zoning ordinances then applicable; and this Declaration, as the same may be amended from time to time.

**Section 3.02. Acceptance of Association Property.** At the time of conveyance of the Association Property or any portion thereof, the Association shall be required to accept such Property and the personal property, if any, and Improvements appurtenant thereto. The Association hereby agrees to accept the Association Property and the personal property and Improvements appurtenant thereto in "AS IS" "WHERE IS" condition, without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Association Property or any portion thereof, and the personal property and Improvements appurtenant thereto.

The Association shall accept any such conveyance of the Association Property and shall pay all costs of such conveyance including documentary stamps and other taxes of conveyance, recording charges, title insurance expenses and insurance fees. The conveyance shall not, however, impair in any way the Declarant's rights and easements as set forth in this Declaration.

The Owners (including Declarant as to Lots owned by it) shall have no personal liability for any damages for which the Association is legally liable or arising out of or connected with the existence or use of any Association Property or any other property required to be maintained by the Association.

Subject to the foregoing, the Declarant may mortgage any or all portions of the Association Property to finance construction and development expenses, provided that the mortgagee recognizes the rights of Owners under this Declaration and neither the Association nor any Owner is personally liable for paying the mortgage. In such event, neither the Association nor the Owners shall be required to join in or be entitled to consent to such mortgage. The Association Property shall be released from any such mortgage no later than the date of conveyance to the Association.

#### ARTICLE IV

##### **PROPERTY RIGHTS IN THE COMMON PROPERTIES AND PROPERTY**

**Section 4.01. Easements.** The Association, Declarant and each Owner shall each have a non-exclusive right and easement of use and enjoyment in and to the Common Property. Said right and easement shall be appurtenant to and pass with the title to each Lot, and shall include, without limitation, the following:

A. Right-of-way for ingress and egress by vehicles and on foot through and across any Streets or walks in the Common Property for all lawful purposes; and

B. Rights to connect to, maintain and make use of Utility Systems, wires, pipes, conduits, cable television lines, telephone lines and equipment, sewers and drainage lines, which may from time to time be in or within the vicinity of the Common Property, but only in accordance with all laws and the requirements of the applicable Governmental Authorities or entities which regulate said utilities; and

C. Every Owner and family member, guest, lessee, agent or invitee of an Owner shall, except as may otherwise be provided in this Declaration, have a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of the Common Area within the Property, except as may otherwise be specifically provided elsewhere in this Declaration, in common with all other Owners, their family members, guests, lessees, agents and invitees, located outside another Owner's Home which easement shall be appurtenant to, and shall pass with title to each Owner's Lot. The exercise of these rights and interests shall be subject to and subordinate to the terms and provisions of the Declaration, the Articles, the Bylaws, any recorded Plats, the Rules and Regulations, and applicable laws.

**Section 4.02. County Easements.** The County is hereby granted and shall have a perpetual non-exclusive easement over: (i) to the extent the Community includes private roads, the private

roadway easement area for access thereto to operate, maintain, or repair any utilities located under said private roadway easement area; and (ii) Common Area tracts for access thereto to operate, maintain, or repair any utilities located under said Common Area. In addition to the foregoing, the County, as a granted perpetual non-exclusive easement, shall be entitled to access and use any utility easements for maintenance and repair of any utilities on or about the Property. The granting of the foregoing easements or any others herein, or via the Plat, to the County does not impose any obligation, burden, responsibility or liability upon the County to enter upon the subject property and take any action to repair or maintain the system unless otherwise stated herein or thereon.

**Section 4.03. Title to Common Property.** In accordance with the requirements set forth in Section 4.03, Declarant shall convey to the Association or, if required by the local government incidental to the establishment of an MSTU/MSBU as described in Section 4.08, dedicate to the local government for the uses and purposes set forth in this Declaration or in any Plats, fee-simple title in and to the Common Property, free and clear of all encumbrances except current real estate taxes and assessments not yet due and payable, any Plats, this Declaration and any easements or matters recorded in the public records prior to such conveyances to the Association. Once conveyed to the Association, the Common Property may not be mortgaged, liened or further conveyed without the consent of at least two-thirds (2/3) of the Members (excluding Declarant).

**Section 4.04. Limited Common Area.** Certain portions of the Community may be designated by Declarant in its sole and absolute discretion as Limited Common Area and reserved for the exclusive use or primary benefit of the Owners, occupants and invitees of certain Lots. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, and lakes. Except as otherwise provided herein, all costs associated with the maintenance, repair, replacement, and insurance of Limited Common Areas shall be Limited Common Expenses to be assessed against and paid by the Owners of those Lots to which the Limited Common Area is assigned. Declarant reserves the right in its sole discretion to designate any initial or additional Limited Common Areas and assign the exclusive use thereof in Supplemental Declaration(s), the deed conveying the Common Area to the Association, or on the Plat relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Limited Common Area to additional Lots, so long as the Turnover Meeting has not occurred. Any matter arising under this Declaration and pertaining to the Limited Common Area and requiring a vote of Members, shall be decided by a vote of only those Members that have been identified by Declarant as being authorized and entitled to utilize and realize the benefits of the Limited Common Area. The Association may adopt Rules and Regulations which govern, among other things, the use of the Limited Common Area. Prior to the Turnover Meeting, the Declarant, shall have the right in its sole discretion to convey additional real estate, improved or unimproved and/or personal property as additional Limited Common Area which conveyance or dedication to the Association shall be accepted by the Association and thereafter shall (except as may otherwise be set forth herein) be maintained by the Association at Limited Common Expenses.

**Section 4.05. Extent of Easements.** The rights and easements in and around the Common Area created in this Article IV shall be governed by the following:

A. Subject to any rights of Declarant, Builders and the Owners set forth in this Declaration, except as to any part of the Common Property that is required to be conveyed to local government, the Association shall be responsible for the exclusive operation, management, administration, control, maintenance, repairing, replacing and insuring of the Common Property;

B. Declarant, until conveyance of fee-simple title to the Association, and the Association thereafter, may reserve unto itself or grant or dedicate to Declarant, any Owner, any Governmental Authority and/or to any utility companies, easements and rights-of-way, over, under, in or through the Common Property for installation, use, maintenance, repair, replacement, and inspection of utility lines and appurtenances for public or private utilities, surface water drainage improvements and areas, or for completion of the development of the Property. No Improvements or materials may be placed upon any such easements which may damage or interfere with the installation, maintenance, repairing or replacement of such utilities or the easement area or that may alter or impede the direction or flow of drainage, or that may interfere with completion of development of the Property;

C. The right of the Association to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the use of the Common Area.

D. The right of the Association in accordance with its Articles, Bylaws, and this Declaration, with the vote or written assent of two thirds (2/3) of the total voting interests, to borrow money for the purpose of improving the Common Area and facilities thereon, and, in aid thereof, to mortgage, pledge, or hypothecate any or all of its real or personal property or pledge Assessments as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners.

E. The right of the Association to dedicate, release, alienate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject the Common Area to such conditions as may be agreed to by the Association. No such dedication, release, alienation or transfer shall be effective unless Members entitled to cast two-thirds (2/3) of the total voting interests agree to such dedication, release, alienation, or transfer.

F. The right of the Association to, without any vote of the Owners, to grant easements and rights of way or strips of land, where necessary or desirable, for utilities, water and sewer facilities, cable television, and other services over the Common Area to serve the Common Area and other portions of the Property.

G. The right of Declarant, Declarant's affiliates, Builders and each of their respective officers, directors, partners, employees, agents, licensees, and invitees to the nonexclusive use of the Common Area within the Property and the facilities thereon, without charge, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes and to grant (without consent of the Association and/or vote of the Owners) easements and rights-of-way as provided in this Declaration.

H. The right of the Association and Declarant and their respective employees, agents, licensees, and invitees to come upon the Property (including, without limitation, Common Area as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or

convenient for the Association and/or the Declarant to carry on its respective duties, obligations, responsibilities under, and all other work referred to in, this Declaration (including, without limitation, Declarant's and/or Builders' development and construction of the Community and Homes therein).

- I. Declarant's rights reserved in this Declaration;
- J. Matters shown in the Public Records or on any recorded Plats; and
- K. Applicable laws.

**Section 4.06. Additional Easements over Common Property.**

A. Declarant hereby creates, reserves and declares to exist, the following licenses, rights, privileges and easements over, under, in and through the Common Property, subject at all times to the terms and conditions of the Permit and subject to receiving prior written approval of the District as to any activities that may affect or may occur on or within the Stormwater Management System and the Conservation Area, including, but not limited to, any upland buffers: (i) rights-of-way and easements to install, maintain and use electric, lighting, telecommunications, cable television, telephone, gas, water, sewer, drainage and utility poles, wires, cables, conduits, fixtures, pipes, meters, equipment, facilities, ponds, swales, berms or ditches, and such other equipment and improvements necessary, convenient, or desirable for the completion, marketing, use and enjoyment of the Property; (ii) the right to cut trees, bushes or shrubbery, make any gradings of the soil, and take any similar action reasonably necessary to provide economical and safe utility and drainage installation or to maintain reasonable standards of health, convenience, safety and appearance; (iii) the right to locate thereon wells, pumping stations, lift stations and irrigation systems and lines; (iv) easements of ingress, egress and access for purposes of development, construction, (for the purposes of this Section the term "construction" shall be construed in the broadest terms to include all construction activities and related and ancillary activities necessary, desirable, economical, effective, or desirable for construction of Improvements within the Community), sales and marketing of the Property; and (v) such other rights as may be reasonably necessary, convenient or desirable to complete in an orderly and economic manner the development and sale of the Property including, without limitation, the maintenance of temporary signage and trailers used in such development and sales efforts; provided, however, that said reservation and right shall not be considered an obligation of Declarant to provide or maintain any such easements, utilities, equipment, improvements or services. Declarant also reserves the right to connect with and make use of the utility lines and drainage improvements which may from time to time be in or along the Streets or within the Common Property or any easements as shown on any recorded Plats or as otherwise properly established. The easements and rights-of-way herein reserved: (y) shall continue in existence in favor of Declarant after conveyance of the Common Property to the Association or dedication to the local government or appropriate Governmental Authority until such time as Declarant has sold all Lots in the Property; and (z) shall continue in favor of Declarant until such time as any lands separately developed by Declarant and located adjacent to the Property have been conveyed to unrelated third-parties; provided, however, that such unrelated third-party is not a Builder, contractor or other party who purchases or hold the title to property for the purpose of constructing a Home thereon for resale.

**Section 4.07. Delegation.** Any Owner (including Declarant) may grant the benefit of any easement, right or privilege to tenants and guests for the duration of their tenancies or visits, but the same shall not be construed to create any rights in the general public or any other party.

**Section 4.08. MSTU/MSBU.** Declarant or the local government may establish a municipal service taxing unit, municipal service benefit unit, or similar mechanism (referred to in this Declaration as “**MSTU/MSBU**”), which MSTUs/MSBUs will have responsibilities established in their enabling resolutions. By way of example, and not limitation, an MSTU/MSBU may be established to provide for any one or more of the following: (a) operation, management, administration, maintenance, repair, and replacement by the local government of any of the Common Property, and any recreational, drainage or other improvements whatsoever at any time located thereon, for the uses and purposes set forth in this Declaration or in any applicable recorded Plat, which may or may not include a requirement that ownership of the affected lands and Improvements be transferred to the local government; (b) construction, maintenance, repair, replacement, or improvement of recreation, drainage, sidewalk, wall, landscaping, open space, conservation, or other areas, improvements or facilities, in, on, under or within the Common Property or any easement areas for the use and benefit of the Property and the occupants thereof; and (c) construction, operation, maintenance, repair and replacement of street lighting or any other service or benefit to or for the Property authorized under the terms of this Declaration, the MSTU/MSBU, or by the applicable Governmental Authority. Notwithstanding the foregoing, the Association may elect, from time to time, to aesthetically maintain any property otherwise maintained or to be maintained by the MSTU/MSBU and if Association does so, no Owner or Member, as a result thereof, shall thereby receive or be entitled to a discount for any ad valorem taxes or Assessments assessed by or in connection with the MSTU/MSBU. If established, each Owner and Member acknowledges and agrees that the costs incurred by the MSTU/MSBU may be billed directly to the Owners or to the Association for subsequent Assessment to the Owners and Lots.

**Section 4.09. Conservation Easement Area(s).** Pursuant to and as and to the extent required by the Permit, the District, or any Governmental Authority, from time to time, Declarant will record in the Public Records, one or more conservation easements (collectively, “**Conservation Easement**”), in favor of the District or any applicable Governmental Authority over, across, and upon certain portions of the Property. The precise metes and bounds legal description of the portions of the Property encumbered by a Conservation Easement shall be as specifically set forth in the subject Conservation Easement (all such portions of the Property that are or become encumbered by a Conservation Easement shall hereinafter be referred to as “**Conservation Areas**”). Upon establishment of any Conservation Easement, the Conservation Areas shall be subjected to the restrictions set forth in the subject Conservation Easement. The Conservation Areas, or the Association’s interest therein, shall be Common Area and the Conservation Areas shall be the perpetual responsibility of the Association, and may in no way be altered from their natural state, except as specifically provided in the subject Conservation Easement. Furthermore, the use and development of the Conservation Areas shall be restricted as set forth in the subject Conservation Easement. Declarant hereby reserves for itself, its successors and assigns, and grants to the Association and its designees, a perpetual, nonexclusive easement over and across all areas of the Stormwater Management System for the drainage of stormwater from the Property. Portions of the Stormwater Management System may be located entirely within Lots.

**Section 4.10. Conservation Easement Maintenance.** The private access easements and private drainage easements encumbering any Common Areas, along with all private access and drainage easements encumbering any Common Areas or Lots, all as depicted and set forth on any recorded Plat, shall be perpetually maintained by the Association, at Common Expense, as Common Area pursuant to the terms hereof. The area of each Lot included within any private drainage easements encumbering said Lot, all as depicted and set forth on any recorded Plat, shall be maintained continuously by the Owner of the Lot, except as may be provided herein to the contrary. No structure, improvement, tree, landscaping, fence, or other material may be placed or permitted in any areas encumbered by any private access easements, private drainage easements, or private access and drainage easements, and no construction, clearing, grading or alteration to any such areas shall be permitted, that will or may interfere with or prevent the use of the subject easement for its express and intended purpose.

**Section 4.11. Grant and Reservation of Easements.** Declarant hereby reserves and grants the following perpetual, nonexclusive easements over and across the Property as covenants running with the Property for the benefit of the Owners, the Association and Declarant as hereinafter specified for the following purposes:

(1) **Utility and Services Easements.** All of the Property shall be subject to an easement or easements to provide for: (i) installation, service, repair and maintenance of the equipment required to provide utility services to the Property and the Lots and Homes, including, but not limited to, power, lights, telephone, cable television, gas, water, sewer, irrigation and drainage, and (ii) governmental services, including, but not limited to, police, fire, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

1. Declarant hereby reserves to itself (and its successors or assigns) for so long as the Declarant owns any of the Property, and for the Association thereafter, the right to grant to any private company, public or private utility, or governmental authority providing utility and other services within the Property, including the individual Villas and Villa Buildings, and the Common Area (collectively, "Utility Providers"), certain easements upon, over, under, across, and through the Property as are reasonably necessary from time to time for the sole purpose of maintaining, installing, repairing, altering, and operating any "Utility Lines and Systems" (as that term is defined below), as may be necessary, convenient, or desirable for the installation and maintenance of said utilities and providing services to Owners, the Property, and Common Area, all pursuant to and in compliance with, all applicable permits, rules, and regulations of any applicable governmental authorities (collectively, "Utility Easements"). All such Utility Easements shall be of a size, width, scope, and location as Declarant (or the Association, after Turnover), in its discretion, deems best, but selected in a location so as to not unreasonably interfere with the use of any improvements which are now, or will be, located upon any Lot. Owners are expressly prohibited from directly or indirectly disturbing or otherwise interfering with the Utility Easements.

2. For purposes of this Declaration, the term "Utility Lines and Systems" shall mean and refer to any sewer lines, irrigation lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal lines and systems, pipes, wires, fiber optics lines, electrical lines, power lines, telephone service, gas lines, syphons, valves, gates, pipelines, HVAC systems and ductwork, cable television service, Internet service, alarm systems and all utility infrastructure, machinery, and apparatus appurtenant to any of the foregoing, necessary or desirable to service the Property. Owners are expressly prohibited from directly or indirectly disturbing or otherwise interfering with any Utility Lines and Systems.

3. Any Utility Easement granted to any Utility Provider concerning any Utility Lines and Systems, which Utility Easement runs through, across, or under any Villa Building ("Benefitted Villa Building"), shall also automatically be deemed an easement for reasonable access and use in favor of, and benefitting, the Association and each Villa within said Benefitted Villa Building, and in favor of, and benefitting, any other Villa in any other Villa Building which Villa accesses said utility infrastructure or Utility Lines and Systems via the Benefitted Villa Building.

4. Declarant hereby reserves for itself and grants to the Association, the individual Villa Owners within a Villa Building, utility providers providing service, and any and all service or repair providers, a perpetual blanket easement for the provision of utility services, installation, operation, maintenance, repair and replacement of all Utility Lines and Systems ("Villa Utility Easement(s)"), which Villa Utility Easement shall be located: (y) within the designated (or to be designated) utility chases under, attached to, through, or within each Villa and servicing one or more Villas within a Villa Building, as such chases are located and designated on any approved plat or site and/or building/construction plans for the Property, any Villa Building, or any Villa; and (x) under or through each Villa Lot (i.e., generally in the front of or in the back/rear of the Villa located on said Villa Lot), via the designated (or to be designated) conduit, piping, or direct-bury (or other) method, as necessary to service said Villa (through the Villa's garage or otherwise) and to service any other Villas located within the same Villa Building, as such conduit, piping, or direct-bury (or other) method are located and designated on any approved plat or site and/or building/construction plans for the Property, any Villa Building, or any Villa. Villa Owners are expressly prohibited from directly or indirectly disturbing or otherwise interfering with the Villa Utility Easements.

5. Declarant further reserves for itself and grants to the Association, the individual Villa Owners within a Villa Building, service or repair providers, and utility providers providing service, a perpetual blanket easement for HVAC systems, electrical/gas/water meters and other electrical, gas, and water equipment, mounted on the end of any Villa Building and benefiting one or more Villas within the particular Villa Building. To the extent the mounted systems,

equipment, and meters are not located on Common Area, the owner of the individual Villa where the systems, equipment, and meters are located, is specifically taking title subject to the foregoing easements for access, repair, use, maintenance, replacement, operation, and installation granted to each individual Villa Owner within any particular Villa Building, the Association, utility providers, and service or repair providers. The easements granted in this Section 4.11(1)5. are further subject to the rights and obligations set forth in Section 4.11(1)6., directly below.

6. As they relate to servicing each Villa within a Villa Building, all Utility Providers shall install, operate, maintain, and repair, as applicable, the subject Utility Lines and Systems, including all infrastructure, meters, machinery, and apparatus appurtenant thereto: (i) within designated utility chases under, attached to, or within the Villa, and serving one or more Villas within the subject Villa Building; (ii) under or through each Villa Lot via the designated conduit, piping, or direct-bury (or other) method, and servicing said Villa and servicing any other Villas located within the same Villa Building; (iii) mounted to the exterior of, or adjacent to, the Villa Building, and serving one or more individual Villas within the subject Villa Building; and/or (iv) within the concrete slab foundation of each Villa Building and serving one or more Villas within the subject Villa Building and “daylighting” into each Villa under such Villa. Further, said Utility Easement granted pursuant to Section 4.11(1)5., directly above, and as set forth in this Section 4.11(1)6., shall include the right of the subject Utility Providers, in a reasonable manner and at reasonable times, to access such utilities described above from garage areas in each Villa Building or Villa.

7. No Utility Provider shall disrupt, interfere with, or damage the Utility Lines and Systems of another Utility Provider without the prior written consent of such other Utility Provider, and in the event of any such disruption, interference or damage, whether consented to or not, the disrupting, interfering or damaging Utility Provider shall be responsible for all costs and expenses incurred by the other Utility Provider or otherwise in connection with the disruption or repair and/or replacement of such affected Utility Lines and Systems, and shall release, indemnify, defend, and hold Declarant, the Association, and all affected Owners harmless from any and all costs, liabilities, claims, and expenses incurred in connection with the disruption, interference or damage to such affected Utility Lines and Systems.

(2) **Easement for Encroachment.** All of the Property shall be subject to an easement or easements for encroachment in favor of each Owner in the event any portion of such Owner’s Home or appurtenant Improvements installed by Declarant such as a fence, stucco, underground footer or sidewalk, now or hereafter encroaches upon any of the Lots as a result of minor inaccuracies in survey or construction, by design, or due to settlement or movement. Such encroaching Improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvements in favor of the Owner thereof or such Owner’s designees. Such

encroachment will likely constitute a violation of the County's regulations. The County does not expressly or by implication authorize such encroachment. This Section does not limit the County's ability to pursue all available remedies to prevent or remove such encroachments. The County will not permit or allow such encroachments into any easement of land dedicated to or owned by the public for utility, drainage or roadway purposes.

(3) **Easement to Enter Upon Lots and Homes.** An easement or easements for ingress and egress in favor of the Association, including the Board or the designee of the Board, to enter upon the Lots for the purposes of fulfilling its duties and responsibilities of ownership, maintenance and/or repair in accordance with the Governing Documents, including, by way of example, the making of such repairs, maintenance or reconstruction as are necessary for the Common Area and to maintain any Lot in the event the Owner thereof fails to do so.

(4) **Easement for Roof Overhang.** An easement or easements, as shown on the Plat and Additional Plat, if any, to provide for the roof overhang of a Home in favor of the Owner thereof, including rights of access for persons or equipment necessary to maintain, repair and replace such roof overhang.

(5) **Irrigation Easement.** An easement for irrigation over, under and upon the Property, including each of the Lots, in favor of the Association and each Owner, including, but not limited to, reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair the irrigation pipes.

(6) **Plat Easement(s).** The Plat and/or Additional Plat, if any, may contain additional easements not discussed herein, granted in favor of the Association, Owners or others, for the specific purposes as described therein.

**Section 4.12. Access Easement.** Declarant hereby reserves perpetual, nonexclusive easements of ingress and egress over and across: (i) any and all streets dedicated to the public use, if any (as well as alcoves, cul de sacs, and other private, paved areas abutting or serving the same), and (ii) any private roads and driveways, if any, within or upon the Property and all other portions of the Property which are necessary or convenient for enabling Declarant to carry on the work referred to in this Declaration. All of the foregoing easements shall be for the use of Declarant, Builders, Declarant's employees, contractors and agents, Declarant's successors and assigns, the Owners, and the respective lessees, employees, agents, invitees, and licensees of Declarant and the Owners.

**Section 4.13. Assignments.** The easements reserved hereunder may be assigned by Declarant or the Association in whole or in part to any city, county or state government or agency thereof, or any water management district, or any duly licensed or franchised public utility, or any other designee of Declarant. Declarant shall have and hereby reserves the right to grant and/or reserve additional easements over, under and upon the Property or portions thereof (including the portion of Lots where no physical structure of the Home is located) which may be necessary or desirable by Declarant. The Owners hereby authorize Declarant and/or the Association to execute, on their behalf and without further authorization, such grants of easement or other instruments as

may from time to time be necessary to grant easements over and upon the Property or portions thereof in accordance with the provisions of this Declaration.

Notwithstanding anything in this Declaration to the contrary, the easement rights granted or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

**Section 4.14. Declarant's Rights.** Declarant, its successors and assigns shall have the unrestricted right, without approval or joinder of any other person or entity: (i) to designate the use of, alienate, release, or otherwise assign the easements shown on the Plat of the Property or described herein, (ii) to plat or replat all or any part of the Property owned by Declarant, and (iii) to widen or extend any right of way shown on the Plat of the Property or convert a Lot to use as a right of way, provided that Declarant owns the lands affected by such change. Owner of Lots subject to easements shown on the Plat of the Property shall acquire no right, title, or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over, or under the easement area. The Owners of Lots subject to any easements shall not construct any improvements on the subject easement areas, alter the flow of drainage, or landscape on such areas with hedges, trees, or other landscaping items that might interfere with the exercise of the easement rights. Any Owner who constructs any improvements or landscaping on such easement areas shall remove the improvements or landscape items upon written request of Declarant, the Association, or the grantee of the easement.

**Section 4.15. Model Row.** Declarant hereby reserves the right for Builders to construct and/or operate a "model row(s)" in the Community. The "model row(s)" may contain models for the Community or other communities, as Declarant and/or any of Declarant's affiliates may so determine, in their sole discretion. The "model row(s)" may also contain parking, landscaping and fencing across the roads within the Community as Declarant may determine in its sole discretion. In the event that Declarant or any Builders constructs a "model row(s)" in the Community, such "model row(s)" may be used for such period of time that Declarant or any Builder determine to be necessary, in their sole judgment. Builders may use any model home(s) for a sales office. By the Owner's acceptance of a deed for a Lot and Home in the Community, such Owner agrees and acknowledges that: (i) Declarant and Builders have a right to construct and/or operate a "model row(s)"; (ii) Declarant and Builders have an easement over the Community for ingress and egress to and from the "model row(s)" and to use and show the models to prospective purchasers in the Community as long as such "model row(s)" exists; and (iii) the Owner shall not interfere in any manner whatsoever in the sales process by Declarant or Builders, including, without limitation, the carrying of signs, the posting of signs on Lots or Homes or other types of demonstrations in the Community or any public right-of-way adjacent to the Property. Each Owner acknowledges and agrees that any such activities interfere with the quiet enjoyment of the Community by the other Owners, are detrimental to the value of the Homes within the Community, and interfere with Declarant's and/or its affiliates ability to conduct their respective business.

## ARTICLE V

**GATED COMMUNITY WITH PRIVATE STREETS**

**Section 5.01. Definitions.** The definitions set forth in Article I of this Declaration are, as applicable, supplemented, amended, or **replaced** with the following definitions:

A. **“Community Subdivision Infrastructure”** or **“Gated Community Subdivision Infrastructure”** shall mean and refer to all subdivision infrastructure within the Community not dedicated to the use of the public or to the Local Government and which may include, but is not limited to: (i) the Common Streets and Roads, any related sidewalks and bike paths; (ii) Street lights; (iii) drainage systems (which includes, without limitation, stormwater detention/retention areas, underdrains, and the Surface Water Management System); and (iv) the Related Subdivision Infrastructure.

B. **“Common Streets Rules”** shall mean and refer to any Rules and Regulations concerning any Common Streets and Roads including, but not limited to, the maximum and minimum speeds of vehicles using said Common Streets and Roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said Common Streets and Roads.

C. **“Related Subdivision Infrastructure”** shall mean and refer to any and all entrance and exit gates, and any and all related improvements, facilities, structures, and appurtenances erected or installed at any time to control or attempt to control access to and from the Property including, but not limited to, any guardhouse(s).

D. **“Streets”**. **“Common Streets and Roads”** or **“Streets”** shall mean and refer to the rights-of-way of all streets, roads, alleys, boulevards, drives, courts, ways, and cul-de-sacs within the Property, along with any areas encumbered by any Private Roadway Easement (such area being the **“Private Roadway Easement Area”**), as the same are described in and depicted on any Recorded Plat, and all paving, curbs, and other improvements, facilities, and appurtenances whatsoever constituting part of the roadway system of the Property, including, but not limited to, the Related Subdivision Infrastructure, Street lights, traffic control signage, and all utility lines under or within such Streets, conveyed to the Association as Common Area pursuant to this Declaration or otherwise; but specifically excluding and not including any utility lines located under or within such Streets as may be owned by private or public utility companies or any governmental authority from time to time providing utility services to the Property; and provided, further, that Streets shall exclude and not include any areas, improvements, facilities, and appurtenances from and after the time that such areas, improvements, facilities, and appurtenances are accepted by conveyance or dedication by the Local Government or other appropriate governmental authority or quasi-governmental entity.

**Section 5.02. Development; Maintenance at Common Expense; Reserves.**

A. Declarant intends that the Property be approved and developed as a gated community limiting access by the public through the utilization of the Related Subdivision Infrastructure. By acceptance of a deed or other conveyance to a Lot or any other part of the

Property, each Owner and Member shall be deemed to have acknowledged and agreed that such Related Subdivision Infrastructure and the Common Streets and Roads: (i) are or shall be perpetually privately owned by the Association, as Common Area; (ii) are and will not be public or dedicated to the public; and (iii) are and shall, all at Common Expense by the levying of one or more types of Assessments from time to time, be maintained, repaired, and replaced by the Association as and to the extent provided in this Declaration and as determined by Declarant (prior to Turnover) or the Board (after Turnover) from time to time. In addition, by acceptance of a deed or other conveyance to a Lot or any other part of the Property, each Owner and Member shall be deemed to have acknowledged and agreed that Declarant's and Association's liability, obligation, and responsibility with respect to the Common Streets and Roads and the Related Subdivision Infrastructure shall be only as and to the extent expressed provided in this Declaration.

B. In addition to such other reserve accounts and funds maintained by the Association from time to time pursuant to or under the authority of this Declaration or the Association Act, Declarant (prior to Turnover) or the Association (after Turnover), at Common Expense, via the levying of one or more types of Assessments, may elect from time to time to establish, keep, maintain, and replenish reserve accounts/funds specific to the Gated Community Subdivision Infrastructure or any part thereof (collectively, the "**Gated Community Accounts**"), which Gated Community Accounts may include, but are in no way limited to, the following types and kinds of accounts, and/or other general reserve account(s) specific to maintenance of the Community Subdivision Infrastructure or any part thereof, all as determined from time to time by Declarant (prior to Turnover) or the Board (after Turnover):

(1) A routine infrastructure maintenance account, which account and the funds therein may be used by Declarant and the Association prior to or after Turnover for such items as scheduled maintenance and for unscheduled repair of the Streets, the Surface Water Management System (including the stormwater detention/retention areas), sidewalks, curbing, bike paths, traffic-control signage and other Association infrastructure appurtenant to the Streets and the Surface Water Management System, all as determined by Declarant (prior to Turnover) or the Board (after Turnover). Monies on deposit in said account may also be used for scheduled maintenance and unscheduled maintenance and repair of the Related Subdivision Infrastructure, as determined by Declarant (prior to Turnover) or the Board (after Turnover).

(2) A capital-repair/streets account, which account and the funds therein may be used by Declarant and the Association prior to or after Turnover for such items as resurfacing and related reconstruction of the Streets, generally (but not necessarily) every twenty-five (25) years after issuance of a certificate of completion for the Streets, all as determined by Declarant (prior to Turnover) or the Board (after Turnover).

(3) A capital-repair/drainage pond account, which account and the funds therein may be used by Declarant and the Association prior to or after Turnover for such items as major repair and reconstruction of the stormwater detention/retention areas of the Surface Water Management System, generally (but not necessarily) every thirty (30) years after issuance of a certificate of completion for the Surface Water Management System, all as determined by Declarant (prior to Turnover) or the Board (after Turnover).

Said reconstruction and repair of said detention/retention areas may include, but not be limited to, dredging and sediment removal.

C. If established, the Gated Community Accounts must be asset accounts maintained separate and apart from all other funds and accounts of the Association, and for accounting purposes the Association may not commingle these accounts with other funds and accounts of the Association. Notwithstanding anything in the foregoing to the contrary, the monies in the Gated Community Accounts may be commingled with monies in other Association accounts for banking and investment purposes, and may be pooled with other Association monies in a common investment program, so long as the financial books and records of the Association account for the monies within the Gated Community Accounts separately and apart from all other Association monies. All earnings, if any, from any investment of monies held in the Gated Community Accounts shall remain in and form a part of the principal of the respective Gated Community Account.

D. Regardless of whether one or more Gated Community Accounts are established or in existence from time to time, each Owner shall, nonetheless, and at all times, still be solely responsible for providing routine landscape maintenance, mowing, and removal of trash and debris within the portions of the Surface Water Management System lying within that Owner's Lot, failing which the Association shall perform the required maintenance and may levy a Special Assessment or Individual Assessment against the Lot to cover the costs thereof.

E. As with all reserves established pursuant to or by virtue of this Declaration or the Association Act, if any Gated Community Account are established, Declarant, provided it is Deficit Funding, shall not be required to pay any Assessments levied in connection with said Gated Community Accounts.

### **Section 5.03. Easements; Traffic Control.**

A. Subject at all times to the terms, conditions, and provisions hereof, for so long as the Streets are privately controlled and maintained, Declarant creates for the benefit of Declarant, the Members, and the Owners, a perpetual, nonexclusive easement for access, ingress, and egress over the Streets, for law enforcement, firefighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school business; for U.S. Postal Service delivery vehicles and personnel; for private delivery or courier services; for vehicles and personnel providing domestic services; for vehicles, equipment, and personnel providing utility services or garbage/recycling collection service to the Property; and for holders of mortgage liens encumbering any Lots. Such easement shall not, under any circumstances whatsoever, authorize any such persons or entities to enter upon the Property except while acting in their official capacities in furtherance of such stated business.

B. The enforcement of traffic laws within the Property, as requested by the Association, may be by the County sheriff or City police force, as appropriate, and all costs of such enforcement incurred by the applicable law enforcement agency shall be paid by the Association as a Common Expense. Nothing in the foregoing is intended, however, to: (i) require the Association to contract with the County sheriff, City police force, or any other law enforcement agency concerning enforcement of traffic laws within the Property; or (ii) prevent

the Association from directing, conducting, maintaining, or supporting private security and traffic enforcement services within the Property; provided, however, that same are not inconsistent with any agreement (if any) between the Association and County sheriff, City police force, or applicable law enforcement agency. No Common Streets Rules enacted by the Board may be inconsistent with the terms or provisions of any such agreement between the Association and, as applicable, the County sheriff, City police force, or any other law enforcement agency, pertaining to the enforcement of traffic laws within the Property.

C. Notwithstanding anything to the contrary set forth in the Declaration, in no event shall temporary interference for purposes of appropriate identification at and clearance through access gates be deemed to be an unreasonable interference with any Member's or Tenant's right to use the Common Streets and Roads for ingress and egress from such Property.

**Section 5.04. Common Street Rules; Parking Restrictions.**

A. The Board has and shall have the power to place (and remove after notice) Common Streets Rules upon or concerning any Common Streets and Roads and any person's or entity's use of the Common Streets and Roads or any part thereof.

B. Members/Owners and their family, tenants, guests, visitors, and other invitees shall park only in the Member's/Owner's garages, or in the driveways serving such Member's/Owner's Residential Property, or in spaces or areas on Common Area that are expressly designated herein or that the Association may expressly designate from time to time for such purposes, which parking may or may not be assigned, and is and shall be at all times subject to the Rules and Regulations.

C. Members/Owners and their family, tenants, guests, visitors, and other invitees may not park on Common Streets and Roads, unless prior approval has been obtained from Declarant or the Association, which approval may be granted, denied, or conditioned by the Association from time to time in Association's sole discretion. Residents of the Community shall instead park all vehicles in their garages or when not possible, in their driveways. Temporary approval allowing short-term parking may be granted by Declarant or the ARB in connection with bona fide current on-going construction of improvements on Residential Property. Declarant shall not be subject to the foregoing restrictions.

D. As long as the provisions of Section 715.07 of the Florida Statutes are complied with, any commercial, recreational, or other vehicle parked, stored, or used on or about the Property in violation foregoing restrictions or limitation set forth in this Section 7.04, or in violation of any Common Streets Rules or other Rules and Regulations concerning the same, may be towed away or otherwise removed from the Property by or at the request of Declarant or the Association and at the sole expense of the owner(s) of such vehicles. In the event of such towing or other removal, neither Declarant, nor the Association, nor their respective officers, employees, or agents shall be liable or responsible to the owner(s) of any such vehicle(s) for trespass, conversion, or damage incurred as an incident to or for the cost of such removal or otherwise; nor shall Declarant, nor the Association, nor their respective officers, employees, or agents be guilty of any criminal act or have any civil liability by reason of such towing or removal; and neither its towing or removal, nor the failure of the owner(s) of the towed or

removed vehicle(s) to receive any notice of the violation of the provisions of this subsection, shall be grounds for relief of any kind.

E. The fact that some of the foregoing restrictions and limitations on the use of and parking on the Common Street and Roads are or may be more restrictive than the laws of the State of Florida or any local government having jurisdiction over the Property, shall not in any way make such restrictions and limitations unreasonable, unlawful, or unenforceable by Declarant or the Association.

**Section 5.05. General.**

A. The Annual Assessments levied by the Association may be used to pay for Common Expenses incurred with regard to the Gated Community Subdivision Infrastructure, to establish, maintain, or replenish Gated Community Accounts, and to enabling the Association to perform its authorized or required functions under this Article VII. Other forms of Assessments may also be levied from time to time as required in connection with the forgoing.

B. Rules and Regulations may be promulgated from time to time with regard to the Gated Community Subdivision Infrastructure.

C. Notwithstanding anything to the contrary set forth herein, the Association shall not be permitted to sell, transfer, or otherwise dispose of any lands upon which is contained any part of the Gated Communities Subdivision Infrastructure or any facilities associated with the operation of such infrastructure, without the prior written consent of the District, to the extent any such sale, transfer or conveyance impacts land upon which the Surface Water Management System is located.

**Section 5.06. Disclaimers; Acknowledgment and Waivers.**

A. No Owner or Member shall be entitled to any discount against property or other taxes or assessments based upon the existence or Declarant's or the Association's ownership of all or any part of the Gated Community Subdivision Infrastructure.

B. Notwithstanding the private ownership of the Common Streets and Roads, neither Declarant nor the Association, nor any of their respective partners, members, officers, directors, employees, or agents shall, in any manner or way, whatsoever, be considered as or deemed or construed to be insurers or guarantors of the personal safety or security of any persons, including, without limitation, any Owner or Member or any tenant, guest, invitee, employee, agent or family member of such Owner or Member, or of any property, whether real, personal, or otherwise, from time to time located within or upon the Property or any portion thereof. Accordingly, neither Declarant nor the Association, nor any of their respective partners, members, officers, directors, employees, or agents shall be responsible or held liable or accountable for the injury or death of any person or for the loss of or damage to any property by reason or on account of the failure of Declarant, the Association, or the Related Subdivision Infrastructure or any part thereof to limit or control access to the Property or by reason or on account of the ineffectiveness of any activities directed, conducted, maintained, or supported by Declarant or Association for that purpose. In this regard, each Owner and Member, for itself and on behalf of any tenants, employees, agents, guests, invitees, or family members of such Owner

or Member, shall, by virtue of the acceptance of a deed or other conveyance of a Lot or any other portion of the Property, be deemed to have acknowledged, understood, and agreed to the foregoing and further: (1) that notwithstanding any efforts or activities on the part of Declarant or Association to limit or control access to the Property, each Owner and Member, for itself and on behalf of any tenants, employees, agents, guests, invitees, and family members of such Owner or Member, (a) shall take title to its Lots or any other part of the Property subject to, and hereby assumes, all risk of personal injury or death and damage to or loss of property, of whatever nature, while present or situate within or upon the Property, and (b) waives, and forever and irrevocably releases Declarant and Association from, any and all claims, losses, damages, causes of action or liabilities of any kind, character, or nature whatsoever with respect to any personal injury or death or damage to or loss of property while present or situate within or upon the Property; and (2) that neither Declarant nor the Association, nor any of their respective partners, members, officers, directors, employees, or agents have made, nor has any Owner or Member, or any of Owner's or Member's tenants, employees, agents, guests, invitees, or family members relied upon, any representation or warranty, whether express or implied, pertaining to (x) the exclusivity or safety of the Property, (y) the effectiveness of any activities directed, conducted, maintained or supported by Declarant or Association in order to provide for the exclusivity of, or limit or control access to, the Property, or (z) the safety or security of persons or property while located or situate on or within the Property.

## ARTICLE VI

### THE ASSOCIATION

#### **Section 6.01. The Association; Directors; Officers; Meetings; Official Records.**

A. **Association.** The Association is and shall remain a Florida nonprofit corporation. The Association shall have the power to do all lawful things which may be authorized, assigned, required or permitted to be done by the Association by virtue and authority of the Association Documents and applicable law, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the operation, maintenance, administration, repairing, replacing, insuring and improvement of the Property, the Community, the Common Property, Limited Common Areas and all Areas of Common Responsibility. Neither the Articles, the Bylaws or any of the other Association Documents shall be amended or interpreted so as to be or become inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The Board, and such Officers as the Board may appoint from time to time, shall conduct the affairs of the Association.

B. **Directors.**

(1) **Number.** At all times, the Board shall consist of at least (3) Directors, and shall always be an odd number. Prior to Turnover: (y) the Board shall consist of three (3) Directors unless Declarant, by notice to the Association, increases the Board; and (z) the number of Directors may not be increased or decreased without Declarant's prior written consent, which consent may be granted or denied by Declarant in its sole and absolute discretion. The term of office of the initial Directors appointed herein by Declarant shall

expire at the time of Turnover, unless otherwise required by Florida law. After Turnover, Directors shall be elected to the Board by a vote of the Members. Notwithstanding anything in the foregoing to the contrary, Declarant shall, without regard to the number of votes allocated to Declarant, be entitled to appoint one (1) Director for as long as Declarant is the Owner of at least five percent (5%) of the total number of Lots within the Property. Nothing contained in the foregoing, however, is intended, nor shall be deemed, to create any obligation upon Declarant to exercise such right to appoint such one (1) Director.

(2) **Appointment; Election.** Prior to Turnover, Declarant, as the Class B Member, shall have the sole and absolute right to appoint, remove, and recall all of the Directors; provided, however, that if at any time Declarant is not permitted under Florida law to appoint, remove, or recall such Directors, then the Class B Member shall have the sole and absolute right to elect, remove, and recall all such Directors, which election, removal or recall, to the fullest extent permitted under the Association Act, may be conducted via written consent of the Class B Member, in lieu of a meeting of the Class B Member. Notwithstanding the foregoing, Members other than Declarant are entitled to elect at least one (1) Director if fifty percent (50%) of the Lots in all phases of the Community, which will ultimately be operated by the Association, have been conveyed to Members other than Declarant. Any Directors appointed by Declarant or elected by the Class B Member prior to Turnover, or appointed or elected by Declarant pursuant to this Section, need not be Members and need not be residents of the State of Florida. All other Directors shall be Class A Members or designated representatives of the Class B Member, and residents of the State of Florida. After Turnover, no Member or Owner may serve as a Director if: (i) such Member or Owner is more than ninety (90) days delinquent or deficit with regard to payment of any Monetary Obligation owed to the Association, or (ii) such Member or Owner has been convicted of any felony in the State of Florida or in a United States District, or has been convicted of any offense in another jurisdiction would be considered a felony in the State of Florida, unless such individual's civil rights have been restored for at least five (5) years as of the date such individual seeks election to the Board. Any Director charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property shall immediately be deemed removed from office. The Board shall fill the vacancy according to the provision of this Declaration until the end of the period of the suspension or the end of the Director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Director shall be reinstated for any remainder of his or her term of office. A Member who has such criminal charges pending may not be appointed or elected to a position as a Director.

(3) **Meetings.** A meeting of the Board occurs whenever a quorum of the Board gathers to conduct Association business. All meetings of the Board shall be open to the Members, except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Members have the right to attend all meetings of the Board. The right to attend such meetings includes the right to speak at such meetings with reference to all designated items. The Association may adopt written

reasonable Rules and Regulations expanding the right of Members to speak and governing the frequency, duration, and other manner of Member statements, which Rules and Regulations may include a sign-up sheet for Members wishing to speak. Notwithstanding any other law, meetings between the Board or a committee and the Association's attorneys to discuss proposed or pending litigation or meetings of the Board held for the purpose of discussing personnel matters are not required to be open to the Members other than Directors.

C. **Officers.**

(1) **General.** The officers of the Association (the "**Officers**") shall be a President, who shall be selected from the Board, a Vice President, a Treasurer, and a Secretary. Prior to Turnover, all Officers shall be appointed/elected by the Declarant and may only be removed and replaced by Declarant pursuant to the terms hereof. After Turnover, all Officers shall be elected annually by the Board of Directors and each Officer may be removed by vote of the Directors at any meeting with or without cause. After Turnover, no Member or Owner may serve as an Officer if such Member or Owner is delinquent or deficit more than ninety (90) days with regard to payment of Assessments or any other any Monetary Obligation. Any person may hold two or more offices except that the President shall not also be the Vice President or the Secretary. The Board shall from time to time elect such other Officers and designate their powers and duties as the Board shall find necessary or convenient to manage properly the affairs of the Association. Officers shall serve without compensation or fees; provided, however, nothing herein shall be deemed to prevent reimbursement of out-of-pocket expenses approved by the Board and incurred on behalf of the Association.

(2) **President.** The "**President**" shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of a president of a Florida not for profit corporation and a Homeowners' Association. He shall serve as chairman of all Board and Members' meetings.

(3) **Vice President.** The "**Vice President**" shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed from time to time by the Board or the President.

(4) **Secretary.** The "**Secretary**" shall keep the minutes of all proceedings of the Directors and the Members. He shall attend to the giving and serving of all notices to the Members and Directors and other notices required by law. He shall keep the official records of the Association, except those of or to be maintained or kept by the Treasurer, and shall perform all other duties incident to the office of a secretary of a Florida not for profit corporation, to the office of a secretary of a Homeowners' Association, and as may be required by the Directors or the President. From time to time, the duties of the Secretary may be fulfilled by a manager or management company employed by the Association.

(5) **Treasurer.** The “**Treasurer**” shall have custody of all funds, securities, and evidences of indebtedness regarding or concerning the Association. He shall keep the books of the Association in accordance with good accounting practices, and shall perform all other duties incident to the office of a treasurer of a Florida not for profit corporation and a Homeowners’ Association. From time to time, the duties of the Treasurer may be fulfilled by a manager or management company employed by the Association.

(6) **Removal.** Any Officer charged by information or indictment with a felony theft or embezzlement offense involving the Association’s funds or property shall immediately be deemed removed from office. As applicable, the Board shall fill the vacancy according to the provision of this Declaration until the end of the period of the suspension or the end of the Officer’s term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Officer shall be reinstated for any remainder of his or her term of office. A Member who has such criminal charges pending may not be appointed or elected to a position as an Officer.

D. **Member Meetings.**

(1) **Annual Meetings.** The annual meeting of the Members of the Association shall be held at such place, at such time and on such date each year as is from time to time designated by the Board. Failure to hold an annual meeting timely shall in no way affect the terms of Officers or Directors or the validity of actions of the Directors, the Officers, or the Association.

(2) **Special Meetings.** Special meetings of the Members may be called by any one of the following persons or groups:

1. The President;
2. A majority of the Board of Directors;
3. Prior to Turnover, Members representing at least fifty percent (50%) of total voting interests of the Association;
4. After Turnover, Members representing at least ten percent (10%) of total voting interests of the Association; or
5. The Declarant, so long as Declarant has the right to elect a Director pursuant to Section 720.307 of the Association Act.

E. **Official Records.**

(1) Section 720.303(4) of the Association Act defines the “**official records**” of the Association. The official records shall be made available to an Owner for inspection within ten (10) business days after receipt by the Board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the Community or, at the option of the

Association, by making the records available to an Owner electronically via the internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. From time to time, the Association may adopt reasonable Rules and Regulations governing the frequency, time, location, notice, official records to be inspected, and manner of inspections by the Owners, but may not require an Owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit an Owner's right to inspect records to less than one 8-hour business day per month. From time to time, the Association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed \$20 per hour.

**Section 6.02. Membership.** Each Owner (including Declarant) shall be a Member of the Association. The Association membership of each Owner (other than Declarant) shall be appurtenant to and inseparable from the Lot giving rise to such membership, and any transfer of title to a Lot shall automatically transfer to the new Owner the membership in the Association appurtenant to that Lot, without any further action required whatsoever of the Board, the Association, the old Owner or the new Owner.

**Section 6.03. Voting Rights and Turnover of Association.**

A. **Voting Rights.** The Association shall have two (2) classes of voting membership as follows:

(1) **Class "A".** "Class 'A' Members" or "Class A Members" shall be all Owners, with the exception of Declarant for so long as Declarant retains Class "B" voting rights. Each Class "A" Member shall have one (1) vote for each Lot owned by that Member.

(2) **Class "B".** The sole "Class 'B' Member" or "Class B Member" shall be Declarant, or its specifically designated (in writing) successor(s) or assign(s). The Class "B" Member shall be allocated the number of votes equal to the total number of Class "A" Member votes, plus one (1). Class "B" Membership shall cease and become converted to Class "A" membership upon Turnover.

B. **Termination of Class "B" Membership.** The Class "B" membership, in its entirety, shall terminate and become converted to Class "A" membership upon the earlier of the following events:

(1) When Declarant, in its sole and absolute discretion, elects to convert the last of its Class "B" membership interests, to Class "A" membership interests; or

(2) At the Turnover Meeting.

C. **Turnover of Association.** Any other provision of this Article VI to the contrary notwithstanding, Members Other Than Declarant (as that term is defined below), shall be entitled to elect at least a majority of the members of the Board of Directors not later than Turnover, which shall be: (i) three (3) months after ninety percent (90%) of the Lots in all phases of the

Development that will or may ultimately be operated by the Association have been conveyed to Class "A" Members, which Turnover shall occur at the Turnover Meeting; (ii) upon Declarant abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the Association Documents, with there being a rebuttable presumption that Declarant has abandoned and deserted the Property if Declarant has unpaid Assessments or guaranteed amounts under Florida Statutes, Section 720.308, for a period of more than 2 years; (iii) upon Declarant filing a petition seeking protection under Chapter 7 of the U.S. Federal Bankruptcy Code; (iv) upon Declarant losing title to the Property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of Declarant's rights and responsibilities hereunder first arising after the date of such assignment; or (v) upon a receiver for the Declarant being appointed by a circuit court and not being discharged within 30 day after such appointment, unless the court determines within 30 days after such appointment that transfer of control would be detrimental to the Association or the Members. For purposes of this Declaration, the term "**Member(s) Other Than Declarant**" shall not include Builders, contractors or other parties who purchases or holds the title to a Lot for the purpose of constructing a Home thereon for resale.

D. **Turnover of Documents.** No later than the Turnover Meeting, Declarant, at Declarant's expense, shall deliver to the Board the documents that Declarant is required to deliver pursuant Subsection 720.307(4) of the Association Act.

**Section 6.04. Multiple Owners.** When any Lot entitling an Owner to membership in the Association is owned of record in the name of more than one person, party, or entity, whether such persons or entities own said Lot as fiduciaries, joint tenants, tenants in common, tenants in partnership, partners, or in any other manner of joint or common ownership, or if two or more persons or entities aforesaid or otherwise shall have the same fiduciary relationship or rights respecting the same Lot, then unless the instrument, document, or order appointing them or creating the subject tenancy or relationship otherwise directs and it or a copy thereof is filed with the Secretary of the Association or has been recorded in the Public Records, such Owner shall: (i) select one official representative to represent such Lot ("**Representative**"), which Representative shall be the only person, or party, or entity with the right to exercise any rights of membership in the Association with respect to such Lot, including, but not limited to, voting with respect to such Lot; and (ii) shall notify the Secretary of the Association in writing of the Representative's name and of any change in same as it occurs. The vote of each Representative shall be considered to represent the will of all the Owners of the subject Lot. In the circumstance of such common or joint ownership or rights, if the Owners fail to properly designate a Representative, then the Association may accept the person, party, or entity asserting the right to vote on behalf of the subject Lot as the voting Owner, until notified to the contrary by the other person(s), party(ies), or entity(ies) that also make up the Owner. Upon such notification no Owner of said Lot may vote until the Owner appoints its Representative pursuant to this paragraph.

## ARTICLE VII

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 7.01. Lien and Personal Obligation Nonpayment.**

A. **Personal Obligation.** Declarant, for each Lot owned by it on the Property, and each Owner other than Declarant, by acceptance of fee-simple title to any Lot, whether or not it shall be so expressed in any deed or other conveyance of title to such Lot, covenants and agrees to pay to the Association the Assessments, which Assessments shall be fixed, established, assessed, and enforced as herein provided and as permitted by the Association Act. Assessments shall be a charge and a continuing lien upon the Lot against which such Assessment is made, and upon any Home located on said Lot, from and after the date on which such Assessment is due. Each Assessment shall also be the personal obligation of each person or entity who was an Owner of the Lot at the time the Assessment fell due. Declarant will never be obligated to pay any Individual Assessment or Start-Up Assessment.

B. **Assessment Lien.** If any Assessment or installment thereon is not paid when due, then such Assessment shall be delinquent and the delinquent Assessment shall be secured by a continuing lien on the Lot as to which the Assessment accrued, and upon any Home located thereon. The Association may record a lien against any Lot to secure payment of Assessments that remain unpaid for a period of thirty (30) days or longer after becoming due (the "**Assessment Lien**"). Any Assessment Lien shall be prior to all other liens created except: (i) ad valorem real estate taxes and assessments levied by any Governmental Authority, (ii) the lien of any mortgage (expressly subject to the mortgagee's compliance with Florida Statutes, Section 720.3085(2)(c), and said mortgagee's payment of all unpaid Assessments resulting from said mortgagee's compliance with, or failure to comply with, said statute), and (iii) other liens which by Law would be superior. To the fullest extent permitted by Law, any Assessment Lien shall be prior to and superior in dignity to the Owner's homestead status. Any Assessment Lien shall bind the Lot and any Home located thereon in the hands of the then Owner and of each subsequent Owner. The personal obligation of the Owner to pay such delinquent Assessment shall remain that Owner's personal obligation for the statutory limitations period and personal liability shall not pass to successors in title of the Lot unless expressly assumed by them.

C. **Interest on Assessments.** If the delinquent Assessment or installment thereon is not paid within thirty (30) days after the due date, the same shall bear interest from the date due at the highest lawful rate in Florida, or at such lesser rate as may be determined by the Board and uniformly applied, and the Association may bring an action for collection against the Owner personally obligated to pay the same and to foreclose the lien against the Lot and any Home located thereon by judicial foreclosure in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such delinquent Assessment the aforesaid interest, late charges, collection costs, expenses and attorneys' and paralegals' fees, and all of the foregoing shall be recoverable whether or not suit be brought. The Owner shall also be required to pay to the Association any Assessments against the Lot which become due during any period of foreclosure by the Association. The Association, acting on behalf of the Owners, shall have the right and power to bid for any Lot at any foreclosure sale and to acquire the same via foreclosure or a deed in lieu thereof and thereafter hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure or a deed in lieu thereof: (x) no right to vote shall be exercised on said Lot; (y) no Assessment shall be assessed or levied on said Lot; and (z) each other Lot shall be charged, in addition to its Assessments, its pro rata share of the Assessment that would have been charged the subject Lot had it not been acquired by the Association as a result of foreclosure or a deed in lieu thereof. Suit to recover a money judgment against an Owner or Lot for unpaid Common Expenses, Assessments, and all

costs, expenses, and fees incurred by the Association in connection with such action, including, but not limited to, interest as provided herein, along with reasonable attorneys' and other legal fees to be fixed by the court, together with all other costs, expenses, and fees of the action, shall be maintainable by the Association without foreclosing or waiving the lien securing the same.

D. **Late Fees.** In addition to any other rights and remedies of the Association hereunder or under Florida law in connection with an Owner's or Member's failure to timely pay Assessments or any installments thereof, the Association may also charge an administrative late fee ("**Late Fee**") not to exceed the greater of Twenty-Five and no/100 Dollars (\$25.00) or five percent (5%) percent of the amount of each installment that is paid past the due date. If in the future, Section 720.3085(3)(a) is amended to permit the Association to charge a higher Late Fee, then the immediately preceding sentence shall be deemed automatically amended to permit the Association to charge such higher Late Fee.

E. **Exempt Property.** The following property shall be exempt from the Assessments, charges and liens created herein: (1) Common Property; (2) lands owned by Declarant which have not been annexed to the Property by this Declaration or any Supplemental Declaration; (3) lands conveyed or dedicated to the local government or other Governmental Authority, any public or quasi-public utility company, or the public; (4) to the fullest extent permitted by the Association Act, Lots owned by Declarant during the period of time that Declarant subsidizes the Common Expenses of the Association pursuant to Section 7.08 hereof, and to the fullest extent permitted by the Association Act, Lots owned by a Builder during the time period that the Declarant subsidizes the Common Expense of the Association pursuant to Section 7.08 hereof. No other land or Improvements in the Property shall be exempt from the Assessments, charges or liens stated above. No Owner may avoid Assessment obligations by virtue of non-use or abandonment of the Common Property or any Area of Common Responsibility, as applicable.

**Section 7.02. Purpose; Powers.** The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners, to perform the Association's duties and obligations hereunder and under the Association Act, to exercise the powers conferred on the Association hereunder and under the Association Act, to manage, improve, operate, administrate, insure, maintain, repair and replace the Common Property and the Areas of Common Responsibility (as may be determined by the Board), and to pursue any other purpose deemed desirable, necessary, convenient or appropriate by the Board, including, without limitation, any one or more of the following, or as otherwise stated herein or as permitted by the Association Act: (a) payment Common Expenses; (b) lighting, irrigation, maintenance, improvement and beautification of the Streets and all easement areas benefiting the Association or the Property as shown on any recorded Plat, or otherwise properly established; (c) acquisition, maintenance, repair and replacement of community identification signs and traffic control devices, and control and regulation of traffic in the Property; (d) payment, contest or compromise of real and personal property taxes and assessments separately levied upon or assessed against the Association or the Common Property; (e) operation, management, insurance, replacement, maintenance, repair, beautification and improvement of the Common Property, Areas of Common Responsibility (as may be determined by the Board), and all easement areas benefiting the Association or the Property as shown on any recorded Plat, or otherwise properly established; (f) repayment of any deficits previously incurred by the Association; (g) funding of reserves for

future Common Expenses; (h) procurement and maintenance of all insurance; (i) employment of accountants, attorneys and other professionals, administration, and experts to represent or advise the Association; (j) operation, maintenance and replacement of the Stormwater Management System for the Property in accordance with the terms of this Declaration and the requirements of the District including, but not limited to, work within retention areas, drainage structures and drainage easements; (k) monitoring and maintenance of protected wetlands and associated reporting as may be required by the District; and (l) doing anything necessary, desirable, or convenient in the judgment of the Board to keep the Property neat and attractive, to preserve or enhance the value thereof, to eliminate fire, health or safety hazards, or otherwise to benefit the Owners. At all times, the Association, acting by and through the Board, shall, in addition to those general and specific powers elsewhere referenced in the Association Documents or imposed upon it by law, have the following specific powers:

A. Except as may be limited by the terms of the Association Documents, to acquire, own, hold, control, administer, manage, operate, regulate, care for, maintain, repair, replace, restore, preserve, protect, insure, buy, sell, lease, transfer, convey, encumber or otherwise deal in or with real or personal property (or any interest therein, including easements) (i) which is, or upon its acquisition by the Association shall thereupon become, Common Area as defined in this Declaration, including the power to enter into any leases or other arrangements with appropriate governmental agencies necessary for the use of sovereignty lands associated with any of the Common Area, or (ii) the responsibility for which is delegated to the Association pursuant to the terms and provisions of this Declaration, and further including the power to direct, conduct, maintain or support activities within or upon the Property in order to limit or control access to said Common Area.

B. To establish, make, levy, impose, enforce and collect all Assessments and impose, foreclose and otherwise enforce all liens for Assessments for which provision is made in this Declaration in accordance with the terms and provisions of the Association Documents.

C. To establish, make, levy, impose, enforce and collect fines and temporarily suspend rights of use of Common Area against any Owner and Lot for any violation of the covenants, conditions and restrictions set forth in the Association Documents or in the Rules and Regulations, all in accordance with the terms hereof and of the Association Act.

D. To create, establish, maintain, and administer such capital expenditure reserves and other reserve funds or accounts as shall, in the discretion of the Board, be reasonably necessary to provide and assure the availability of funds necessary for the care, maintenance, repair, replacement, restoration, preservation, and protection of all Common Area, including all easements and facilities, and for such other purposes as the Board, in its reasonable discretion, shall deem necessary or appropriate.

E. To sue and be sued and to defend any suits brought against it.

F. Subject to any limitations set forth in the Association Documents or imposed by the Association Act, to borrow such money as may reasonably be required to discharge and perform the duties, responsibilities and obligations imposed upon the Association pursuant to the Association Documents or the Association Act.

G. To employ such persons or to contract with such independent contractors or managing agents as shall be reasonably required in order for the Association to carry out, perform and discharge all or any part of its duties, obligations and responsibilities pursuant to the Association Documents and the Association Act; provided, however, that any such employment contract or contract with any independent contractor or managing agent for a term of more than one (1) year shall, by its express terms, be terminable: (i) for cause at any time upon not more than thirty (30) days written notice by the Association; and (ii) without cause at any time after one (1) year upon not more than sixty (60) days written notice by either party; and, provided further, that any such contract shall otherwise be subject to the provisions of this Section.

H. To provide equipment, facilities and personnel or to contract with an independent contractor or independent contractors, for such public or quasi-public services as may be deemed by the Association to be reasonably necessary or desirable for the common health, safety and general welfare of the residents, including, without limitation, internal security and protection services, garbage and trash pickup and disposal services, cable television/Internet services and street lighting services.

I. To take such steps as may be necessary to enforce the provisions of the Association Documents and the Rules and Regulations, including, without limitation, the employment of counsel and the institution and prosecution of litigation to enforce said provisions including, without limitation, such litigation as may be necessary to collect Assessments and foreclose liens for which provisions are made in the Association Documents.

J. To encourage, cause, facilitate, assist and cooperate in the formation, establishment and operation of a Community Development District and/or MSBUs/MSTUs.

K. To establish, undertake, and promote, from time to time, social activities or programs; educational programs; cultural, artistic and environmental programs; charter and other similar services, activities or programs designed, intended, or implemented to further a sense of community among Owners and residents thereof. Nothing in this subsection shall ever be construed as a representation or promise by Declarant or the Association as to which, if any, of the foregoing may be established, undertaken, promoted, or (as applicable) continued by the Association from time to time.

### **Section 7.03. Determination of Annual Assessments.**

A. **Budgets and Reserve Fund Contribution.** The Board shall annually prepare a budget that sets out the Association's annual operating expenses ("**Budget**"), which Budget must: (i) reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year; (ii) set out separately all fees or charges paid for by the Association for recreational amenities, whether owned by the Association, the Declarant, or another person or entity; (iii) include reserve accounts for capital expenditures and deferred maintenance for which the Association is responsible, including, but not limited to, the Common Property; and (iv) shall comply with Florida Statutes, Sections 720.303(6)(a) and (b), taking into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost to be incurred by the Association, and shall establish a reserve fund for such anticipated expenditures. The Board shall set the required reserve fund, if

any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the Budget, with respect both to amount and timing of Annual Assessments over the period of the Budget. The reserve funds required, if any, shall be fixed by the Board and included within and distributed with the Budget and any applicable notice of Annual Assessment. Any reserve funds established by the Board shall be held in an interest-bearing account or investments. The first Budget promulgated or adopted by the Declarant on behalf of the Association must designate therein the components for which reserve accounts and funds may be used.

B. **Adoption of Operating Budget.** The Association shall mail to each Member a copy of the Budget and projected Annual Assessments approved by the Board to be levied for the next fiscal year at least thirty (30) days prior to the end of the Association's current fiscal year. The Budget and Annual Assessments set forth therein shall become effective unless disapproved at a special meeting of the Members held not later than sixty (60) days after the proposed Budget and Annual Assessments are mailed to the Members. To be effective, the disapproval of the proposed Budget and Annual Assessments must be by a vote of two-thirds (2/3) of the membership of the Association, without regard to membership class. If the membership so disapproves the Budget for the succeeding year, or if the Board fails to propose a Budget or the Annual Assessments, then the Budget and Annual Assessments for the preceding year shall continue in effect until a new Budget with Annual Assessments is determined or adopted.

C. **Allocation of Annual Assessments Among Lots.** The Budget and Annual Assessments of the Association shall be assessed against all Owners and Lots within the Property in an equal amount per Lot. At the discretion of the Board, the Annual Assessments for any year may be paid by Owners in monthly installments, due and payable on the first (1st) day of each month; in bi-annual installments, due and payable by the first (1st) day of January and July of each year; or in quarterly installments, due and payable by the first (1st) day of January, the first (1st) day of April, the first (1st) day of July, and the first (1st) day of October of each year. In the event of such deferred payments, the Board may, but shall not be required to, charge a uniform, lawful rate of interest on the unpaid balance. The Board may accelerate the balance of any Annual Assessment upon default in the payment of any installment thereon or any other Assessment due hereunder. Absent any such determination by the Board permitting payment in monthly, bi-annual, or quarterly installments, the Annual Assessment for any year shall be due and payable by January 1 of such year. Any Annual Assessment not paid by January 15, if payable in one lump sum, not paid by the fifteenth (15th) day of January and July, if allowed to be paid bi-annually, or paid by the fifteenth (15th) day of January, April, July, and October, if allowed to be paid quarterly, or on the fifth (5th) day of any month, if allowed to be paid monthly, shall be considered delinquent.

#### **Section 7.04. Special Assessments and Individual Assessments.**

A. **Special Assessments.** In addition to Annual Assessments, the Board may levy at any time a special assessment for the purpose of defraying the cost of any construction, maintenance, repair, replacement or insurance of any improvement on the Common Property, any Areas of Common Responsibility, or on any easement benefiting the Association or the Property as shown on any recorded Plat, or otherwise properly established, for the purpose of

covering any budget deficits of the Association, or for any other purpose deemed necessary, desirable or appropriate by the Board (collectively, "**Special Assessment(s)**").

B. **Individual Assessment.** The Board may levy an individual assessment against any Owner and that Owner's Lot and, if applicable, any Home located thereon in order to cover any costs, expenses and fees whatsoever incurred by the Association due to: (i) that Owner's failure to maintain its Lot or Home pursuant to the standards set forth in this Declaration or as otherwise established by the Board or the ARB, or (ii) to reimburse the Association for loss or damage to the Association or to any Common Property, Area of Common Responsibility or easement area benefiting the Association or the Property caused by that Owner or that Owner's lessee, sublessee, licensee, agent, contractor, subcontractor, invitee, domestic help or guest, and not covered by insurance maintained by the Association, or (iii) for any other purpose expressly permitted by this Declaration or permitted under applicable Law (each assessment levied pursuant to (i), (ii), or (iii), above, an "**Individual Assessment**").

C. **Villa Assessment.** In addition to the Annual Assessments, and any Special Assessment or Individual Assessment, each Villa Lot shall be assessed an assessment ("**Villa Assessment**") for the purpose of paying the costs, expenses and fees associated with: (i) the landscaping and lawn maintenance of grass and landscape areas within the Service Area of each Villa Lot; (ii) the insurance premiums for the Association Policy, and the amount of any deductible required to be paid in the event of a loss, as set forth in Section 13.04 below; (iii) the Association's Villa maintenance obligations pursuant to Section 9.02 below; and (iv) reserves for capital accounts for capital expenditures and deferred maintenance for which the Association is responsible for pursuant to Section 9.02 below. The Budget shall include an estimate of maintenance expenses, reserves and Association Policy Expense associated with the Villa Buildings. The Association Budget shall include Villa reserve accounts for capital expenditures and deferred maintenance for the Villas for which the Association is responsible; and (iv) shall comply with Florida Statutes, Sections 720.303(6)(a) and (b), taking into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost to be incurred by the Association, and shall establish a reserve fund for such anticipated expenditures. The Board shall set the required reserve fund, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the Budget, with respect both to amount and timing of Villa Assessments over the period of the Budget. The reserve funds required, if any, shall be fixed by the Board and included within and distributed with the Budget and any applicable notice of Villa Assessment. Any reserve funds for the Villas established by the Board shall be held in an interest-bearing account or investments. The first Budget promulgated or adopted by the Declarant on behalf of the Association must designate therein the components for which Villa reserve accounts and funds may be used. The budgeted Villa Assessments shall be assessed only against Villa Owners and Villa Lots, and shall be allocated and assessed in an equal amount per Villa Lot.

**Section 7.05. Start-Up Assessment; Capital Assessment; Due Dates.**

A. At the closing of the sale of each Lot in the Property to a Third Party Purchaser, said purchaser shall pay to the Association: (i) a one-time Start-Up Assessment in an amount equal to 25% of the then Annual Assessment; and (ii) the entire Annual Assessment for the calendar year of closing, prorated on a per diem basis from the date of closing on the sale of, or

the date of occupancy of the Lot, whichever is earlier, through the end of that calendar year. Thereafter, Annual Assessments shall be due, in advance, on or before the commencement of the Association fiscal year for which they are imposed; but the Board, as provided above, may elect to collect Annual Assessments in monthly, quarterly or semi-annual installments. Annual Assessments which commence to accrue as to any Lot other than on the first day of the year shall be prorated for the balance of that year. Notwithstanding the foregoing, the Start-Up Assessment shall be due from the first Third Party Purchaser that is not a Builder.

B. The Board may elect to assess, impose, or levy on each subsequent conveyance of a Home following the initial sale of such Home to the first Third Party Purchaser thereof or to any party other than Declarant, a capital assessment (the "**Capital Assessment**"), which Capital Assessment shall be shown on any estoppel certificate issued by or on behalf of the Association in connection with the conveyance of the Lot to said purchaser or grantee; shall be nonrefundable; shall be in addition to, and not in lieu of, the Assessments levied on the Lot; shall not be considered an advance payment of any portion of Assessments; and shall be used by the Association exclusively for purposes which provide a direct benefit (as defined in 77 Fed. Reg. 15574 (Mar. 16, 2012)) to the Property. The Association may use the Capital Assessment for any of the purposes and services set forth in this Declaration, including the reduction of the Declarant's deficit funding. The Capital Assessment shall not apply in instances of transfer of title of a Home to (a) a co-Owner of the Home; (b) the Owner's estate, surviving spouse or child upon the death of the Owner; (c) an entity owned by the grantor of title and/or the grantor's spouse; (d) to a mortgagee or Association pursuant to a Final Judgment of Foreclosure or deed in lieu of foreclosure. Prior to Turnover, Declarant may increase the Capital Assessment in subsequent fiscal years, provided that such increase shall not be greater than ten percent (10%) over the prior fiscal year. Subsequent to Turnover, Association may increase the Capital Assessment in subsequent fiscal years, provided that such increase shall not be greater than ten percent (10%) over the prior fiscal year. Neither Declarant nor Association makes any representation or warranty that, at Turnover, any portion of these Capital Assessment shall be in the accounts of the Association, as these monies may be used to offset Declarant's deficit funding.

**Section 7.06. Certificate.** Upon request, the Association, pursuant to Florida Statutes, Section 720.30851, shall furnish to any Owner a certificate setting forth whether all required Assessments have been paid. Such certificate, subject to the limitations and terms of Florida Statutes, Section 720.30851, shall be conclusive evidence in favor of bona-fide third parties relying thereon of the payment of any Assessment therein stated to have been paid. The Association may charge a fee for the preparation of such certificate, and the amount of such fee must be stated on the certificate. Unless sold or conveyed by or to Declarant, no Lot or parcel may be sold or conveyed unless an estoppel certificate pursuant to Florida Statutes, Section 720.30851 is obtained and all amounts set forth therein are paid prior to the sale or conveyance.

**Section 7.07. Subordination.** Expressly subject to the mortgagee's compliance with Florida Statutes, Section 720.3085(2)(c) and said mortgagee's payment of all unpaid Assessments resulting from said Mortgagee's compliance with, or failure to comply with, said statute, all Assessment Liens shall be subordinate to the lien of any Mortgage. Any mortgagee which obtains title to a Lot by lawful foreclosure of a mortgage or by lawful and proper voluntary conveyance by deed in lieu of such foreclosure, shall not be liable for the uncollected

Assessments or interest, late charges or collection costs pertaining to such Lot or chargeable to the former Owner thereof which became due prior to the acquisition of title of the Lot by said mortgagee. Such unpaid Assessment amounts shall be deemed a Common Expense collectible from all Owners, including the acquiring mortgagee, on a pro-rata basis. Any such transfer to a mortgagee under this Section or otherwise shall not relieve the transferor of personal responsibility for any prior Assessments nor the Lot from the lien for Assessments thereafter falling due.

**Section 7.08. Funding by Declarant.** Notwithstanding anything contained in this Declaration to the contrary or otherwise, to the fullest extent permitted by the Association Act, Declarant shall not be obligated to pay any Assessment as to any Lot owned by it during any period of time that Declarant pays the Common Expense actually incurred over and above the income derived from the Assessments collectible from the Class "A" Members ("**Deficit Fund**"). For purposes of this subsidy arrangement, unless expressly required by applicable law, Declarant need not subsidize or pay any Assessment amounts levied for replacement reserves or capital expenditures. If Declarant elects to Deficit Fund as permitted herein and under the Association Act, then for purpose of complying with Florida Statutes, Section 720.308(3), the amount of the Annual Assessments, as such Annual Assessments may be increased per fiscal year, shall be the maximum obligation of the Class "A" Members. If Declarant elects to Deficit Fund, then for purpose of complying with Florida Statutes, Section 720.308(3), the amount above the Annual Assessments that is necessary to keep the Association operational shall be the amount of Declarant's guarantee of Common Expenses. It is the express intent of Declarant that this be an establishment of a guarantee pursuant to Florida Statutes, Section 720.308(2). Unless Declarant otherwise notifies the Board in writing at least thirty (30) days before the beginning of a fiscal year, Declarant shall continue paying on the same basis as during the previous fiscal year. Declarant, at its option, may elect by written notice delivered to the Association at any time to abandon the subsidy approach and commence payment of the Assessments thereafter falling due for the Lots then owned by Declarant, prorated as of the date that such notice is delivered to the Association. Notwithstanding the foregoing, Declarant shall never be obligated to pay any Individual Assessment or Start-Up Assessment.

**Section 7.09. Waiver of Use.** No Owner, other than Declarant, may exempt himself, herself or itself from personal liability for Assessments duly levied by the Association. No Owner may release the Owner's Home from the liens and charges hereof either by waiver of the use and enjoyment of the Property and the facilities thereon or by abandonment of such Owner's Home.

**Section 7.10. Declarant's Right to Loan or Advance Funds.** Declarant may (but is not obligated to) loan, advance or otherwise make payments to the Association to assist the Association in meeting its financial obligations. Notwithstanding anything to the contrary contained in this Section, if Declarant loans, advances or otherwise makes payments to the Association, other than as a voluntary subsidy, then any such sums shall be repaid to Declarant prior to the Turnover Date.

**Section 7.11. Builder Exemption.** Notwithstanding anything in this Declaration or the Articles and Bylaws to the contrary, except as provided herein, during the time that a Builder owns any Lot, the Builder shall not pay any Assessments with respect to the Lots owned by the Builder; provided however, Assessments shall commence and be payable as to a particular Lot owned by

a Builder upon the earlier to occur of (i) the sale of the Lot by a Builder to an unaffiliated third party; or (ii) three (3) years from the date the Builder acquired the Lot from Declarant. Further, in the event that Declarant elects to pay Assessments applicable to the Lots owned by Declarant rather than pay the Deficit as provided in Section 7.08, Declarant covenants, agrees and shall be obligated to pay all Assessments with respect to Lots owned by a Builder for which the Builder is not required to pay Assessments pursuant to this Section. For the purpose of this Section, if there is more than one (1) Builder, each Builder, for the purposes of this Section, shall be treated individually and not collectively with other Builders.

## ARTICLE VIII

### ARCHITECTURAL CONTROL BOARD

#### **Section 8.01. Architectural Control; ARB.**

A. All Lots and Homes in the Property are subject to architectural review in accordance with this Article VIII and any planning, construction, development, or other architectural criteria, guidelines, or procedures (collectively, "**Planning Criteria**") adopted and revised from time to time by the Architectural Review Board (the "**ARB**"), which may also be referred to at times as the Architectural Review Committee (the "**ARC**"). The Planning Criteria shall be written and made available to all Builders and to all Owners or prospective Owners. The Planning Criteria may include any matters considered appropriate by the ARB not inconsistent with this Declaration, the other Association Documents or the Association Act.

B. No site work/development, landscaping, utility extension, drainage improvement, paving, driveway, swimming pool, pool enclosure, building, fence, wall, sidewalk, or any other physical or structural improvement, or change or alteration to the exterior of any existing structure or improvement, or to any existing landscaping, shall be commenced, constructed, erected, modified, changed, altered or maintained until the plans showing such details as the size, design, shape, finished grade elevation, height, materials and color of the same, together with a landscape plan and a plot plan showing the location relative to boundaries and adjacent improvements of such proposed improvements or changes (collectively, the "**Plans**"), have been approved in writing by the ARB. All such Improvements must further conform to the Planning Criteria and no Plans shall be approved by the ARB if they are not in conformity with same. All Improvements, construction, changes, modifications and alterations shall also comply with all Laws. Until such time as any Improvements, construction, changes, modifications and/or alterations have been submitted to and approved by the ARB, no Owner (and/or designee thereof) shall make application for a building permit from the applicable Governmental Authority. Nothing herein shall limit the right of an Owner to finish or alter the interior of that Owner's Home as that Owner desires.

**Section 8.02. Membership of ARB.** Prior to Turnover, Declarant shall be entitled to appoint all members of the ARB. The initial members of the ARB shall hold office until all Lots and Homes have been conveyed to Third Party Purchasers or such earlier time as the Declarant may, in its sole discretion, elect. Thereafter, the membership of the ARB shall be determined by the Board. The ARB shall consist of no less than three (3) members, none of whom shall be required, prior to Turnover, to be Owners or occupants of the Property. The ARB shall always

consist of an odd number of members. No member of the ARB shall be entitled to compensation for services performed, but the ARB may employ professional advisors and pay reasonable compensation to such advisors at Common Expense. Members of the ARB (other than those appointed or designated by Declarant) may be removed by the Board at any time without cause. Members of the ARB appointed or designated by Declarant may only be removed by Declarant, which removal may be at any time without cause.

**Section 8.03. Approvals.** Decisions of the ARB shall be by majority action. Unless waived by the ARB, all Plans shall be prepared by an architect or engineer, said person to be employed by and at the expense of the Owner. If for any reason, including purely aesthetic reasons, the ARB should determine that a proposed improvement, construction, modification or alteration is not consistent with the Planning Criteria or Declarant's development plan, or in the best interest of the Association and its Members, such improvement, construction, modification or alteration shall not be approved or made. Approval of Plans may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by virtue of the dissatisfaction of the ARB with the location of the structure on the Lot, the elevation, color scheme, finish, design, proportions, architecture, drainage plan, shape, height, style and appropriateness of the proposed structures or altered structures, the materials used therein, the planting, landscaping, size, height or location of vegetation on the Lot, or because of its reasonable dissatisfaction with any other matter or thing which, in the judgment of the ARB, will render the proposed improvement or alteration inharmonious with Declarant's general development plan or the Planning Criteria. Two (2) sets of Plans and specifications shall be submitted to the ARB by the Owner prior to applying for a building permit from the applicable Governmental Authority. Submittals and re-submittals of Plans shall be approved or disapproved within thirty (30) days after receipt by the ARB. The ARB approval or disapproval shall be written and shall be accompanied by one (1) copy of the Plans to be returned to the Owner. Whenever the ARB disapproves Plans, the ARB shall specify the reason or reasons for such disapproval. The Planning Criteria are not the exclusive basis for decisions of the ARB and compliance with the Planning Criteria does not guarantee approval of any application.

**Section 8.04. Violations.** The work approved by the ARB must be performed strictly in accordance with the Plans as approved by the ARB. If after Plans have been approved, the Improvements are altered, constructed, modified, erected, or maintained upon the Lot other than as approved, the same shall be deemed to have been undertaken without ARB approval. After one (1) year from completion of any improvement, addition, modification or alteration, said Improvement shall, in favor of purchasers in good faith and for value and mortgagees, be deemed to comply with the provisions hereof unless a notice of such noncompliance executed by any member of the ARB shall appear in the Public Records or legal proceedings shall have been instituted to enjoin the noncompliance or to enforce compliance with this Article VIII.

**Section 8.05. Variances.** The ARB may grant variances from compliance with the architectural provisions of this Declaration or the Planning Criteria, including, without limitation, restrictions upon height, size or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may reasonably require. The granting of any variance shall not operate to waive any of the terms and provisions of this Declaration or the Planning Criteria for any purpose except as to the particular

Lot and the particular provision covered by the variance, nor shall it affect the Owner's obligation to comply with all applicable laws. Such variances may only be granted when unique circumstances dictate and no variance shall (i) be effective unless in writing, (ii) be contrary to the restrictions set forth in this Declaration, or (iii) estop the ARB from denying a variance in other similar or dissimilar circumstances.

**Section 8.06. Waiver of Liability.** None of Declarant, the ARB, the Directors or the Association, or any agent, employee or officer thereof, shall be liable to anyone submitting Plans for approval or to any Owner, occupant, tenant, subtenant, invitee, licensee or guest of the Property by reason of or in connection with approval or disapproval of any Plans, or for any defect in any Plans submitted, reviewed, revised or approved in accordance with the requirements of the ARB, or for any structural or other defect in any work done according to or contrary to such Plans. Approval of Plans, or any other approvals, variances or consents by the ARB, are given solely to protect the aesthetics of the Property in the judgment of the ARB and shall not be deemed a warranty, representation or covenant that any action taken in reliance thereon complies with all applicable laws, nor shall ARB approval be deemed approval of any Plan or design from the standpoint of structural safety or conformity with building or other codes. Every person who submits Plans for approval agrees, by submission of such Plans, and every Owner or occupant, tenant and subtenant of any Lot agrees, by acquiring title thereto or an interest therein, that it will not bring any action, proceeding or suit to recover any such damages and shall be deemed to have automatically agreed to hold harmless and indemnify the Board, the ARB, the Declarant and the Association, and all of the foregoing's directors, officers, members, agents and employees from and for any loss, claim, liability, expenses, causes of action or damages connected with the aforesaid aspects of the Plans, Improvements or alterations.

**Section 8.07. Enforcement.** Declarant and the Association shall have standing and authority on behalf of the Association to enforce in courts of competent jurisdiction the Planning Criteria and the decisions of the ARB. Should Declarant or the Association be required to enforce the provisions hereof by legal action, the reasonable attorneys' and paralegals' fees and costs and expenses incurred, whether or not judicial proceedings are involved, including the attorneys' and paralegals' fees and costs, and expenses incurred on appeal from judicial proceedings, shall be collectible from the violating Owner. Should any Owner fail to comply with the requirements hereof after thirty (30) days' written notice, Declarant and the Association shall have the right, but not the obligation, to enter upon the Owner's Lot, make such corrections, alterations or modifications as are necessary, or remove anything in violation of the provisions hereof, the Rules and Regulations, or the Planning Criteria, and charge the costs and expenses thereof to the Owner as an Individual Assessment. Declarant, the Association the Board and the ARB and all of the foregoing's directors, officers, members, agents and employees, shall not be liable to the Owner or to any occupant or invitee of any Lot for any trespass or damages or injury to property or person for any action taken hereunder unless caused by gross negligence, intentional misconduct or intentional wrongdoing.

**Section 8.08. Exemption.** Declarant, before and after Turnover, shall be exempt from the Planning Criteria, the ARB Rules and the architectural control provisions of this Article VIII. Declarant, before and after Turnover, shall be entitled to construct or install any new Improvement, and to alter or change or modify any existing Improvement, without submitting Plans to or obtaining the approval of the ARB. Upon approval by the ARB of Plans for a Home

design submitted by a Builder (“**Approved Builder Plans**”) those Builder Plans shall be deemed approved for the construction of Homes throughout the Community, and the Approved Builder Plans (including modifications to the Approved Builder Plans necessary or desirable to facilitate construction of a Home on a Lot in the Community), are exempt from further ARB review and approval on any other Lots within the Community. Additionally, Approved Builder Plans shall be deemed to meet the requirements of the Planning Criteria.

**Section 8.09. No Waiver of Future Approvals.** The approval of the ARB of any proposals or Plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans, specifications, drawings or matters subsequently or additionally submitted for approval or consent.

**Section 8.10. ARB Rules and Regulations.** The ARB may adopt reasonable rules of procedure and standards for the submission and review of any matter to be brought before it and the inspection and final approval of any completed work done pursuant to an approval of the ARB (the “**ARB Rules**”). The ARB Rules shall be: (i) at the discretion of the Board, subject to the prior approval of the Board, (ii) consistent with the Planning Criteria, (iii) consistent with the covenants and restrictions set forth in this Declaration, and (iv) published or otherwise made available to all Owners, prospective Owners and their contractors, subcontractors and other appropriate designees. All ARB Rules shall be adopted and/or amended by a majority vote of the ARB.

## ARTICLE IX

### MAINTENANCE AND REPAIR OBLIGATIONS

This Article sets forth the various maintenance and repair obligations of the Association and the Owners with respect to the Property and the Lots and Association Property located therein. Such maintenance and repair obligations may be different than those provided in any Supplemental Declarations.

**Section 9.01. By The Association General Obligations.**

A. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Improvements and facilities located upon the Association Property as otherwise provided herein. Should any incidental damage be caused to any Home by virtue of the Association’s failure to maintain the Association Property as herein required or by virtue of any work which may be performed or caused to be performed by the Association in the maintenance, repair or replacement of any Association Property, the Association shall, at its expense, repair such incidental damage. The Association shall not, however, be responsible for any loss of use, any hardship, an Owner’s time or any other consequential or punitive damages.

B. The Association is specifically empowered to own, operate and maintain Utility Systems as defined in this Declaration, and to make assessments as provided in this Declaration and the Articles and Bylaws to provide for ownership, maintenance and operation of the Utility

Systems, including but not limited to assessments to provide for a reasonable reserve fund for operation and maintenance of such Utility Systems. The Association may sell, donate, or otherwise devise the Utility Systems to another entity authorized by law to own and operate the Utility Systems, including but not limited to utilities certificated by the Florida Public Service Commission, any applicable Community Development District, or governmental entities.

C. The Association shall be responsible for the maintenance, repair and replacement of all private streets located upon the Association Property and there is hereby reserved in favor of the Association the right to enter upon any and all parts of the Association Property and Lots for such purpose. To the extent permitted by the appropriate governmental authority, the Association may, but shall not be obligated to, also provide maintenance of all County, district or municipal properties which are located within or in a reasonable proximity of the Property to the extent that their deterioration or unkempt appearance would adversely affect the appearance of the Property, including the right to enhance the landscaping in any public right of way.

D. The Association shall be responsible for the maintenance, repair and replacement of any street lights located in the Community.

E. The Association has a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. The Board may establish rules and regulations regarding the Association's entry upon the Lots.

F. The Association may maintain other Property which it does not own, including, without limitation, Property dedicated to the public, (a) if such maintenance is required by this Declaration, (b) if the Board determines that such maintenance is necessary or desirable to maintain the standards for the Community promulgated by the ARB or to cause compliance with this Declaration, (c) if the maintenance is requested by an Owner, or (d) if the Board determines that maintenance to any privately-owned facility is necessary or desirable and the Board elects to perform such maintenance in lieu of enforcing the respective Owner(s)'s obligation to perform such maintenance, in which event the respective Owner(s) shall be assessed the costs incurred.

G. The Association shall maintain and irrigate the lawns and landscaping lying within the Service Area between each Villa and any right-of-way or community wall or fence as determined by the Association from time to time. The Association reserves the right to require each Villa Owner to perform lawn and landscaping maintenance on each Villa Owner's respective Villa Lot.

**Section 9.02. By The Association Villa Maintenance.**

A. The Association, all at Common Expense, (assessed against Villa Lots pursuant to Section 7.04(c) as Villa Assessments), acting by and through the Board, shall, in addition to those general and specific duties, responsibilities, and obligations elsewhere referenced in the Governing Documents or imposed upon it by law, have the following specific duties, responsibilities and obligations:

- (1) As may be necessary from time to time, to maintain and operate the Villa Buildings. The Association may adopt standards of maintenance and operation

concerning the Villa Buildings. In all events, however, the Villa Buildings be maintained and operated in compliance with any and all governmental permits, rules, regulations, and requirements.

(2) With regard to each Villa Building, as may be necessary from time to time due to the ordinary wear and tear and customary usage of the Villas located within such Villa Building, to perform general maintenance, pressure cleaning, and painting of all exterior portions thereof, including any carports, garages, garage doors, exterior doors, shutters, and facia, and any fences erected along Villa Lot boundaries by Declarant or any Builder ("**Boundary Fence(s)**"), and further including caulking around Villa Building windows prior to painting, as necessary. The maintenance responsibility of the Association concerning Villa Buildings shall not extend to or include the glass in individual Villa windows, and shall not include any screen enclosures, fences, patios, or other improvements constructed by or at the direction of an individual Owner; such improvements, at all times, shall be insured, maintained, repaired, and replaced by the Owner of such improvements, at said Owners sole cost and expense, and pursuant to the terms hereof.

(3) With regard to each Villa Building, as may be necessary from time to time due to the ordinary wear and tear and customary usage of such roof, to maintain, repair, and/or replace, as necessary, each Villa Building roof, including the roof deck, surface, flashings, and gutters, if any, and any exterior porch or garage roofs constructed or installed as part of the original construction of the subject Villa Building. The maintenance, repair, and/or replacement responsibility of the Association concerning Villa Building roofs shall not include the roofs of any patios, screen enclosures, or other improvements constructed by or at the direction of an individual Owner; such improvements, at all times, shall be insured, maintained, repaired, and replaced by the Owner of such improvements, at said Owners sole cost and expense, and pursuant to the terms hereof.

(4) As may be necessary from time to time due to the ordinary wear and tear, to perform general maintenance, repair, and/or replacement of structural components of Party Walls.

(5) As may be necessary from time to time due to the ordinary wear and tear and customary usage of such sidewalks, to perform general maintenance, repair, replacement, and pressure cleaning of all sidewalks on any Villa Lots, which sidewalks: (A) are not dedicated to the public or any governmental authority, and are not maintained by any governmental authority; and (b) are designed to and in fact connect and serve more than one Villa Lot.

(6) As may be necessary from time to time due to the ordinary wear and tear and customary usage of such driveways, to perform maintenance, repair, replacement, and pressure cleaning of all Villa Lot driveways.

(7) As may be necessary from time to time due to the ordinary wear and tear and customary usage of a Boundary Fence, to maintain, repair, and replace any Boundary Fence(s).

(8) As may be necessary from time to time due to the ordinary wear and tear and customary usage of such irrigation equipment, to maintain, repair, and replace any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines, rain sensors, and time clocks, wherever located) serving any Villa Lot and any property adjacent to such Villa Lot for which the Owner thereof would otherwise be responsible for under the Governing Documents; provided, however, that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner or Tenant of any such Villa Lot. In the event that the Association opts to master-meter the irrigation system as to any Villa Lots, then in addition to the foregoing obligations stated in this subsection, the Association shall be responsible for watering of Villa Lots and the operation, maintenance, repair, and replacement of said irrigation system.

(9) Periodic treatment for termites and for obtaining/maintaining a termite bond covering all exterior walls and foundations of all Villa Buildings and related garages; provided, however, that the Association shall never be held liable or responsible if any such treatment, for any reason whatsoever, does not occur, or at any time proves to be or becomes ineffective.

(10) Maintenance, repair, and replacement of any other components of any Villa Building that is insured under the "**Association Policy**" (as that term is defined below) as of the time of such damage or casualty.

B. The Association shall perform the foregoing maintenance, cleaning, repair, etc., as set forth Section 9.02, pursuant to and in compliance with a schedule of maintenance that may be adopted from time to time by the Association to maintain the subject property and improvements in a manner consistent with this Declaration, the Planning Criteria, and the Rules and Regulations. The Association shall never have the obligation to, but reserves and shall always have the power, right, and authority to perform any of the aforementioned maintenance or other obligations set forth in Section 9.02 hereof to the extent such maintenance or other obligations are required, caused, or necessitated by or as a result of the willful misconduct, negligence, or other activities not consistent with ordinary wear and tear or usage of the subject property or improvements, by any Villa Owner or any member of such Villa Owner's family, or of any Tenants, guests or other invitees of said Villa Owner. Notwithstanding anything in the foregoing to the contrary or otherwise, to the extent any maintenance, cleaning, repair, etc., or other obligations as set forth Section 9.02 pertain to only a specific Villa Lot or Villa, or such maintenance, cleaning, repair, etc., or other obligations are performed or necessitated as a direct result of aforementioned willful misconduct, negligence, or activities not consistent with ordinary wear and tear or customary usage, then the Association's costs and expenses in connection with such maintenance, cleaning, repair, etc., or other obligations may be assessed as a Special Assessment or Individual Assessment against only such Villa Owner and such Villa Owner's Villa Lot.

C. The Association shall never be responsible for any maintenance of, repairs to, or replacement of any improvement or modification added or made to a Villa or upon a Villa Lot after the conveyance of the Villa Lot to the first Villa Owner or grantee thereof following completion of any initial improvements thereon by Declarant or a Builder. Except as and to the extent expressly provided in this Section 9.02, maintenance, repairs, and replacement of or concerning each Villa Lot and Villa, including, but not limited to, driveways serving said Villa, any landscaping or improvements installed by the Villa Owners or occupants of any Villa Lot or Villa, or otherwise, shall always be the sole responsibility, duty, and liability of the respective Villa Owner. Any and all maintenance, repairs, and replacements of or concerning each Villa Lot and Villa shall at all times be performed in a manner consistent with this Declaration, the Planning Criteria, and the Rules and Regulations.

D. If maintenance, repair, or replacement of any component of a Villa Building, Villa Lot, or Villa for which the Association is responsible hereunder is necessary due to intentional misconduct, negligence, or failure to comply with the terms of the Governing Documents, the Rules and Regulations, or applicable law, by Villa Owner (including, but not limited to, the members of said Villa Owner's family, tenants or other occupants, guests, or invitees), the Association shall have the right to assess the Villa Owner's Villa Lot for the cost of necessary maintenance, repair or replacement, as a Special Assessment or Individual Assessment, to the extent insurance proceeds do not cover the cost of such work, and without compromise to the rights of subrogation of the insurer. The Association may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Villa Owner shall be jointly and severally liable with such party(ies).

**Section 9.03. By The Owners.**

A. Except to the extent the Association is responsible therefore as provided in the Association Documents, the Owner of each Lot must keep and maintain his/her Lot and the Improvements thereon, including equipment, appurtenances, and landscaping, in good order, condition and repair, and must perform promptly all maintenance and repair work within his Home which, if omitted, would adversely affect the Community, the other Owners, or the Association and its Members. The Owner of each Lot shall be responsible for any damages caused by a failure to so maintain such Lot and Home. The Owners' responsibility for maintenance, repair and replacement shall include, but not be limited to, all of the physical structure constructed in, upon or below the Lot, physical items attached or connected to such structure that run beyond the boundary line of the Lot which exclusively service or benefit the Lot and Home which an Owner is obligated to perform pursuant to any separate instrument setting forth such responsibilities. The painting, caulking and maintenance of the exterior surface of the walls, doors, windows and roof of the physical structure of the Home shall be performed by the Owner, and the exterior surface of such walls, doors, windows and roof shall at all times be maintained in a good and serviceable condition with no damage or other defect therein by the Owner. The Owner of a Lot further agrees to pay for all utilities, such as telephone, cable television, water (including water associated with irrigation if such water is not being provided by the Association), sewer, sanitation, electric, etc., that may be separately billed or charged to his/her Home. The Owner of each Lot shall be responsible for insect and pest control within the Lot and Home. Whenever the maintenance, repair and replacement of any items which an Owner is obligated to maintain, repair or replace at his own expense is

occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or otherwise, reduce the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

B. The Owner of each Lot shall maintain, repair and replace as needed any fencing on his/her Lot, clean, maintain and repair the driveway on his/her Lot, and keep the sidewalk located on his/her Lot clean and free from any impediments to pedestrian traffic.

C. The Declarant has constructed or may construct a drainage swale upon each Lot and other parcels for the purpose of managing and containing the flow of excess surface water, if any, found upon such Lot or parcel from time to time. Each Owner, including Builders, shall be responsible for the maintenance, operation and repair of the drainage swales on the Lot or parcel. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair which allow the drainage swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the drainage swales is prohibited. No alteration of drainage swales shall be authorized and any damage to any drainage 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(s) of the Lot and parcel(s) upon which the drainage swale is located.

D. If a Home is damaged by fire or other casualty, its Owner shall properly and promptly restore it to at least as good a condition as it was before the casualty occurred. Any such work shall be in accordance with the original plans and specifications of the Home unless otherwise authorized by the ARB.

E. If an Owner fails to comply with the foregoing provisions, the Association may proceed in court of equity to enjoin compliance. Further, if the failure to comply relates to the Owner's obligations to maintain insurance, the Association shall be entitled, although not obligated, to obtain the required coverage itself and to levy on the offending Owner an Assessment equal to the cost of premiums, and any such Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for operating expenses.

F. If a failure to comply with the provisions of this Section relates to the Owner's obligation to maintain his/her Home or any other area required to be maintained by the Owner, then, in addition to the exercise of all other remedies, the Association or Declarant shall have the right, but not the obligation, upon fifteen (15) days written notice, to enter the Property of the Owner for the purpose of performing the maintenance referred to, set forth and described in the notice. The determination of whether an Owner is failing to properly maintain and care for the Property for which he has the maintenance responsibility shall be determined in the sole discretion of the Association or Declarant. Further, the Association shall be entitled, but not obligated, to perform such maintenance and care itself and to levy on the offending Owner an Assessment equal to the cost of performing such maintenance and any such Assessment shall

constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for operating expenses.

G. Duties of the Villa Owners.

(1) Each Villa Owner shall at all times properly care for and maintain, at the Villa Owner's sole cost and expense, the interior of the improvements on its Villa Lot and Villa such as, without limitation: doors and windows; garage doors; plumbing; individual mailbox (if applicable); electrical, heat and air-conditioning systems serving the Villa Lot and Villa; interior finish work, such as sheetrock and drywall; routine maintenance of non-structural components of Party Walls; interior painting of Party Walls; and all other portions and components of the Villa Lot and improvements thereon, including the Villa, except those expressly required to be and actually maintained by the Association pursuant to the terms hereof. Without limiting the generality of the foregoing, each Villa Owner shall perform the following repairs and maintenance:

(2) Maintenance and irrigation of lawns and landscaping lying between the Villa and any right-of-way or any community wall or fence shall be performed by the Association; Villa Owner shall remove any trees, shrubs, or other vegetation from these areas outside such Owner's Villa Lot without the prior written approval of the Association.

(3) Each Villa Owner shall be responsible for termite treatment of all interior walls of the improvements on its Villa Lot and for obtaining and maintaining an annual termite bond with a properly licensed company doing business in Florida for the same.

(4) To the extent any maintenance, repair, replacement, or other obligations described in this Section 9.03(G) is not performed by the subject Villa Owner, the Association may (but is not required to) perform all or any part of such work, in which event the costs of doing so shall be assessed to said Villa Owner and the Villa Lot as an Individual Assessment. In addition to, but not in limitations of, the foregoing, if an Villa Owner's failure to maintain, repair, or replace those portions of the Property (including said Villa Owner's Villa Lot and Villa) that are said Villa Owner's responsibility hereunder endangering or that will or may endanger the structural integrity of another Villa or any Villa Building, including, but not limited to, actual or potential water or other damage, the Association shall have the right (but is not required) to enter and maintain, repair, replace, or otherwise address the subject defect or issue and charge the cost, plus an administrative fee of 15%, to the subject Owner as an Individual Assessment. The Association shall give at least ten (10) calendar days' notice or, in an emergency, such notice (if any) as is reasonable under the circumstances.

**Section 9.04. Damage To Buildings.** The Owner of any Home which has suffered damage may apply to the ARB for approval for reconstruction, rebuilding, or repair of the Improvements therein. The ARB shall grant such approval only if, upon completion of the work, the exterior appearance will be substantially similar to that which existed prior to the date of the casualty; provided, however, nothing shall prohibit the ARB from approving reconstruction, rebuilding, or repair that would result in an exterior appearance not substantially similar to that which existed

prior to the date of the casualty if an Owner pursues the complete ARB application, review and approval process set forth in Article IX of this Declaration. If the obligation for repair falls upon the Association, the ARB approval will not be required prior to the commencement of such work, so long as the exterior appearance will be substantially similar to that which existed prior to the date of the casualty.

The Owner or Owners of any damaged building, the Association, and the ARB shall be obligated to proceed with all due diligence hereunder and the responsible parties shall commence reconstruction within three (3) months after the damage occurs and complete reconstruction within one (1) year after the damage occurs, unless prevented by causes beyond his or its reasonable control.

Declarant and any Builder shall be exempt from the provisions of this Section, provided that any such reconstruction, rebuilding or repairs made by the Declarant or Builder shall be reasonably consistent, as to the exterior appearance, with the Improvements as they existed prior to the damage or other casualty, unless otherwise approved by the ARB.

**Section 9.05. Interpretation.** From time to time, the Board may make and consistently apply reasonable rules interpreting the provisions of this Article IX to determine which portions of the Property shall be maintained by the Association and which portions shall be maintained by the Owners. Notwithstanding anything in the foregoing to the contrary, the Association shall be responsible for performing, or causing to be performed, all maintenance to the Common Areas.

## ARTICLE X

### STORMWATER MANAGEMENT

#### **Section 10.01. Ownership/Control, Maintenance, and General Use of Stormwater Management System.**

A. The Association owns the Stormwater Management System. The Stormwater Management System is located on land that is designated as Common Area, is located on land that is owned by the Association, or is located on land that is subject to a perpetual easement in favor of the Association and its successors such that the Association has the perpetual right to operate and maintain the Stormwater Management System.

B. The Association shall be responsible for the maintenance, operation and repair of the Stormwater Management System. It is the responsibility of the Association to operate and maintain the Stormwater Management System. Maintenance of the Stormwater Management System(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Stormwater Management System shall be as permitted, or if modified, as approved by the District. If monitoring and/or maintenance of wetland mitigation areas are required by the Permit, the Association, at Common Expense, shall be perpetually responsible for carrying out said monitoring and/or maintenance to complete any necessary or required tasks

successfully, including meeting all conditions associated with said wetland mitigation, maintenance, and monitoring.

C. To the extent not included in the areas required to be maintained by the Association pursuant to Section 10.01(b) above, each Owner shall, at that Owner's expense, grass over, provide routine landscape maintenance, mow and keep free of trash and debris, on a routine basis, those portions of the Stormwater Management System located on or within that Owner's Lot (whether or not included in a platted drainage easement depicted on any recorded Plat), failing which the Association shall perform the required maintenance and may levy an Individual Assessment to cover the costs thereof. Each Owner shall be responsible for the "Maintenance, Operation and Repair" (as that term is defined below) of the swales, if any, on the Owner's Lot, failing which the Association shall perform the required maintenance and may levy an Individual Assessment to cover the costs thereof. The term "Maintenance, Operation and Repair", as used in this Declaration, shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted or required by the Permit or the District. Filling, excavation, or construction of fences, or the existence of anything else that interferes with drainage or otherwise obstructs the surface water flow in the swales is prohibited. No alteration of the swale shall be authorized and any damage to any swale, whether caused by natural or human-induced phenomena, shall be repaired and the swale returned to its former and proper condition as soon as possible by the Owner(s) of the Lot(s) upon which the swale is located, failing which the Association shall perform the required repair and may levy an Individual Assessment to cover the costs thereof.

D. Unless first approved by the ARB and the District, no Owner, including Declarant, may obstruct, alter or in any way modify the method and/or structures of drainage utilized or installed by Declarant or the Association from, on, or across any Lot, Common Area, Areas of Common Responsibility, or any easement area; nor shall any structure or material be erected, placed or maintained which shall in any way obstruct such drainage devices or facilities or impede their efficient operation. No elevation changes shall be permitted on any Lot which materially adversely affects the drainage of or to neighboring Lots or the Common Area, or any Areas of Common Responsibility.

E. It shall be the responsibility of each Owner, at the time of construction of Home or any other structure or building on that Owner's Lot, to comply with the approved construction plans for the Stormwater Management System on file with the District.

F. Fences may only be permitted within drainage easements on an Owner's Lot so long as the fence does not block or impede the flow of water through the drainage easement area. With regard to any fences permitted within drainage easements pursuant to the terms hereof, the Owner of the subject Lot shall be responsible for removal/replacement of the fence or any portion thereof if removal of same is required in connection with any maintenance, repair, construction, or installations concerning the drainage easement area or the Stormwater Management System. Notwithstanding the foregoing, if the Owner of the subject Lot fails to timely remove any such fence or portion thereof, the Declarant, the Association, and any Governmental Authority (including, but not limited to, the District) may remove such fence or portion thereof, in its discretion, without any liability whatsoever to said Owner, whereupon the

fence or portion thereof may be disposed of, and without the party removing the fence or any portion thereof being required to thereafter reinstall or replace said fence or portion thereof.

G. ALL OWNERS ARE HEREBY ADVISED THAT A PERMIT FROM THE DISTRICT WILL BE REQUIRED IF ANY OF THE FOLLOWING ITEMS ARE PROPOSED: (1) ANY ALTERATION TO THE STORMWATER MANAGEMENT SYSTEM; OR (2) ENCROACHMENT INTO THE WETLANDS, WETLAND BUFFERS, OR ADJACENT OFF-SITE PROPERTY LINE BUFFERS.

**Section 10.02. Easements for Access and Drainage.**

A. The Association shall have a perpetual non-exclusive easement over all areas of the Stormwater Management System for access thereto and to operate, maintain or repair the system. By virtue of said easement, the Association shall have the right to enter upon any portion of any Lot which is a part of the Stormwater Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Stormwater Management System as required by the Permit, subject to any maintenance responsibilities assumed by any Governmental Authorities. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Stormwater Management System. No person shall alter the drainage flow of the Stormwater Management System, including buffer areas or swales, without the prior written approval of the Association and the District.

B. Each Owner (including Declarant) shall have a non-exclusive right and easement of use and enjoyment to drain across the Stormwater Management System in accordance with the Permit, District rules, and the Rules and Regulations.

**Section 10.03. Amendment to Declaration.** Any Amendment to this Declaration which alters the Stormwater Management System, beyond maintenance in its original condition, including mitigation or preservation areas and the water management portions of the Common Areas, must have the prior approval of the District. Any proposed Amendment to this Declaration affecting the Stormwater Management System (including environmental conservation areas and the water management portions of the Common Areas) shall be submitted to the District for a determination of whether the Amendment necessitates a modification of the Permit. If a modification is necessary, the District will so advise the Permit's permittee. The Amendment affecting the Stormwater Management System may not be finalized until any necessary Permit modification is approved by the District or the Association is advised that a modification is not necessary.

**Section 10.04. Enforcement.** The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation, and repair of the Stormwater Management System. The District has the right to take enforcement action, including a civil action for an injunction and penalties, against the Association to compel it to correct any outstanding problems with the Stormwater Management System facilities or in mitigation or Conservation Areas under the responsibility or control of the Association.

**Section 10.05. LIABILITY.** NEITHER DECLARANT NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY WHATSOEVER TO OWNERS, GUESTS, TENANTS, OR INVITEES IN CONNECTION WITH THE RETENTION LAKES (IF ANY) AND DRAINAGE FACILITIES OR ANY PART OF THE STORMWATER MANAGEMENT SYSTEM. EACH OWNER, FOR ITSELF AND ITS GUESTS, TENANTS, OR INVITEES, RELEASES DECLARANT AND THE ASSOCIATION FROM ANY LIABILITY IN CONNECTION THEREWITH.

**Section 10.06. Rights of the District.** Notwithstanding any other provisions contained elsewhere in this Declaration, the District shall have the rights and powers enumerated in this paragraph. The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration that relate to the maintenance, operation, and repair of the Stormwater Management System. Any repair or reconstruction of the Stormwater Management System shall be as permitted, or if modified, as approved in writing by the District. No person shall alter the drainage flow of the Stormwater Management System, including any buffer areas, swales, treatment berms or swales, without prior written approval of the District. Any amendment to this Declaration that alters the Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Property, must have prior written approval of the District. In the event that the Association is dissolved, prior to such dissolution, all responsibility relating to the Stormwater Management System must be assigned to and accepted by an entity approved in writing by the District.

**Section 10.07. Indemnity.** Declarant may be required to assume certain duties and liabilities for the maintenance of the Stormwater Management System or drainage system within the Property under the Plat, permits, or certain agreements with governmental agencies. The Association further agrees that subsequent to the recording of this Declaration, it shall hold Declarant harmless from all suits, actions, damages, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising out of any occurrence in, upon, at or from the maintenance of the Stormwater Management System occasioned in whole or in part by any action, omission of the Association or its agents, contractor, employees, servants, or licensees but not excluding any liability occasioned wholly or in part by the acts of the Declarant, its successors or assigns. Upon completion of construction of the Stormwater Management System or drainage system Declarant shall assign all its rights, obligations and duties thereunder to the Association. The Association shall assume all such rights, duties and liabilities and shall indemnify and hold Declarant harmless therefrom.

## ARTICLE XI

### USE RESTRICTIONS

All of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions, and any and all additional rules and regulations which may from time to time, be adopted by the Association:

**Section 11.01. Nuisances.** No obnoxious or offensive activity shall be carried on or about the Lots or in or about any Improvements, Homes, or on any portion of the Community nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to

any Owner. No use or practice shall be allowed in or around the Homes which is a source of annoyance to Owners or occupants of Homes or which interferes with the peaceful possession or proper use of the Homes or the surrounding areas. No loud noises or noxious odors shall be permitted in any Improvements, Homes or Lots. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Owner shall be located, used or placed on any Lot, or exposed to the view of other Owners without the prior written approval of the Board.

### **Section 11.02. Vehicles.**

A. Unless express prior written approval is given by the Board, in the Board's sole and absolute discretion, no commercial vehicle (including, but not limited to, any vehicle operated for the transportation of persons or property in the furtherance of any business, commercial, manufacturing, or industrial enterprise, for-hire, not-for-hire, or otherwise), recreational vehicle (including, but not limited to, personal water craft, all-terrain vehicles, and two-wheeled dirt bike motorcycles), camper, mobile home, motor home, boat, house trailer, boat trailer, or trailer of any other kind or description (collectively, "**Prohibited Vehicle(s)**"), shall be permitted to be parked or to be stored at any place on the Property, unless Declarant designates specifically certain spaces for some or all of the above, in which case Declarant or the Association may change for the use of such spaces. The Board may, but is not required to, allow boats or other recreational vehicles or Prohibited Vehicles to be parked on a Lot behind an ARB-approved fence or wall which totally screens said boat or other recreational vehicle or Prohibited Vehicle from the view of all Streets and adjacent Homes. Provision for temporary visitation of Prohibited Vehicles may be established by the Board. The foregoing prohibition of parking shall not apply to temporary parking of commercial Prohibited Vehicles, such as for pick-up and delivery and other bona fide temporary commercial services being delivered or provided to a Lot or Home, nor to Prohibited Vehicles which are stored within a Home's closed garage, nor to any Prohibited Vehicles of Declarant or its affiliates, or to any Builder, or to building contractor designated by Declarant in writing from time to time. Marked or unmarked police cars and other municipal vehicles are specifically excluded from the definition of Prohibited Vehicles.

B. No vehicle, regardless of whether it would otherwise be permitted to be parked on any Lot or other part of the Property, shall be permitted to be parked on any Lot (unless permanently in a garage) or other part of the Property if such vehicle is not fully functioning and operational, currently registered by the State of Florida or another U.S. state, and currently tagged (with a license plate affixed in the proper place(s) on said vehicle) by the State of Florida or such other U.S. state in which the vehicle is registered.

C. All vehicles must be parked on surfaces designed for vehicle parking (e.g. parking areas or lots and driveways) and shall not in any event be parked on individual lawns or the grass of any Common Areas. Vehicles shall not be parked in a manner which would block fire hydrants, dumpsters, sidewalks or pedestrian or bicycle paths.

D. No Owner or other occupant of the Community shall repair or restore any vehicle of any kind upon or within the Community, except for: (i) emergency repairs and then only to the

extent necessary to enable the movement thereof to a proper repair facility; or (ii) repairs completed within the garage (in which case no garage doors shall be left open overnight or at any other time when the subject vehicle is not actually being worked on or repaired).

E. Inoperable vehicles (e.g. missing major components such as engines and/or transmissions, one or more flat tires, etc.), or derelict vehicles (e.g. broken glass, severely damaged body panels, unpainted body panels, etc.) must be fully enclosed within a closed garage at all times, and in any case may not be parked in plain view.

F. As long as the provisions of Florida Statutes, Section 715.07, are complied with, any vehicles parked in violation of the aforementioned or other restrictions contained herein, or in violation of any Rules and Regulations, may be towed by the Association at the sole cost and expense of the owner of such vehicle, if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle or the owner thereof is otherwise notified. The Association shall not be liable to the owner of such vehicle for trespass, conversion, or otherwise, nor guilty of any criminal or civil act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner thereof to receive it for any other reasons, shall be grounds for relief of any kind. An affidavit of the person posting such notice on any vehicle stating that it was properly posted shall be conclusive evidence of proper posting.

G. All powered vehicles capable of exceeding five (5) miles per hour are prohibited from use on Property unless they are licensed, registered, and insured. Specifically, any motorcycle, moped, or motorized scooter used in the Community may only be driven by a licensed driver, and must be registered and insured in accordance with Florida law. Specifically exempted from this regulation are electric personal assistive mobility devices as defined under Florida Statutes, Section 316.003(83); and any other bona-fide "assistive technology devices" as defined in Florida Statutes, Section 427.802(1); and any special mobile equipment as defined under Florida Statutes, Section 316.003(48) provided that such equipment may not be operated in a manner that creates a traffic hazard, or which poses a threat of harm to the user of such equipment.

H. No person, firm or corporation shall maintain or repair any vehicle (including, but not limited to, four wheel passenger automobiles) upon any portion of the Property except within a closed garage and totally isolated from public view; provided, however, Declarant its successors, nominees or assigns and the Association may make, or cause to be made, such repairs if necessary in regard to vehicles used in connection with construction, sales or management at the Community. Vehicles which are missing one or more wheels, have one or more deflated tires, are not in an operating condition, or do not have current valid license plates shall not remain upon any portion of the Property, except within a wholly enclosed garage fully shielded from view, for more than two (2) consecutive days. No Owner or his or her family members, guests, invitees or lessees or their family members, guests, or invitees shall be permitted to keep any vehicle on the Property which is deemed to be a nuisance by the Association or Declarant.

**Section 11.03. No Improper Use.** No improper, offensive, hazardous or unlawful use shall be made of any Home nor shall anything be done thereon tending to cause embarrassment,

discomfort, annoyance or nuisance to any person using any portion of the Property. No activity shall be conducted in any Home that involves the production or distribution by any means, whether electronic or otherwise, of pornographic, adult, nude or sexually oriented or explicit materials, content or entertainment. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover relating to any Home or Lot shall be corrected by, and at the sole expense of, the Home's or Lot's Owner.

**Section 11.04. Flags.** An Owner may display one portable, removable United States flag in a respectful manner, and one portable, removable official flag in a respectful manner, not larger than 4½ feet by 6 feet, that represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. An Owner may erect a freestanding flagpole no more than 20 feet high on any portion of the Owner's Lot if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The Owner may further display in a respectful manner from that flagpole, one official United States flag, not larger than 4½ feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the County and all setback and locational criteria contained in this Declaration.

**Section 11.05. Window Decor.** No newspaper, aluminum foil, sheets or other temporary window treatments shall be permitted, except for periods not exceeding two (2) weeks after an Owner or a lessee first moves into a Home or when permanent window treatments are being cleaned or repaired. Window tinting is permitted provided that the type and method of tinting is first approved by the ARB.

**Section 11.06. Animals and Pets.** Only common domesticated household pets may be kept on any Lot or in a Home, but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, reptiles or poultry of any kind shall be kept, raised, bred or maintained on any portion of the Property. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Board. Under no circumstances may a pet that is dangerous or has been known to cause strict liability to the owner be permitted on the Property. Any pet must be carried or kept on a leash when outside of a Home or fenced-in area. No pet shall be kept tied up outside of a Home or in any screened porch or patio, unless someone is present in the Home. An Owner shall immediately pick up and remove any solid animal waste deposited by his or her pet on the Property. An Owner is responsible for the cost of repair or replacement of any Association Property damaged by his or her pet. Each Owner who determines to keep a pet thereby agrees to indemnify the Association and Declarant and hold them harmless against any loss or liability of any kind or character whatsoever arising from or growing out of his or her having any animal on the Property.

**Section 11.07. Wildlife.** SUBSTANTIAL WILDLIFE EXISTS WITHIN THE COMMUNITY, INCLUDING, BUT NOT LIMITED TO, GOPHER TORTOISES, ALLIGATORS,

ARMADILLOS, FISH, SNAKES, SQUIRRELS, AND RACCOONS. SUCH WILDLIFE MAY EXIST BOTH IN AREAS DESIGNATED AS SPECIAL PRESERVATION AREAS AND THROUGHOUT THE COMMUNITY, SOME OF WHICH WILDLIFE MAY BE DANGEROUS. NO OWNERS, RESIDENTS, OR THEIR GUESTS SHALL HARASS, HARM, PURSUE, HUNT, SHOOT, WOUND, KILL, TRAP, FEED, CAPTURE, OR COLLECT ANY WILDLIFE WITHIN THE COMMUNITY. FISHING ACTIVITIES UNDERTAKEN CONSISTENT WITH THIS DECLARATION SHALL BE EXEMPT FROM THIS PARAGRAPH.

**Section 11.08. On-Site Fuel Storage.** No on-site storage of gasoline or other fuels shall be permitted on any Lot, except that up to five (5) gallons fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment. Propane tanks normally associated with outdoor barbecue grills are permitted above-ground. This restriction is designed to reduce environmental risks associated with fuel storage and to minimize the hazards associated with on-site fuel storage.

**Section 11.09. Water Supply.** No individual water supply system shall be permitted on any of the Property, provided that one or more central water supply systems are being operated in accordance with requirements of the governmental body having jurisdiction over said central system, except that wells are permitted for the irrigation of landscaping only, provided that a method of stain reduction is utilized in conjunction with the irrigation well.

**Section 11.10. Additions and Alterations.** No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any improvement, addition, or alteration to the exterior of his Home, including, without limitation, the painting, staining, or varnishing of the exterior of the Home, including doors, garage doors, driveways and walkways, without the prior written approval of (i) the ARB as set forth in Article VIII of this Declaration, which approval may be withheld for purely aesthetic reasons, and (ii) all applicable governmental entities.

**Section 11.11. Weapons.** The use and discharge of weapons within the Community is prohibited. The term "weapons" includes bows and arrows, slingshots, "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

**Section 11.12. Increase in Insurance Rates.** No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

**Section 11.13. Slopes and Trees.** No Owner may engage in any activity which will change the slope or drainage of a Lot. No additional trees are permitted to be planted on the Property without the prior written consent of Declarant for as long as Declarant owns a Lot, and thereafter without the prior written consent of the ARB.

**Section 11.14. Signs.** No signs, advertisements, billboards, solicitation or advertising structures or materials of any kind shall be displayed or placed upon any Lot (including within any window) without the prior written approval of the ARB. Notwithstanding the foregoing, the following shall be permitted without prior approval of the ARB: (i) street number and name signs; and (ii) one (1) professionally made, non-digital, non-electric (or otherwise illuminated)

sign constructed of metal or wood, installed on one wooden 4" by 4" post, and of not more than eight (8) square feet of surface area per side (2 sides maximum), containing no handwriting whatsoever, and used solely in connection with the marketing of the affected Lot for sale or lease. Wire-stake signs, commonly known as "H-Frame" or "U-Frame" signs, are expressly prohibited. The ARB shall have the right to establish guidelines so as to require a uniform standard for signs in the subdivision. Additionally, an Owner may display a sign of reasonable size provided by a contractor for security services provided that said sign is located no more than ten (10) feet from any entrance to a Home. Declarant or the Association may enter upon any Lot and remove and destroy any sign which violates this Section 11.14. This Section 11.14 shall not apply to Declarant or to any Builder doing business in the Property provided that any such Builder first obtains Declarant's written approval of any such signs structures or materials prior to installing same, such approval to be granted, conditioned or denied by Declarant in Declarant's sole and absolute discretion.

**Section 11.15. Trash and Other Materials.** No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on the Lots and/or Association Property, or other portions of the Property, except in sanitary, self-locking containers located in appropriate areas, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, offensive, detrimental or a nuisance to Owners or to any other Property in the vicinity thereof or to its occupants. No clothing or other household items shall be hung, dried, or aired in such a way as to be visible from the Association Property or another Lot. No stripped vehicles, lumber or other building materials, grass, tree clippings, metals, scrap, automobile pieces or parts, refuse, or trash shall be stored or allowed to accumulate on any portion of the Property (except when accumulated during construction by Declarant, during construction approved by the ARB, or when accumulated by the Association for imminent pick-up and discard).

**Section 11.16. Clotheslines.** Unless otherwise permitted by applicable law and only to the extent permitted therein, no clothesline or clothes drying which is visible from outside a Lot shall be undertaken or permitted on any portion of the Community.

**Section 11.17. Garages.** No garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage space and no garage opening shall have a screen covering without the consent of the Association. All garage doors shall remain closed when vehicles are not entering or leaving the garage.

**Section 11.18. Temporary Structures.** No tent, shack, shed or other temporary building or Improvement, other than separate construction and sales trailers to be used by Declarant, its agents and contractors, for the construction, service and sale of the Community or other communities, shall be placed upon any portion of the Property, either temporarily or permanently. No trailer, motor home or recreational vehicle shall be: (i) used as a residence, either temporarily or permanently, or (ii) parked upon the Property.

**Section 11.19. Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, boning or mining operations of any kind shall be permitted upon or on any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No

derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

**Section 11.20. Subdivision and Partition.** No Lot on the Property shall be subdivided without the ARB's prior written consent except by Declarant.

**Section 11.21. Sewage Disposal.** No individual sewage disposal system shall be permitted on any part of the Property, provided that a central sewage disposal system is being operated in accordance with the requirements of the governmental regulatory body having jurisdiction over said central system.

**Section 11.22. Fences.** Any fence placed upon any Lot must be approved by the ARB, as provided in Article VIII hereof, prior to installation. In no event may a fence be placed in the area between the front of a Home and the Street, at the front of the Lot on which the Home is situated. The Owner assumes complete responsibility to maintain the fence, including, but not limited to, trimming any grass, ivy or other plants from the fence. In the event the ARB approves the installation of a fence, it shall also have the right to require installation of landscaping, also subject to the ARB's approval, at the time the fence is installed.

Notwithstanding that an Owner has obtained the approval of the ARB to install a fence or landscape materials, as provided hereinabove, such installation shall be at the Owner's sole risk so long as Declarant has not yet begun or is engaged in the construction of a Home on an adjacent Lot. In the event such construction activity on an adjacent Lot causes damage to or destruction of such Owner's fence or landscape materials or any part thereof, the Owner on whose Lot the fence and/or landscaping has been damaged shall be required, at the Owner's expense, to repair or replace such fence and/or landscape materials in conformance with the requirements of the ARB's approval of the initial installation of the fence and/or landscape materials and Declarant shall have no liability for any such damage or destruction. Such repair or replacement shall commence as soon as construction on the adjacent Lot has been completed and shall be pursued with due diligence. For purposes of this paragraph, the term "**landscape materials**" shall include landscape materials located on or adjacent to any Property line of a Lot, including, by way of example and not of limitation, hedges, shrubs and trees, whether or not associated with a fence.

In addition, the installation of any fence placed upon any Lot is subject to easements which run with the land. In the event the grantee of any such easement which runs with the land (*e.g.* a utility provider), its successors and/or assigns, requires the removal of any fence upon the Lot, then the Owner of said Lot shall, at the Owner's sole cost and expense, immediately remove the fence. The Owner of a Lot in installing any fence upon the Lot shall comply with all valid laws, zoning ordinances and regulations of the city and County governmental bodies, as applicable, in addition to the ARB approval required by Article VIII hereof.

**Section 11.23. Exterior Electronic or Electric Devices; Solar Panels.**

A. No exterior antennas and no citizen band or short wave antennas or satellite dishes in excess of one meter in diameter shall be permitted on any Lot or Improvement thereon, except that Declarant and its affiliates shall have the right to install and maintain community

antenna, microwave antenna, dishes, satellite antenna and radio, television and security lines. The location of any approved satellite dish must be approved by the ARC, which may require appropriate screening; provided, however, that the satellite dish shall be allowed in the least obtrusive location where the satellite signal may be received.

B. No solar heating equipment, panels, collectors, or devices ("**Solar Equipment**") is permitted on or outside of any enclosed structure on any Lot, except such Solar Equipment whose installation and use is protected by U.S. federal or Florida law including, but not limited, by Florida Statutes, Section 163.04. Notwithstanding such protection, for aesthetic purposes, and to the maximum extent permitted by Florida Statutes, Section 163.04, the location, type, and design of all Solar Equipment must be approved by the ARC prior to installation and use of same, which approval, if granted, may require landscape or other screening, in the ARB's determination and reasonable discretion. An application for use and installation of such Solar Equipment must be submitted for approval to the ARC prior to installation and approval and will be granted only if: (i) such Solar Equipment is designed for minimal visual intrusion when installed (i.e., is located in a manner which minimizes visibility from all Streets and adjacent Lots); and (ii) the Solar Equipment complies to the maximum extent feasible with the ARB's requirements and the Planning Criteria. Without limiting, and in addition to the foregoing, Declarant or the ARB may determine the specific location where solar collectors may be installed on the roof of any Home or building within an orientation to the south or within forty five (45) degrees east or west of due south if such determination does not impair the effective operation of the solar collectors.

**Section 11.24. Excavation.** No clearing or excavation shall be made except incident to construction, maintenance or repair of an ARB approved Improvement (or by Declarant or in connection with development of the Property) and must be in accordance with the Permit; and upon completion thereof exposed openings shall be back-filled, and disturbed ground shall be leveled, graded and covered with sod or seeded in accordance with the approved Plans and the Permit.

**Section 11.25. Yard Accessories and Play Structures.**

A. Except as otherwise required by Law, all yard accessories and play structures, including basketball hoops or backboards and any other fixed games, shall be located at the side or rear of the Home, except that, in the case of Home(s) on corner Lots, such accessories and structures shall be restricted to the side yard furthest from the side Street and to that portion of the rear yard which is no closer to the side Street than a fence would be permitted to be located by the Governmental Authorities. The location of any play structure or permanent basketball structure shall be approved by the ARB prior to location of the structure on a Lot. Basketball structures, either permanently mounted to a Home above the garage or mounted to a permanent pole, will be allowed only under the following conditions:

- (1) basketball hoops and structures must be well-maintained;
- (2) backboards must be transparent or white, NBA approved, with a limit of two colors of trim;

- (3) nets are limited to white nylon;
- (4) the location of the basketball hoop and structure must first be approved by the ARB;
- (5) If pole-mounted, the pole must be metal, either black or galvanized and permanently mounted into the ground with a concrete base; and
- (6) No permanent basketball structures may be placed in any side yard.

Temporary basketball structures are allowed provided that they meet the requirements of items (a) through (c) above. Temporary basketball structures shall be placed in the garage or laid down behind a fence when not in use so as not to be seen from the Streets or neighboring Lots. The time of play of basketball may be limited by the Board or the ARB to reasonable daylight hours.

- (7) Tree houses are prohibited within the Community.
- (8) The ARB may regulate the size and number (which could be zero) of permitted decorative statues or figures, birdbaths, bird houses, lawn ornaments and other yard art.

**Section 11.26. Pools.** Swimming pools may not be located in the front or side yard of any Lot, nor nearer than Home to any side Street lot line. Swimming pools, spas, hot tubs, decks, screens, screen enclosures, lanais, etc. (collectively, "**Pool Improvements**"), shall be designed to be compatible and "tie in" with the architecture and material of the subject Home. Screen enclosures and lanais shall be a maximum of one (1) story in height (unless building architecture, as determined by the ARB, requires two (2) stories in height). Tree protection barricades shall remain throughout construction of all Pool Improvements. All swimming pools shall be constructed and built at existing grade unless otherwise expressly approved by the ARB. All Pool Improvements construction shall, at all times, be in accordance with all applicable laws. In no event shall any above-ground swimming pool be permitted within the Community. All swimming pool materials, equipment, and play toys stored on any Lot shall be screened from view from outside the Lot. Swimming pool security fencing and screen enclosures shall be installed subject to applicable hurricane standards within the Florida Building Code or other applicable jurisdictional codes. No Pool Improvements may be constructed, erected, or maintained upon any Lot without the prior written approval of the ARC. No Pool Improvements shall be permitted on any Villa Lot.

**Section 11.27. Use; Rentals; Timesharing.**

A. Lots shall be used for single family residential purposes only. No trade, business, profession, occupation or other commercial activity or use shall be conducted on any Lot or within any Home, provided, however, that an Owner or lawful tenant of a completed Home may use a single room within the Home as an office for conducting business as long as the business: (i) does not involve or require regular visitation of the Lot or Home by clients, customers, suppliers, service providers, or other business invitees, or door-to-door solicitation within the Community; (ii) does not include the manufacture or distribution of any products or goods in the

Home or on or from the Community; (iii) is not apparent or detectable by sight, sound, or smell from outside the Home; (iv) complies with applicable land use and zoning requirements; (v) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Community, as determined from time to time in the Board's sole discretion; and (v) is not a daycare facility, child care facility, or assisted living/hospice facility. No signs shall be placed on any Home or Lot which identifies the Home or Lot as a place of business. For purposes of this Section, "**(B)usiness**" shall have its ordinary, customary, generally accepted meaning and shall include, without limitation, any occupation, work, trade, or activity undertaken from time to time or on an ongoing basis which involves providing goods or services to persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of monetary or non-monetary consideration, regardless of whether: (A) such activity is engaged in full or part-time; (B) such activity is intended to or does generate a profit; or (C) a license is required. This Section shall not apply to restrict Declarant's or Declarant's affiliates' activities, nor shall it restrict the activities of persons or entities Declarant approves with respect to the development and marketing/sale of property within the Community. This Section also shall not apply to Association activities related to the provision of services or to operating and maintaining the Community, including the Community's recreational and other amenities. Leasing a Home is not a "business" within the meaning of this Section. Temporary uses of Lots by Declarant and its affiliates or assigns (including Builders as may be designated by Declarant from time to time) for model homes, sales displays, parking lots, sales offices, and other offices or uses, or any one or combination of the foregoing, shall be permitted until permanent cessation of such uses takes place. No changes may be made in buildings or structures erected by Declarant or its affiliates (except if such changes are made by Declarant) without the consent of Declarant and the ARB as provided herein.

B. Owners shall be permitted to lease their Home, provided that such lease shall require the tenant thereunder to comply with the Governing Documents and the terms and conditions of the Rules and Regulations. "Short-Term Rentals" (as that term is defined below) of Homes are prohibited. For purposes of this Declaration, the term "**Short-Term Rentals**" shall mean and refer to the leasing or rental of any Home or Lot to a person or entity for a period of less than seven (7) consecutive months. Should an Owner enter into a lease or rental agreement, and said lease or rental agreement shall terminate or expire earlier than stated therein, then Owner may only enter into one more lease or rental agreement in the calendar year in which the previous lease or rental agreement terminated or expired. The subleasing or sub-renting of a Home is subject to the same requirements and limitations as are applicable to the leasing or renting thereof. If an Owner intending to lease or rent a Home is delinquent in the payment of Assessments, the Association shall be entitled, but not required, to prohibit the Owner from renting or leasing the Home until such delinquency is made current. From time to time, the Association may reserve the right to approve of any form of lease that an Owner wishes to use, or otherwise require inclusion in a lease of certain provisions that the Association may deem necessary or appropriate to assure the tenant's compliance with all the terms and provisions of the Governing Documents and the Rules and Regulations. The Association may charge a reasonable administrative fee not to exceed One Hundred and No/100 Dollars (\$100.00) for the required review of any lease or rental agreement, or other such amount as permitted by law from time to time. Homes shall be leased in their entirety, and no individual rooms may be leased.

C. No time sharing plan (as defined in Chapter 721, Florida Statutes, as may be amended from time to time), or any similar plan of fragmented or interval ownership of Homes shall be permitted. De facto timesharing of a Home shall not be permitted. By way of example but not limitation, de facto timesharing shall include use of a Home by multiple persons, such as siblings or business associates, who intend that they and their families would split occupancy of the Home into different periods for use during the year.

**Section 11.28. Tree Removal and Landscaping.** Except if done by Declarant, trees measuring six inches (6") or more in diameter at three feet (3') or more above ground level shall not be cut or removed without the prior written consent of the ARB; provided, however, if approved by the ARB, trees located within six feet (6') of the location of the Home may be removed, regardless of size, without prior approval of the ARB. More restrictive arbor ordinances or environmental laws shall control in the event of conflict herewith. There shall be no removal of trees or Lot clearing, other than clearing of underbrush, until the ARB has approved in writing a general, conceptual landscape plan that designates those existing trees to be retained and preserved on the Lot. All Lots shall have fully sodded front and side lawns using St. Augustine Grass (i.e., *Stenotaphrum Secundatum* "Floratom" or a similar variety) except in approved landscape or retained natural areas, or as otherwise installed by Declarant or permitted by the ARB. All areas of each Lot not covered by building improvements or included within approved gardens and natural areas within the Lot shall be sodded prior to occupancy of the Home on that Lot. Unless prohibited by Law, natural areas shall be finished by removal of underbrush and addition of mulch. Notwithstanding anything contained herein to the contrary and unless done so by Declarant, prior to Turnover no tree, regardless of size, shall be removed without prior written consent of the ARB.

**Section 11.29. Homes.**

A. No Home shall contain less than the minimum square footage required by the Local Government, nor greater than the maximum square footage permitted by the Local Government.

B. Each Home shall have an attached fully enclosed garage capable of housing not less than one (1) standard sized automobile, which shall not be enclosed for use as a living area.

C. Setbacks for Homes shall be as permitted by the Local Government.

D. No Home shall exceed two (2) stories in height.

E. No Home shall have exposed structural block on its front elevation.

F. All driveways shall be constructed of solid concrete or decorative pavers approved by the ARB.

G. Except as may otherwise be provided herein (if at all) with regard to central air conditioning compressor units, all oil tanks, soft water tanks, wood piles, water softeners, well pumps, sprinkler pumps, pool and spa equipment and heaters, and other or similar mechanical fixtures and equipment, shall be screened or located so as not to be visible from a Street or other Lot.

H. Unless installed by Declarant or the Association, the following fence materials are expressly prohibited: (a) metal, other than decorative aluminum; (b) plastic, other than PVC which is tan in color; (c) fabric of any type; (d) wood of any type; (e) bamboo; or (f) chain link.

**Section 11.30. Mailboxes.**

A. Community mailboxes may be provided by the United States Postal Service (“**USPS**”) and individual mailboxes on each Lot shall be prohibited while community mailboxes are utilized by the U.S. Post Office. If community mailboxes are not provided, each Owner shall install a U.S. Postal Service-approved mailbox, the color, style and design of which shall be subject to approval by the ARB. All individual mailboxes shall be mounted on a 4” X 4” vertical post with a supporting bracket installed at a 45 degree angle to the post. Except for identifying numbers and letters, the mailbox shall be painted solid black and the post and support shall be painted solid white.

B. Notwithstanding the foregoing, in connection with the development of the Community, should: (a) the USPS require the use of cluster box units approved by the USPS (“**CBUs**”) for the purpose of centralized mail delivery by the USPS (“**Centralized Mail Delivery**”) to the Community or any part, Section, or phase thereof; (b) any other Governmental Authority requires the use of CBUs for Centralized Mail Delivery to the Community or any part, Section, or phase thereof; or (c) Declarant, in its sole discretion, desires to develop the Community or any part, Section, or phase thereof with CBUs for Centralized Mail Delivery, then the Community or the applicable part, Section, or phase thereof shall be developed with concrete slabs on, as applicable, Common Property or Limited Common Property to accommodate the subject CBUs. Unless otherwise undertaken by the USPS from time to time, the Association, as determined necessary by the Board, and, as applicable, at Common Expense or Limited Common Property Expense, shall be responsible for the routine maintenance, repair, and replacement of the aforementioned concrete slabs and all CBUs, all in accordance with any applicable requirements, rules, policies, and guidelines of the USPS. Notwithstanding the foregoing, neither Declarant nor the Association shall ever be responsible for the safety or security of any CBUs or any mailboxes or parcel compartments contained therein. Each Owner and Member acknowledges and agrees that if at any time their Lot is or becomes serviced by CBUs, all mail delivery to said Lot by the USPS will be done via the mailboxes or parcel compartments contained within the CBUs, as opposed to individual, curbside mailboxes for said Lot.

**Section 11.31. Exterior Lighting.** Except as may be installed initially by Declarant, no spotlights, seasonal and special effect lighting, floodlights or similar high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the Improvements thereon or upon any Common Area, or any part thereof without the prior written approval of the ARB and in accordance with the Planning Criteria and the Rules and Regulations. Low intensity lighting which does not disturb the Owners or other occupants shall be permitted.

**Section 11.32. Approved Builders.** All development, construction, and reconstruction of any Home or other Improvements on or about a Lot shall be performed by a Builder approved by Declarant, or by another licensed residential building contractor approved by Declarant or the ARB (after Turnover).

**Section 11.33. Construction Requirement.**

A. Construction and completion of any and all Improvements shall be performed and completed by Owner at its sole cost and expense in substantial conformance, in all material respects, with the plans approved by the ARB.

B. For purposes of this Section, “**Completion of Construction**” shall have occurred only upon the satisfaction of the following conditions: (i) the Improvements, including, without limitation, all equipment, fittings and fixtures and all exterior painting, landscaping, patios and driveways required to be installed pursuant to the approved Plans, shall have been substantially completed and installed in substantial conformance, in all material respects, with the approved Plans therefore, as certified by the architect, engineer, or architectural or engineering firm responsible for the creation of the approved Plans; (ii) permanent certificate(s) of occupancy for the Improvements shall have been issued by the appropriate Governmental Authorities to Owner, and a copy thereof delivered to Declarant, and all other certificates, licenses, permits, authorizations, consents and approvals necessary for the full use and occupancy of the Improvements for their intended purposes shall have been issued by the appropriate Governmental Authority to Owner, and a copy thereof delivered to Declarant; and (iii) Owner shall have caused to be delivered to Declarant a written certificate from its architect or engineer (the “**Completion Certificate**”) to the effect that the construction of the Improvements, including, without limitation, all equipment, fittings and fixtures required to be installed pursuant to the approved Plans, have been substantially completed and installed in substantial conformance, in all material respects, with the approved Plans and in accordance with all applicable laws relating to the construction of the Improvements, and that direct connection has been made to all abutting public utilities (including water, electricity, storm and sanitary sewer and telephone).

C. For purposes of this Section, “**Commencement of Construction**” or “**Commence Construction**” shall mean that: (a) a building permit has been issued for the Home by the appropriate jurisdiction; (b) construction of the Home has physically commenced beyond site preparation; and (c) the Home’s slab and foundation have been inspected.

**Section 11.34. Compliance with Documents.** Each Owner and their family members, guests, and invitees shall be bound by and abide by the Governing Documents. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual’s presence within the Community. Such Owner shall be liable to the Association and shall pay the cost of any maintenance, repair or replacement of any real or personal property located on the Property rendered necessary by his or her act, neglect or carelessness, or by that of any other of the foregoing parties as an Individual Assessment.

**Section 11.35. Board’s Rule Making Power.** The foregoing use restrictions shall not be deemed to be all inclusive nor restrict the right of the Association to adopt such reasonable rules and regulations governing the use of the Community as the Board may determine from time to time, provided that such rules and regulations: (i) are not in conflict with the provisions hereof; (ii) apply equally to all lawful residents of the Community without discriminating on the basis of whether a Home is occupied by an Owner or his or her lessee; and (iii) for so long as Declarant

holds any Homes within the Community for sale in the ordinary course of its business, have the prior written approval of Declarant. Declarant has the right to approve any rule or modification thereof.

**Section 11.36. No Implied Waiver.** The failure of the Association or Declarant to object to an Owner's or other party's failure to comply with the covenants or restrictions contained herein or any other Governing Document (including the rules now or hereafter promulgated) shall in no event be deemed a waiver by Declarant or the Association or of any other party having an interest in the Property of its right to object to same and to seek compliance in accordance with the provisions of the Governing Documents.

**Section 11.37. Declarant and Builder Exemption.** Declarant and Builders plan to undertake the work of constructing Homes and Improvements upon the Property and may undertake the work of constructing other buildings upon adjacent land or other Property being developed or marketed by Declarant or its affiliates. The completion of that work and the sale, rental and other transfer of Homes is essential to the establishment and welfare of the Property as a residential community. In order that such work may be completed and a fully occupied community established as rapidly as possible, neither the Owners, the Association, nor the ARB shall do anything to interfere with Declarant's and/or Builder's activities. The Declarant and Builder are exempt from the use restrictions provision, conditions and terms set forth in Sections 11.01, 11.02, 11.04, 11.5, 11.08, 11.09, 11.10, 11.13, 11.14, 11.15, 11.17, 11.18, 11.20, 11.22, 11.24, 11.28, 11.29(B), and 11.33(B) for any Lot which is subject Declarant or Builder construction activity related to the construction of Improvements on the Lots, or other Lots in the Community, and for any Lot or Home on any Lot which is being held for sale or used by Declarant or a Builder for any sales, marketing, construction or related Declarant or Builder activity

## ARTICLE XII

### DAMAGE OR DESTRUCTION TO ASSOCIATION PROPERTY

Damage to or destruction of all or any portion of the Association Property shall, notwithstanding any provision in this Declaration to the contrary, be handled as follows:

A. If insurance proceeds are sufficient to effect total restoration of damaged or destroyed Association Property, then the Association shall cause such Association Property to be repaired and reconstructed substantially as it previously existed.

B. If insurance proceeds are insufficient to effect total restoration, and the cost of restoration exceeds such proceeds by Twenty-Five Thousand Dollars (\$25,000.00) or less, then the Association shall cause the Association Property to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment proportionately against each of the Lots in accordance with the provisions of Articles VII and VIII herein.

C. If the insurance proceeds are insufficient to effect total restoration and the cost of restoration of the Association Property exceeds said proceeds by over Twenty-Five Thousand

Dollars (\$25,000.00), then by the written consent or vote of a majority of the voting interests, they shall determine whether: (a) to rebuild and restore either: (i) in substantially the same manner as the Improvements existed prior to the damage or destruction; or (ii) in a manner less expensive, and in the event of (i) or (ii) to raise the necessary rebuilding and restoration funds by levying pro rata restoration and construction Special Assessments against all Lots; or (b) to not rebuild and to retain available insurance proceeds. In the event it is decided that the damaged or destroyed Association Property shall not be rebuilt, the remains of any structure or structures shall be torn down and hauled away, so as not to be a safety hazard or visual nuisance, and the land shall be fully sodded with grass and landscaped or otherwise treated in an attractive manner. Notwithstanding anything contained herein to the contrary, any decision not to rebuild or to rebuild in a manner which would result in a change in the Improvements on the Association Property shall not be effective without the prior written approval of Declarant as long as Declarant owns any portion of the Property.

D. Each Owner shall be liable to the Association for any damage to the Association Property not fully covered or collected by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, lessees, invitees and guests, both minors and adults.

E. In the event that the repairs and replacements were paid for by any Special Assessments as well as insurance proceeds and regular Assessments, then, if after the completion of and payment for the repair, replacement, construction or reconstruction there shall remain any excess in the hands of the Association, it shall be presumed that the monies disbursed in payment of any repair, replacement, construction and reconstruction were first disbursed from insurance proceeds and regular Assessments and any remaining funds shall be deemed to be the remaining Special Assessments which shall be returned to the Owners by means of a pro rata distribution in accordance with the collection of such Special Assessments.

### ARTICLE XIII

#### INSURANCE AND CONDEMNATION

**Section 13.01. Association Insurance.** The Association shall purchase and maintain the following insurance coverages subject to the following provisions, and the cost of the premiums therefor shall be a part of the Common Expenses:

A. **Casualty Insurance.** Property and casualty insurance in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all Improvements and personal property which are owned by the Association and now or hereafter located upon the Association Property, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Association Property in developments similar to the Community in construction, location and use.

B. **Public Liability Insurance.** A comprehensive policy of public liability insurance naming the Association and, until completion of construction of a Home on each Lot located within the Property, Declarant as named insureds thereof insuring against any and all claims or

demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance and use of the Association Property and any Improvements located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000.00) for damages incurred or claimed by any one person for any one occurrence; not less than Three Million Dollars (\$3,000,000.00) for damages incurred or claimed by more than one person for any one occurrence; and for not less than Fifty Thousand Dollars (\$50,000.00) Property damage per occurrence with no separate limits stated for the number of claims. The Association may also obtain worker's compensation insurance and other liability insurance including, but not limited to, insurance for lawsuits related to employment contracts in which the Association is a party, as it may deem desirable.

C. **Fidelity Coverage.** Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Board and all others who handle and are responsible for handling funds of the Association shall be maintained in the form of fidelity bonds, which requirements shall be reasonably determined by the Board.

D. **Directors' Coverage.** Adequate directors' and officers' liability coverage, which coverage shall be effective from and after the date the Association is created.

E. **Other Insurance.** The Board may obtain such other forms of insurance as the Board may determine and in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Association Property and any Improvements now or hereafter located thereon or in the best interests of the Association and/or its Officers and Directors.

F. **Cancellation or Modification.** All insurance policies purchased by the Association shall provide that they may not be canceled (including for nonpayment of premiums) or substantially modified without it least ten (10) days' prior written notice to the Association and to each first mortgage holder, if any, named in the mortgage clause.

G. **Flood Insurance.** If determined appropriate by the Board or if required by an Institutional Mortgagee, a master or blanket policy of flood insurance covering the Association Property, if available under the National Flood Insurance Program, shall be purchased, which flood insurance shall be in the form of a standard policy issued by a member of the National Flood Insurers Association, and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available under such program, or one hundred percent (100%) of the current replacement cost of all buildings and other insurable Property located in the flood hazard area.

H. **Condemnation.** In the event the Association receives any award or payment arising from the taking of any Association Property or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and Improvements thereon to the extent deemed advisable by the Board and approved by at least two-thirds (2/3) of the total voting interests, and the remaining balance thereof, if any, shall then be distributed pro rata to Owners and mortgagees of Lots as their respective interests may appear.

I. **Waiver of Subrogation.** As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement of said persons, but only to the extent that such insurance proceeds are received in compensation for such loss.

**Section 13.02. Individual Insurance.** By virtue of taking title to a Lot, each Owner (other than Declarant) covenants and agrees with all other Owners, and with the Association, that each Owner shall carry, at minimum full replacement cost Home protection with building structure replacement cost method extended limits. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising its Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. Said Owner shall pay any costs of repair or reconstruction which is not covered by insurance proceeds. In the event that the structure is totally destroyed, said Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the terms hereof, any Rules and Regulations, and all applicable law. Assessments shall still apply to and be levied against any Lot cleared and thereafter maintained pursuant to the provisions of this Section. Any such cleared Lot shall still, at all times, continue to be responsible for payment of full Assessments, regardless of the fact that the Lot and Owner may not benefit from maintenance and other services otherwise provided by the Association to occupied or improved Lots.

**Section 13.03. Insurance Premiums.** Premiums for all insurance obtained by the Association pursuant to Section 13.01 shall be at Common Expense, and premiums for all insurance obtained by the Association pursuant to Section 13.04 shall be a Villa Assessment. The Association, in its discretion, if permitted by law, may elect to self-insure against any risk.

**Section 13.04. Insurance and Casualty Losses.**

A. **Association Policy.** In addition to the other insurance required to be carried by the Association pursuant to the terms hereof, the Association shall obtain and maintain in full force and effect a policy or policies of property insurance insuring the structures of the Villa Buildings, including the internal structure of the Party Walls, for their full insurable value, if and to the extent such insurance is available in the State of Florida, with a company holding a BEST's rated "A" or better, if feasible. Such policy is referred to herein as the "Association Policy". The Association Policy shall be a master property policy, and may be written on the ISO CP 00 10 property form, or industry equivalent, or other similar or replacement forms promulgated or available from time to time. The Association Policy may also be written to include the ISO CP 10 30 causes of loss special form property form, or industry equivalent, or other similar or replacement forms promulgated or available from time to time. If necessary or advisable, to avoid coinsurance penalties or otherwise, the Association Policy may include endorsements such as the ISO CP 14 20 Additional Property Not Covered endorsement, or industry equivalent, or other similar or replacement endorsement that would have a similar

effect, if such endorsements are available. Any such endorsement shall have attached thereto a description of the property not covered by the endorsement of the Association Policy. If reasonably available, necessary or advisable, to avoid coinsurance penalties or otherwise, the Association Policy may also include blanket insurance, agreed value and/or ordinance or law coverage endorsements. The Association Policy shall provide for a reasonable deductible, in the discretion of the Board. The Association Policy shall be on such forms as are approved for use in the State of Florida from time to time for similar developments, and the Owner of each Villa Lot and its Mortgagee shall have the right to review the form of the Association Policy at the office of the Association upon reasonable request. The premiums for the Association Policy, and the amount of any deductible required to be paid in the event of a loss, shall be a Villa Assessment, except to the extent the Board determines any of such amounts should be deemed Special Assessments or Individual Assessments to be assessed against one or more Villa Owners, Villa Buildings, or Villa Lots. If and to the extent allowed under applicable law and available under applicable insurance rules and regulations, and with the purchase of endorsements, if necessary and available, the Association Policy shall include coverage for the primary structure of the Villa Buildings, including the roof, exterior walls, Party Walls, interior load-bearing walls, floor structures (but not coverings), sheetrock and drywall, electrical wiring inside of walls and plumbing pipes inside the walls. The Association Policy shall not be required to cover items that are not structural elements of the Villa Buildings. Without limiting the generality of the foregoing, the Association Policy shall not include coverage for: floor coverings (e.g., carpet, pad, tile, linoleum); wall coverings (e.g., paint, wallpaper); ceiling coverings (e.g., paint, "popcorn", texture coating, drop ceilings); electrical fixtures (e.g., lighting, ceiling fans, chandeliers, switch/plug plates); appliances; water heaters; water filters; heating or air conditioning units or equipment; built-in cabinets and countertops (e.g., kitchen and bath); window treatments (e.g., curtains, drapes, blinds, hardware, and similar window treatment components); replacements of any of the foregoing which are located within the boundaries of a Villa and serve only said Villa; wear and tear and deterioration over time; faulty materials or workmanship; intentional acts; or damages for the loss of use of the subject Villa Lot or Villa.

### **Section 13.05. Owners' Insurance.**

(1) In addition to, or as a supplement to, the other insurance requirements of each Villa Owner set forth in this Declaration concerning said Villa Owner's Villa Lot and Villa, each Owner of a Villa Lot and Villa shall obtain and maintain at all times an ISO form HO-6 insurance policy endorsed to include: (a) Unit Owners Coverage A Special Coverage utilizing the ISO HO 17 32 form; and (b), personal liability insurance ((a) and (b), collectively, "Owner's Policy"). The Owner's Policy, at minimum, must provide coverage for: (x) the Villa Owner's personal belongings/contents (e.g., furniture, clothing, etc.); (y) coverage commonly known as owners' additions and alterations or building coverage, endorsed to include replacement cost loss adjustment and special form perils of coverage, of at least \$40 per square foot of living area of the Villa, for the items such as: floor coverings (e.g., carpet, pad, tile, linoleum); wall coverings (e.g., paint, wallpaper); ceiling coverings (e.g., paint, "popcorn", texture coating, drop ceilings); electrical fixtures (e.g., lighting, ceiling fans, chandeliers, switch/plug plates); appliances; water heaters; water filters; heating or air conditioning units or equipment; built-in cabinets and countertops (e.g., kitchen and bath); window treatments (e.g., curtains, drapes, blinds, hardware, and similar window treatment components); non-load-bearing

walls; patios, screen enclosures, and any improvements constructed by or at the direction of an individual Owner; and replacements of any of the foregoing which are located within the boundaries of the subject Villa and serve only said Villa; and (z) personal liability coverage with limits of at least \$300,000.00 to provide protection to the Owner for injuries or damages they may cause or be responsible for within or outside of their Villa. Each Villa Owner shall provide a certificate evidencing such insurance coverage to the Association: (i) prior to or upon acquisition of record title to the Villa Lot; (ii) on or about each anniversary of Owner having become the fee simple owner of said Villa Lot; and (iii) at any other time, from time to time, upon request of the Board. The Board may promulgate Rules and Regulations concerning the Owner's Policy requirement, coverage amounts, coverage types, deductibles, etc. The Owner's Policy shall name the Association as an additional interest utilizing the ISO HO 04 10 form, or industry equivalent, or other similar or replacement forms promulgated or available from time to time. In the event of any damage casualty loss, the Association shall be entitled to file a claim on such Owner's Policy for the cost of any repair or replacement to the Villa Lot, Villa, or other improvements thereon, which is the Association's responsibility hereunder, and the subject Villa Owner shall pay the amount of any deductible and shall be responsible for any deficiency in the insurance proceeds. The Association shall be entitled to adjust with the insurance provider the amount of any proceeds payable to the Association and/or the Villa Owner under the Owner's Policy, based upon the funds necessary to enable the subject Villa Owner and Association to each repair and replace those portions of the Villa Lot, Villa, and other improvements thereon which are their respective responsibilities hereunder. In the event that an Villa Owner fails to obtain and thereafter continuously maintain such Owner's Policy, or allows or permits such Owner's Policy to lapse the Association may, but shall not be obligated to, obtain such Owner's Policy on behalf of the Villa Owner and/or the Association and assess the costs and expenses thereof to the Villa Owner and the Owner's Villa Lot as a Special Assessment or an Individual Assessment.

(2) In addition to, or as a supplement to, the coverage provided by the Association Policy and the Owner's Policy, each Villa Owner may and is encouraged to obtain such additional homeowners' and other property insurance as may be desired or required by the Villa Owner to protect its property and interests. Any such insurance policies shall name the Association as an additional interest. Notwithstanding anything to the contrary set forth herein or otherwise, it is the absolute responsibility of each Villa Owner to obtain property and liability insurance coverage with respect to its own Villa Lot and Villa so that the Villa Owner is fully insured with respect to the full replacement value of the Villa Lot, Villa, and improvements thereon, and all of the Villa Owner's furnishings and other personal property within the Villa Owner's Villa or on or about its Villa Lot, whether pursuant to the Association Policy, the Owner's Policy, or other insurance coverage obtained by the Villa Owner. The Association may (but is not required to) require the Owners to provide copies of any such Villa Owners' policies to the Association upon request. The Association shall have no obligation, however, to assure that any Villa Owner obtains or maintains any such insurance coverages.

## ARTICLE XIV

### HUD/FHA/VA AND DISTRICT APPROVAL RIGHTS

Notwithstanding anything in this Declaration to the contrary, as long as there exists a Class "B" membership, if any one or more of the U.S. Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA) or the U.S. Department of Veterans Affairs (VA), or any successor department or agency of any of the foregoing, requires approval or consent by it or them to annexation of Additional Property, any merger or consolidation involving the Association, the placing of any mortgage lien on the Common Property, dedication to the public of any Common Property, any Amendment, or dissolution of the Association, by any one or more of said agencies as a condition of making, insuring or purchasing loans on Homes in the Property, and any such loan has been approved, insured, guaranteed, or purchased by the applicable agency at the time of the proposed annexation, merger, consolidation, mortgaging, dedication, amendment or dissolution, then the required consent or approval shall be obtained.

## ARTICLE XV

### AMENDMENT

#### **Section 15.01. Amendment by Members**

A. **Amendment by Written Instrument.** This Declaration may be amended (an "**Amendment**") at any time by the holders of a simple majority of the votes in the Association (without regard to membership class). Upon approval of an Amendment in accordance with the preceding sentence, the Board shall direct the appropriate Officer, agent or employee of the Association to have a written instrument prepared in recordable form which instrument shall set forth the text of the approved Amendment, and which Amendment shall also comply with all requirements of the Association Act. Upon execution of the Amendment by the holders of at least a simple majority of the votes in the Association (without regard to membership class), the Board shall direct the appropriate Officer, agent or employee of the Association to record the Amendment in the Public Records. The Amendment will be deemed effective upon recording.

B. **Amendment by Vote at a Duly-Authorized Meeting.** An Amendment may be proposed by Declarant (before or after Turnover), the Association, or after Turnover, through a petition signed by ten percent (10%) of the Owners. If a proposed Amendment is to be adopted by a vote, a written copy of the proposed Amendment shall be furnished to each Owner at least thirty (30) days, but not more than ninety (90) days, prior to a duly-authorized meeting called to discuss the proposed Amendment. To pass, the proposed Amendment shall be approved upon the affirmative vote of at least a simple majority of the membership casting votes (either in person or by proxy) at a meeting duly called to consider the proposed Amendment. Upon the approval of an Amendment pursuant to this Section 15.01(b), the President and Secretary shall execute a written instrument in recordable form which shall set forth the text of the Amendment, the effective date of the Amendment, the date of the meeting of the Association at which such Amendment was adopted, the date that notice of such meeting was given, the total number of votes cast at the meeting (either in person or by proxy), the total number of votes necessary to

adopt the Amendment, the total number of votes cast for the Amendment, and the total number of votes cast against the Amendment. The written Amendment executed by the President and Secretary shall be recorded in the Public Records. The Amendment will be deemed effective upon recording.

C. **Amendment by Declarant.** Until such time as Turnover occurs, Declarant specifically reserves the absolute and unconditional right to alter, modify, change, revoke, rescind, amend, restate, or cancel all or any portion of this Declaration (or any of the other Governing Documents) or the restrictive covenants contained in this Declaration (or in any of the other Governing Documents); provided, however, that to be valid and enforceable, any such amendment by Declarant may not be arbitrary, capricious, or in bad faith; destroy the general plan of development of the community; prejudice the rights of existing non-declarant Members to use and enjoy the benefits of Common Property; or materially shift economic burdens from the Declarant to the existing non-declarant Members. Following Declarant's relinquishment of control of the Association, this Declaration may only be amended pursuant to the provisions of such Section 15.01(a) and Section 15.01(b) hereof.

**Section 15.02. Restrictions on Amendments.** Notwithstanding anything to the contrary contained in Section 15.01 hereof, no Amendment to this Declaration may: (i) remove, revoke, or modify any right or privilege of Declarant without the prior express written consent of Declarant or the assignee of any such right or privilege which consent may be granted, conditioned or denied in such party's absolute and sole discretion; (ii) impair the validity or priority of the lien of any Mortgage or impair the rights granted to mortgagees herein without the prior written consent of such mortgagees; (iii) to the extent that any provision of the Declaration has been included to satisfy a condition of approval of a planned development, preliminary subdivision plan, development order or a subdivision plat of the property, such provision shall not be changed, amended, modified or otherwise deleted or eliminated without the prior written consent of the applicable Governmental Authority; (iv) result in or facilitate a termination of the Association's obligation to maintain the Common Property; or (v) change, amend, modify, eliminate or delete the restrictions contained in this Section 15.02. Additionally, any proposed Amendment which would have the effect of materially altering the general plan of development for the Development or which would materially prejudice the Owners' rights to use and enjoy the benefits of the Common Property, shall require the unanimous written consent of all Owners. No Amendment shall be permitted that would violate the Association Act.

## ARTICLE XVI

### DURATION AND TERMINATION

This Declaration shall run with and bind and benefit the Property, and shall inure to the benefit of and be enforceable by Declarant, the Association and any Owner, and their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the Effective Date, after which time this Declaration and each Supplemental Declaration shall be automatically extended for successive periods of ten (10) years unless prior to the commencement of any 10-year extension period an instrument properly executed and signed by the Owners of eighty percent (80%) of the Lots and agreeing to terminate this Declaration is recorded in the Public Records.

## ARTICLE XVII

### ENFORCEMENT

**Section 17.01. Compliance by Owners.** Every Owner and all guests, tenants, subtenants, occupants, licensees, and guests and invitees of any Member, shall comply with the restrictions and covenants set forth in this Declaration and any and all Rules and Regulations which from time to time may be adopted.

**Section 17.02. Enforcement.** Failure of an Owner or that Owner's tenants, subtenants, occupants, licensees, invitees and guests to comply with the restrictions and covenants set forth in this Declaration or the Rules and Regulations applicable to the Owner, the Lot, Home or the Property, shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The offending Owner shall be responsible for all costs and expenses of enforcement, including, but not limited to, attorneys' and paralegals' fees actually incurred and court costs, fees and expenses. If any person shall violate or attempt or threaten to violate the provisions of this Declaration, it shall be lawful for Declarant, any Owner, or the Association: (a) to prosecute proceedings for the recovery of damages against those so violating or attempting to violate the provisions of this Declaration; (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting or threatening to violate the provisions of this Declaration, for the purpose of preventing or enjoining all or any such violations or attempted or threatened violations; or (c) to maintain a proceeding for any other equitable or legal recourse or remedy available at law or in equity to address or prevent the violation or attempted or threatened violation of this Declaration. In addition, whenever there shall have been built or there shall exist on any Lot any structure, building, thing or condition which violates the provisions of this Declaration, Declarant or the Association (but not any Owner) shall have the right, but not the obligation, to enter upon the Lot where such violation exists and summarily abate and remove the same, all at the expense of the Owner of such Lot, which expense shall constitute an Individual Assessment, and such entry and abatement or removal shall not be deemed a trespass or make Declarant, the Board, or Association, or the directors, officers, members, agents, employees, contractors or subcontractors of any of the foregoing, liable for any damages on account thereof. The remedies contained in this Section 17.02 shall be cumulative of all other remedies now or hereafter provided by law, in equity, or by virtue of this Declaration. The failure of Declarant, the Board, the Association, or an Owner to enforce any covenant, restriction, obligation, right, power, privilege or reservation contained in this Declaration, 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 occurring prior or subsequent thereto.

**Section 17.03. Fines; Suspension.** In addition to all other remedies, and to the maximum extent lawful, in the sole discretion of the Board, (A) a fine or fines may be imposed upon an Owner for failure of an Owner or that Owner's tenants, subtenants, occupants, licensees, invitees and guests to comply with any condition, covenant or restriction contained in this Declaration or any Rule or Regulation, and (B) the Association shall have the right to suspend for a reasonable period of time the rights of use of the Common Property and the facilities located thereon (except for vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the

right to park of defaulting Owners) provided that before imposing any fine or suspension, the following procedures are adhered to:

A. **Notice.** The Association shall notify the Owner of the alleged infraction or infractions. Included in the notice shall be the date and time of a hearing of a committee of at least three (3) Members who are appointed by the Board (the "**Committee**"), at which time the Owner may present reasons why a fine(s) or suspension should not be imposed. The members of the Committee shall not be Officers, Directors, or employees of the Association, or the spouse, parent, child, brother or sister of an Officer, Director, or employee of the Association. At least fourteen (14) days' notice of such meeting shall be given.

B. **Hearing.** The alleged non-compliance shall be presented to the Committee after which the Committee shall hear reasons why a fine(s) or suspension should not be imposed. A written decision of the Committee shall be submitted to the Owner by not later than twenty-one (21) days after the Committee's hearing. The Owner shall have a right to be represented by counsel and to cross examine witnesses. If the Committee does not approve a proposed fine or suspension by majority vote, it may not be imposed.

C. **Amounts.** The Board (if the Committee's findings are made against the Owner) may impose a suspension or a fine in the form of Special Assessments against the Lot owned by the Owner as follows:

(1) For each separate violation, a fine not exceeding One Hundred Dollars (\$100.00). Each day that there exists on any Lot any structure, thing or condition which violates this Declaration shall be considered a separate violation.

(2) Because Declarant intends that the Property be developed and occupied as a high-end residential development, it is important that the Association have the authority and leeway to enforce the covenants, conditions, and restriction set forth in the Governing Documents and the Rules and Regulations by meaningful fines. Therefore, fines may exceed One Thousand and No/100 Dollars (\$1,000.00) in the aggregate and there shall be no limit on the aggregate amount of fines that may be levied for continuing violations of the covenants, conditions, and restriction set forth in the Governing Documents or in the Rules and Regulations.

D. **Payment and Collection of Fines.** Any Owner against whose Lot fines have been levied shall remit such fines to the Association within thirty (30) days of receiving notice of such fines from the Association. The Association may pursue legal and equitable remedies to recover such fines. Fines shall be treated as an Individual Assessment subject to the provisions for the collection of Individual Assessments, and the lien securing same, as set forth herein.

E. **Application of Proceeds.** All moneys received from fines shall be allocated as directed by the Board.

F. **Non-exclusive Remedy.** These fines and suspensions shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, any fines paid by the offending Owner

shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by Law from such Owner.

G. **CPI.** Unless limited by Law, specific dollar amounts stated in this Section 17.03 shall increase from time to time by application of a nationally recognized consumer price index chosen by the Board of Directors, using the year of the Effective Date as the base year. In the event no such consumer price index is available, the Board shall choose a reasonable alternative to compute such increases.

H. **Suspension of Voting Rights.** In accordance with Florida law, the Association may suspend the voting rights of a Member for the nonpayment of regular Annual Assessments that are delinquent in excess of ninety (90) days.

## ARTICLE XVIII

### DECLARANT AND BUILDER RESERVATION.

**Section 18.01. Declarant and Builder Reservation.** Any provision of this Declaration to the contrary notwithstanding, until Declarant has completed all of the contemplated Improvements and the Lots have been sold to Third Party Purchasers, neither the Owners nor the Association shall interfere with, or allow the interference with, the completion of Declarant's planned Improvements and the sale of the Lots. Declarant may make such lawful use of the unsold Lots and the Common Property, without charge, as may facilitate such completion and sale, including, but not limited to, maintenance of sales and construction trailers and offices, the showing of the Lots and the display of signs and the use of Lots for vehicular parking. Without limiting the generality of the foregoing, except only when the express provisions of this Declaration prohibit Declarant from taking a particular action, nothing in this Declaration shall be understood or construed to prevent or prohibit Declarant from any of the following:

A. Doing on any property or Lot owned or controlled by it, whatever it determines to be necessary, convenient or advisable in connection with the completion of the development of the Property, including without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development (all models or sketches showing plans for future development of the Property, as same may be expanded, may be modified by Declarant at any time and from time to time, without notice); or

B. Erecting, constructing and maintaining on any property or Lot owned or controlled by Declarant, such structures as may be reasonably necessary for the conduct of its business of completing said development and establishing the Property as a community and disposing of the same by sale, lease or otherwise; or

C. Conducting on any property or Lot owned or controlled by Declarant, its business of developing, subdividing, grading and constructing Improvements in the Property and of disposing of Lots therein by sale, lease or otherwise; or

D. Determining in its sole discretion the nature of any type of Improvements to be initially constructed as part of the Development or the Property; or

E. Maintaining such sign or signs on any property or Lot owned or controlled by Declarant as may be necessary or desired in connection with the operation of any Lots owned by Declarant or the sale, lease, marketing or operation of the Lots; or

F. Recording Supplemental Declarations which modify or amend this Declaration, which add or withdraw Additional Property, or that otherwise allow or permit Declarant to effect any action which may be required of Declarant by the Local Government or any other Governmental Authority or quasi-governmental agency in connection with the development and continuing operation of the Property; or

G. Modifying, changing, re-configuring, removing or otherwise altering any Improvements located on the Common Property or utilizing all or portions of the Common Property for construction access or staging (provided that same does not impair existing platted access (as shown on any recorded Plats) or utility services to the Lots); or

H. Causing utilities to be available to all portions of the Property, including, but not limited to, the reserving or granting of easements and rights of way as may be necessary to locate, install and maintain facilities and connections.

**Section 18.02. Amendment.** This Article may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Association Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section, the term “**Declarant**” shall include any “**Lender**” which has loaned money to Declarant to acquire or construct Improvements upon the Property, or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Property as a result of the foreclosure of any mortgage encumbering any portion of the Property securing any such loan to Declarant, or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Article, which are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Association Documents, shall terminate upon Declarant no longer owning any portion of the Property (and having any equitable or legal interest therein) or upon such earlier date as Declarant shall notify the Association in writing of Declarant’s voluntary election to relinquish the aforesaid rights and privileges.

## ARTICLE XIX

### GENERAL PROVISIONS

**Section 19.01. Conflict With Other Association Documents.** In the event of any conflict between the provisions hereof and the provisions of the Articles, Bylaws, or rules and regulations promulgated by the Association, the provisions of this Declaration shall supersede and control. In the event of any conflict between the provisions of the Articles and the provisions of the Bylaws or rules and regulations promulgated by the Association, the provisions of the Articles shall supersede and control. In the event of any conflict between the provisions of the Bylaws and the provisions of the rules and regulations promulgated by the Association, the provisions of the Bylaws shall supersede and control.

**Section 19.02. Notices.** Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) each Owner, at the United States address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; (ii) the Association, certified mail, return receipt requested, at \_\_\_\_\_ or such other address as the Association shall hereinafter notify Declarant and the Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at \_\_\_\_\_, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Owners.

**Section 19.03. Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of recreational facilities and Association Property. Article, section and paragraph captions, headings and titles inserted throughout this Declaration is intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Declaration.

Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa. The term “**include**” and similar terms (e.g., includes, including, included, comprises, comprising, such as e.g., and for example), when used as part of a phrase including one or more specific items, are used by way of example and not limitation.

**Section 19.04. Severability.** In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. In the event that any court should hereafter determine that any provision of this Declaration is in violation of the rule of Property known as the “**rule against perpetuities**” or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Association.

**Section 19.05. Disputes as to Use.** In the event there is any dispute as to whether the use of the Property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Notwithstanding anything to the contrary herein contained, any use by Declarant of the Property shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

**Section 19.06. Delegation.** The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant.

**Section 19.07. Rights of Mortgagees.**

A. **Right to Notice.** The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Association Documents and the books, records and financial statements of the Association to Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Property. In addition, evidence of insurance shall be issued to each Owner and mortgagee holding a mortgage encumbering a Home upon written request to the Association.

B. **Rights of Listed Mortgagee.** Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor (such holder, insurer or guarantor is herein referred to as a “**Listed Mortgagee**”) of a mortgage encumbering a Lot and the legal description of such Lot, the Association shall provide such Listed Mortgagee with timely written notice of the following:

- (1) Any condemnation, loss or casualty loss which affects any material portion of the Association Property;
- (2) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (3) Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Lot; and
- (4) Any failure by an Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform his obligations under the Association Documents, including, but not limited to, any delinquency in the payment of Assessments, or any other charge owed to the Association by said Owner where such failure or delinquency has continued for a period of sixty (60) days.

C. **Right of Listed Mortgagee to Receive Financial Statement.** Any Listed Mortgagee shall, upon written request made to the Association, be entitled to financial statements of the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

**Section 19.08. Approval of Association Lawsuits by Owners.** Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of the total voting interests (at a duly called meeting of the Owners at which a quorum is present) prior to engaging persons or entities for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- a. the collection of Assessments;

- b. the collection of other charges which Owners are obligated to pay pursuant to the Association Documents;
- c. the enforcement of the use and occupancy restrictions contained in the Association Documents;
- d. dealing with an emergency when waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Association Property or to Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths [3/4ths] of the Owners); or
- e. filing a compulsory counterclaim.

**Section 19.09. Compliance with Provisions.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot except as elsewhere herein provided does consent and agree to, and shall be conclusively deemed to have consented and agreed to, every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such Property. Declarant shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than Declarant.

**Section 19.10. Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Additionally, NEITHER DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE. ALL OWNERS AGREE TO HOLD DECLARANT, THE ASSOCIATION AND ANY SUCCESSOR DECLARANT HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY. ALL MEMBERS, OWNERS AND OCCUPANTS OF ANY LOT OR HOME, AND TENANTS, GUESTS, AND INVITEES OF ANY OWNER ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD, DECLARANT, AND ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT: (a) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM, IF ANY, DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE ARB MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR (b) THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD AND THE ARB, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY MEMBER OR OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS OR HOMES, AND TO THE CONTENTS OF LOTS

OR HOMES AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD AND THE ARB, DECLARANT, AND ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, MEMBER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

**Section 19.11. Owners' Views.** NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT, OR THEIR AGENTS OR EMPLOYEES IN CONNECTION WITH THE EXISTING OR FUTURE VIEWS THAT WILL BE AVAILABLE TO OWNERS. EACH OWNER BY ITS PURCHASE OF A HOME OR A LOT ASSUMES THE RISK OF VIEW RESTRICTIONS CAUSED BY MATURATION OF TREES AND SHRUBBERY AND THE CONSTRUCTION OF ANY IMPROVEMENTS.

**Section 19.12. Covenant Running With The Land.** All provisions of this Declaration shall, to the extent applicable and unless otherwise expressly provided herein to the contrary, be construed to be covenants running with the Lots and Homes and the Property and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon and inure to the benefit of the Declarant and subsequent Owner(s) of the Homes, Lots and Property or any part thereof, or interest therein, and their respective heirs, successors, and assigns. However, the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary. All present and future Owners, lessees, and occupants of the Lots and Homes, as applicable, shall be subject to and shall comply with the provisions of this Declaration and the Articles, Bylaws and applicable rules and regulations as they exist and may from time to time be amended. The acceptance of a deed of conveyance of a Lot, or the entering into a lease of or occupancy of a Home, shall constitute an adoption and ratification by such Owner, lessee, or occupant of the provisions of this Declaration, and the Articles, Bylaws, and applicable rules and regulations of the Association, as they may be amended from time to time. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

**Section 19.13. No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Association Property to the public, or for any public use.

**Section 19.14. No Representations or Warranties.** NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE ASSOCIATION PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST

OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION.

**Section 19.15. Association and Declarant as Attorney-In-Fact.** Each Owner, by reason of having acquired ownership of a Lot, whether by purchase, gift, operation of law or otherwise, and each occupant of a Home, by reason of his or her occupancy, is hereby declared to have acknowledged and agreed to his or her automatic consent to any rezoning, replatting, covenant in lieu of unity of title, change, addition or deletion made in, on or to the Community by Declarant (hereinafter, collectively, “**Modifications**”) and, in respect thereto, each Owner of a Lot and occupant of a Home hereby designates the Association to act as agent and attorney-in-fact on behalf of such Owner or occupant to consent to any such Modification. If requested by Declarant, each Owner shall evidence his consent to a Modification in writing (provided, however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). Further, each Owner, by reason of acceptance to such Owner’s Lot, hereby agrees to execute, at the request of Declarant, any document and/or consent which may be required by any government agency to allow Declarant and/or its affiliates to complete the plan of development of the Community, as such plan may be hereafter amended, and each such Owner hereby further appoints Declarant as such Owner’s agent and attorney-in-fact to execute, on behalf and in the name of each such Owner, any and all of such documents and/or consents. This power of attorney is irrevocable and is coupled with an interest. The provisions of this Section 19.15 may not be amended without Declarant’s prior written consent.

## ARTICLE XX

### THE ASSOCIATION AND OTHER SUB-ASSOCIATIONS

**Section 20.01. Preamble.** In order to ensure the orderly development, operation and maintenance of the Property, including the Property subject to the administration of the Condominium Associations as integrated parts of the Property, this Article has been promulgated for the purposes of (a) giving the Association certain powers to effectuate such goal, (b) providing for intended (but not guaranteed) economies of scale and (c) establishing the framework of the mechanism through which the foregoing may be accomplished. The provisions of this Article are specifically subject, however, to Section 20.8 of this Declaration.

**Section 20.02. Cumulative Effect.** Conflict. The covenants, restrictions and provisions of this Declaration shall be cumulative with those of any Condominium Associations and the Association may, but shall not be required to, enforce the latter; provided, however, that in the event of conflict between or among such covenants, restrictions and provisions, or any Articles of Incorporation, Bylaws, rules and regulations, policies or practices adopted or carried out pursuant thereto, those of any Condominium Associations shall be subject and subordinate to this Declaration. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association and any Condominium Associations as provided for herein. As to any Condominium Association which is a condominium association, no duties of same hereunder shall be performed or assumed by the Association if same are required by law to be performed by any Condominium Association or if the performance or assumption of such duties would be contrary to the purpose and intent of Section 20.8 of this Declaration.

**Section 20.03. Architectural Control.** All architectural control, Lot and Unit maintenance requirements and use restrictions provided for in or pursuant to this Declaration shall, initially, be exercised and enforced by the Association. However, the Association may delegate to a Condominium Association(s) all or any part of such rights/duties, on an exclusive or non-exclusive basis, upon written notice recorded in the Public Records of the County.

As long as the Association performs architectural control functions, no Condominium Association shall do so unless such functions are specifically delegated to it by the Association; provided, however, that a Condominium Association for a condominium may perform such functions to the extent required by its Declaration of Condominium or by applicable law.

**Section 20.04. Collection of Assessments.** The Association shall collect all assessments and other sums due the Association from the members thereof.

To the extent lawful, the Association may delegate, or contract for the performance of any duties performed by it pursuant hereto to/with a management company approved by the Association.

**Section 20.05. Delegation of Other Duties.** The Association shall have the right to delegate to a Condominium Association, on an exclusive or non-exclusive basis, such additional duties not specifically described in this Section as the Association shall deem appropriate, provided that such duties have a reasonable relationship (by virtue of function or location) to any Condominium Association or its respective property. Such delegation shall be made by written notice to any Condominium Association, which shall be effective no earlier than thirty (30) days from the date it is given. Any delegation made pursuant hereto may be modified or revoked by the Association at any time.

**Section 20.06. Acceptance of Delegated Duties.** Whenever the Association delegates any duty to a Condominium Association pursuant to this Section, the Condominium Association shall be deemed to have automatically accepted same and to have agreed to indemnify, defend and hold harmless the Association for all liabilities, losses, damages and expenses (including attorneys' fees actually incurred and court costs, through all appellate levels) arising from or connected with the Condominium Association's performance, non-performance or negligent performance thereof. All Condominium Associations shall be responsible to the Association for maintaining adequate liability and other insurance covering injuries, deaths, losses or damages arising from or connected with the Condominium Association's performance or nonperformance of its duties hereunder.

**Section 20.07. Expense Allocations.** The Association may, by written notice given to the affected Condominium Association at least sixty (60) days prior to the end of the Condominium Association's fiscal year, allocate and assess to the Condominium Association a share of the expenses incurred by the Association which are reasonably allocable to the Condominium Association and/or the portion of the Property within its jurisdiction. In such event, the expenses so allocated shall thereafter be deemed common expenses of the Condominium Association payable by it (with assessments collected from its members) to the Association.

In the event of a failure of a Condominium Association to budget or assess its members for expenses allocated as aforesaid, the Association shall be entitled to pursue all available legal and

equitable remedies against the Condominium Association or, without waiving its right to the foregoing, specially assess the members of the Condominium Association and their Lots or Units for the sums due (such special assessments, as all others, to be secured by the lien provided for in this Declaration).

**Section 20.08. Non-Performance of Condominium Association Duties.** In addition to the specific rights of the Association provided in Section 10.7 above, and subject to the limitations set forth in Sections 10.2 and 20.8 of this Declaration, in the event that a Condominium Association fails to perform any duties delegated to, or required of, it under this Declaration or to otherwise be performed by it pursuant to its own declaration, Articles of Incorporation, Bylaws or related documents, which failure continues for a period in excess of thirty (30) days after the Association's giving notice thereof, then the Association may, but shall not be required to, assume such duties. In such event, the Condominium Association shall not perform such duties unless and until such time as the Association directs it to once again do so.

**Section 20.09. Conflict.** In the event of conflict between this Article 10, as amended from time to time, and any of the other covenants, restrictions or provisions of this Declaration or the Articles of Incorporation, Bylaws or rules and regulations of the Association all as amended from time to time, the provisions of this Article shall supersede and control.

## ARTICLE XXI

### SPECIAL COVENANTS

**Section 21.01. Preamble.** In recognition of the fact that certain special types of platting and/or construction require special types of covenants to accurately reflect the maintenance and use of the affected Lots and Units, the following provisions of this Article 21 shall apply in those cases where the below-described types of improvements are constructed within the Property. However, nothing herein shall necessarily suggest that Declarant will or will not, in fact, construct such types of improvements nor shall anything herein contained be deemed an obligation to do so.

**Section 21.02. Condominiums.** With respect to the portion of the Property that is submitted to the condominium form of ownership, the following special provisions shall apply:

A. The board of directors of the condominium association shall constitute the Condominium Association for such condominium.

B. For the purposes of complying with and enforcing the standards of maintenance contained herein, the condominium building and any appurtenant facilities shall be treated as a Unit and any other portion of the condominium shall be treated as an unimproved portion of the Lot, with the condominium association to have the maintenance duties of an Owner as set forth herein. The condominium association shall also be jointly and severally liable with its members for any violation of the use restrictions set forth in this Declaration or of rules and regulations of the Association.

C. As distinguished from maintenance duties, assessments hereunder shall be levied against, and shall be secured by lien upon, each individual condominium unit and shall be the direct obligation of the Owner thereof.


With respect to the Architectural Review Board: (i) no condominium association shall make any improvements or alterations on or to the Property under its jurisdiction without first having secured the approval of the Architectural Review Board as provided herein and (ii) in the event that an individual Owner of a condominium Unit(s) desires to make alterations to the exterior thereof, a request for the approval thereof shall be submitted to the Architectural Review Board as required by this Declaration, but such request shall be accompanied by evidence that the condominium or cooperative association having jurisdiction thereover has already approved same, absent which approval the Architectural Review Board shall not consider the submission and same shall be considered timely disapproved.


*[Remainder of page intentionally left blank. Signature page follows]*

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IN WITNESS WHEREOF, this Declaration has been signed by Declarant and Joined in by the Association as of the date first written above.

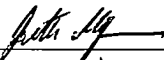
WITNESSES AS TO DECLARANT:

  
Signature  
Print Name: STEVE CARMEN

  
Signature  
Print Name: Norman Suss


DECLARANT:

BANYAN BAY MACKS, LLC, a Delaware limited liability company

By:   
Name: Jonathan Mayers  
Title: President


WITNESSES AS TO ASSOCIATION:

  
Signature  
Print Name: STEVE CARMEN

  
Signature  
Print Name: Norman Suss

ASSOCIATION:

BANYAN BAY STUART HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit

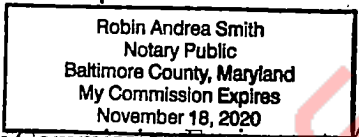
By:   
Name: Jonathan Mayers  
Title: President

(SEAL)

STATE OF ~~FLORIDA~~ Maryland )  
 ) SS  
COUNTY OF Baltimore)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to make acknowledgments, the foregoing instrument was acknowledged before me by Jonathan Mayers, the President of Banyan Bay Macks, LLC, freely and voluntarily under authority duly vested in him. He is personally known to me or has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 27<sup>th</sup> day of September, 2017



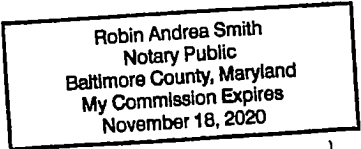
My Commission Expires: 11/18/2020

Robin Andrea Smith  
Notary Public, State of ~~Florida~~ Maryland  
Robin Andrea Smith  
Typed, Printed or Stamped Name of Notary Public

STATE OF ~~FLORIDA~~ Maryland )  
 ) SS  
COUNTY OF Baltimore)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Jonathan Mayers, the President of \_\_\_\_\_ BANYAN BAY STUART HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, freely and voluntarily under authority duly vested in him. He is personally known to me or has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 27<sup>th</sup> day of September, 2017



My Commission Expires: 11/18/2020

Robin Andrea Smith  
Notary Public, State of ~~Florida~~ Maryland  
Robin Andrea Smith  
Typed, Printed or Stamped Name of Notary Public

**SUBORDINATION AND CONSENT**

NVR Inc., a Virginia corporation ("NVR"), as owner of Lots 5 and 6 ("NVR Lots"), as shown on the Plat of Banyan Bay P.U.D. Phase I, as recorded in Plat Book 16, Page 75, in the Public Records of Martin County, Florida, does hereby subordinate, consent and agree to encumber the NVR Lots to all of the terms, conditions, provisions, and restrictions, as set forth in the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Banyan Bay ("Declaration"), executed by Banyan Bay Macks LLC, a Delaware limited liability company as Declarant, dated 9/27, 2017, to which this Subordination and Consent is attached. This Subordination and Consent is executed and delivered by NVR solely to encumber the NVR Lots with the Declaration, and shall not be deemed or construed to create any recourse obligation upon NVR.

IN WITNESS WHEREOF, this Subordination and Consent is made this 18 day of

SEPTEMBER, 2017.

WITNESSES:

Witness Signature

Printed Name: Michael DuBois

Witness Signature

Printed Name: Barbara Roberts

NVR Inc., a Virginia corporation

By:

Name: Robert Smithwick

Title: Vice President

Date: 9-18-17, 2017

STATE OF FLORIDA

COUNTY OF PAUM BUCH

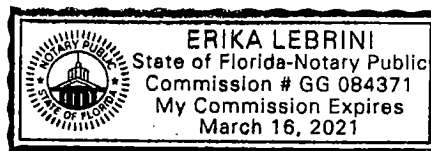
The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of Sept, 2017, by Robert Smithwick, as V.P. of NVR Inc., a Virginia corporation. He/She is personally known to me or has produced a \_\_\_\_\_ (state) driver's license as identification.

IN WITNESS WHEREOF, I hereunto set my hand and official seal. NOTARY PUBLIC, STATE OF FLORIDA

Erika Lebrini  
(Signature)

ERIKA LEBRINI  
(Name)

My Commission Expires: 3/16/2021



SCHEDULE OF EXHIBITS

Exhibit "A" –Legal Description

Exhibit "B" – Articles of Incorporation

Exhibit "C" - Bylaws

Exhibit "D" – Rules and Regulations

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

The real property described in the Plat of Banyan Bay P.U.D., Phase 1, as recorded in Plat Book 16, Page 75 through 82, inclusive, recorded in the Public Records of Martin County, Florida.

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**EXHIBIT "B"**

**ARTICLES OF INCORPORATION  
OF  
BANYAN BAY STUART HOMEOWNERS ASSOCIATION, INC.  
(A Florida Corporation Not For Profit)**

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ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
BANYAN BAY PROPERTY OWNERS' ASSOCIATION, INC.

WHEREAS, the Articles of Incorporation of BANYAN BAY PROPERTY OWNERS' ASSOCIATION, INC. (the "Corporation") were filed with the Florida Department of State on May 24, 2012, as Document No. N12000005270; and

WHEREAS, it is the intention of the Board of Directors of the Corporation that the Articles of Incorporation of the Corporation be amended, effective the date this Amendment is filed with the Florida Department of State, in accordance with the proposed amendment hereinafter set forth; and

WHEREAS, the proposed amendment to the Articles of Incorporation of the Corporation as hereinafter set forth was adopted by the members and the number of votes cast for the amendment was sufficient for approval.

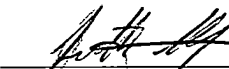
NOW, THEREFORE, the Articles of Incorporation of the Corporation are hereby amended effective the date these Articles of Amendment are filed with the Florida Department of State, as follows:

1. The name of the Corporation shall be amended to:

BANYAN BAY STUART HOMEOWNER'S ASSOCIATION, INC.

IN WITNESS WHEREOF, these Articles of Amendment are hereby executed on behalf of the Corporation as of the 9<sup>th</sup> day of October, 2017.

BANYAN BAY PROPERTY OWNERS' ASSOCIATION, INC.

By:   
Name: Jonathan Mayers  
Title: President

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**ARTICLES OF INCORPORATION  
OF  
BANYAN BAY PROPERTY OWNERS' ASSOCIATION, INC.**

The undersigned, acting as incorporator of a corporation not for profit organized under Chapter 617 and Chapter 720, Florida Statutes, adopts the following Articles of Incorporation for the corporation:

1. Name of Corporation. The name of the corporation is Banyan Bay Property Owners' Association, Inc. (the "Association").
2. Principal Office; Mailing Address. The initial principal office and mailing address of the Association is 7807 Baymeadows Road East, Suite 205, Jacksonville, Florida 32256.
3. Registered Office – Registered Agent. The initial registered office of the Association is 19321-C US Highway 19N, Suite 600, Clearwater, Florida 33764, and the initial registered agent at such address is Donna J. Feldman.
4. Definitions. All capitalized terms used herein that are not defined herein shall have the meaning set forth in the Declaration of Covenants, Conditions and Restrictions for Banyan Bay recorded in O.R. Book 2350, Page 1346, *et. seq.*, of the official public records of Martin County, Florida, as it has previously been, and may be further, amended from time to time (collectively; the "Declaration").
5. Purpose of the Association. The Association does not contemplate pecuniary gain or profit, direct or indirect, to its members. By way of explanation and not of limitation, the purposes for which the Association is organized are: (a) to be and constitute the Association to which reference is made in the Declaration, and to perform all obligations and duties and to exercise all rights and powers of the Association as specified in the Declaration; (b) to provide for ownership, operation, maintenance and preservation of the Common Areas, and improvements thereon; and (c) to provide an entity for the furtherance of the interests of the Owners of property now and hereafter made subject to the Declaration.
6. Powers of the Association. In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Declaration or the By-Laws, may be exercised by its Board of Directors:
  - (a) All of the powers conferred upon corporations not-for-profit by common law and Florida Statutes in effect from time to time, including, without limitation, the power to sue and be sued; and
  - (b) All of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers of the Association set out in these Articles, the Declaration, and the By-Laws, including, without limitation, the following:
    - i. to enforce, by legal action or otherwise, the provisions of the Declaration and the By-Laws and of all rules, regulations, covenants, restrictions and agreements governing or binding the Association and the Banyan Bay Community;

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TALLAHASSEE, FLORIDA

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ii. to adopt budgets, fix, levy, collect and enforce payment, by any lawful means, of all charges or assessments authorized by the Declaration, including adequate assessment of fees for the costs of operation and maintenance of the Surface Water Management System and assessments for services or materials for the benefit of Owners or the Banyan Bay Community for which the Association has contracted with third party providers;

iii. to use the proceeds collected from assessments to pay all costs, expenses, and obligations lawfully incurred in connection with the Association's affairs including, without limitation, all licenses, taxes, or other governmental charges levied or imposed against the Association's property;

iv. to manage, control, operate, maintain, repair, reconstruct and improve the Common Areas and any other property for which the Association has a right or duty to provide such services pursuant to the Declaration, other applicable covenants, or any agreement or contract, including the Surface Water Management System (including inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and associated buffer areas, and wetland mitigation areas which are a part thereof, if any) in a manner consistent with the applicable SFWMD permit requirements and applicable SFWMD rules, and to assist in the enforcement of the provisions of the Declaration which relate to the Surface Water Management System;

v. to buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, own, hold, use, operate, improve, maintain, grant rights and easements in, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association, except as limited by the Declaration and/or Section 11 hereinbelow;

vi. to borrow money for any purpose, subject to such limitations as may be set forth in the Declaration and the By-Laws;

vii. to dedicate, grant, license, lease, concession, create easements upon, sell or transfer all or any part of the Association's property to any public agency, entity, authority, utility or other person or entity for such purposes and subject to such conditions as it determines and as provided in the Declaration;

viii. to participate in mergers and consolidations with other non-profit corporations organized for the same purposes, subject to such limitations as may be set forth in the Declaration and the By-Laws;

ix. to adopt, publish, promulgate and enforce rules, regulations, covenants, restrictions or agreements governing the Association and/or the Banyan Bay Community, as provided in the Declaration, and to effectuate all of the purposes for which the Association is organized;

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x. to contract with others for performance of the Association's management and maintenance responsibilities under the Declaration, for the provision of services by the Association to others to the extent beneficial for the Owners or the Banyan Bay Community; and for the furnishing of services or materials to the Association for the benefit of the Owners or the Banyan Bay Community consistent with the provisions of the Declaration, including, without limitation, contracting for utility, irrigation, water, telecommunications, internet, and security services; and to delegate in such contract(s) all or any part of the powers and duties of the Association;

xi. to enter into, make, perform and enforce contracts of every kind and description, and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association;

xii. to establish committees and delegate certain of its functions to those committees;

xiii. to engage in activities that will actively foster, promote, and advance the common interests of all owners of property subject to the Declaration; and

xiv. to adopt, alter and amend or repeal such By-laws as may be necessary or desirable for the proper management of the Association's affairs; provided, any amendment is subject to Voting Member approval to the extent required by the By-Laws, and such By-Laws may not be inconsistent with or contrary to the provisions of the Declaration.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers that may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Section are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provision of this Section.

7. Members. The Association shall be a membership corporation without certificates or shares of stock. The Owner of each Lot or Home, as those terms are defined in the Declaration, shall be a member of the Association; provided that any person who holds an interest in a Lot or Home only as security for the performance of an obligation shall not be a Member. In addition, the Developer shall be a Member of the Association for such period as provided in the Declaration and/or Bylaws. Owners and Developer shall have the voting rights set forth in the By-Laws and the Declaration. Membership is appurtenant to, and may not be separated from, ownership of a Lot or Home. Membership may not be transferred except by transfer of record title to such Lot or Home.

8. Board of Directors. The affairs of the Association shall be conducted, managed and controlled by a Board of Directors consisting of three (3) or seven (7) Directors (as provided in the Bylaws. Directors shall be appointed and/or elected as stated in the By-Laws. The Board may delegate its operating authority to such corporations, individuals, and committees as it, in its discretion, may determine. The initial Board of Directors shall consist of three (3) persons. The names and addresses of the initial Directors, who shall hold office until their successors are appointed or elected, or until their resignation or removal, are as follows:

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NAME	ADDRESS
Graydon E. Miars	19850 Southern Hills Blvd. Brooksville, Florida 34601
Roger Postlethwaite	7807 Baymeadows Road East, Suite 205 Jacksonville, Florida 32256
Erik Wilson	7807 Baymeadows Road East, Suite 205 Jacksonville, Florida 32256

The number of Directors, method of appointment, election and removal, method of filling vacancies, and term of office of Directors shall be as set forth in the By-Laws.

9. Officers. The Board shall elect a President, Secretary, Treasurer, and as many Vice Presidents, Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall from time to time determine. The names and addresses of the Officers who shall serve until their successors are elected by the Board are as follows:

President:	Graydon E. Miars 19850 Southern Hills Blvd. Brooksville, Florida 34601
Vice President:	Roger Postlethwaite 7807 Baymeadows Road East, Suite 205 Jacksonville, Florida 32256
Secretary:	Erik Wilson 7807 Baymeadows Road East, Suite 205 Jacksonville, Florida 32256
Treasurer:	Erik Wilson 7807 Baymeadows Road East, Suite 205 Jacksonville, Florida 32256

10. Liability and Indemnification of Directors and Officers. To the extent consistent with the Florida Not For Profit Corporation Act, as it exists on the date hereof or as it may hereafter be amended, the Association shall indemnify its Directors and Officers as required by the Declaration and the By-Laws. No Director or Officer of the Association, including any Director or Officer appointed by the Developer, shall be personally liable to the Association or its members for monetary damages for breach of duty of care or other duty as a Director or Officer, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe that such action was unlawful. The termination of any such action, suit, or proceeding by judgment, order, settlement, conviction or a plea of *nolo contendere* or its equivalent shall not, in and of itself

create a presumption that the Director or Officer did not act in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association or that he or she has reasonable cause to believe that his or her conduct was unlawful. No amendment or repeal of this Section shall apply to or have any effect on the liability or alleged liability of any Director or officer for or with respect to any acts or omissions of such Director or Officer occurring prior to such amendment or repeal.

11. Merger, Consolidation or Dissolution. The Association may merge, consolidate, or effect its dissolution only upon a resolution duly adopted by its Board, with the written consent of the Developer if Developer then has the right to appoint any of the Directors, and either: (a) the affirmative vote of Voting Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast at a meeting at which a quorum is represented; or (b) the written consent of all Voting Members. If the Association is dissolved other than incident to a merger or consolidation, any Member may petition the Circuit Court in the Judicial Circuit of the State of Florida having jurisdiction for the appointment of a receiver to manage the affairs of the dissolved Association and to manage the Common Areas, in the place and stead of the Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties. In addition, if the Association is dissolved, the Surface Water Management System shall be conveyed to an appropriate governmental agency or public utility or, if not accepted by a governmental agency or public utility, conveyed to a non-profit corporation similar in nature to the Association, which shall assume the Association's responsibilities with respect to such Surface Water Management System.

12. Duration. The Association shall have perpetual duration, subject to any merger, consolidation, or dissolution effected pursuant to Section 11 above.

13. By-Laws. The Associations' Bylaws will be initially adopted by the Board of Directors.

14. Amendments.

(a) General Restrictions on Amendments. Notwithstanding any other provision herein to the contrary, no amendment shall be made to these Articles, either before or after the Turnover Date, that shall abridge, reduce, amend, affect or modify the rights of Developer unless such amendment receives the prior written consent of Developer, which may be withheld for any reason whatsoever. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to these Articles, then the prior written consent of such entity or agency must also be obtained.

(b) Amendments Prior to and Including the Turnover Date. Prior to and including the Turnover Date, Developer shall have the right to amend these Articles as it deems appropriate, without the joinder or consent of the Association or any other person or entity whatsoever. Developer's right to amend under this Section is to be construed as broadly as possible. In the event that the Association shall desire to amend these Articles prior to the Turnover Date, the Association must first obtain Developer's prior written consent to any proposed amendment.

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(c) Amendments After the Turnover Date. After the Turnover Date, but subject to the general restrictions on amendments set forth above, these Articles may be amended only upon a resolution duly adopted by the Board, with the written consent of the Developer if the Developer is still entitled to appoint any of the Directors, and either the affirmative vote or written consent of the Voting Members entitled to cast at least two-thirds (2/3) of the votes present, in person or by proxy, at a duly noticed meeting of the Members of the Association at which there is a quorum. Written notice setting forth any proposed amendment or a summary of the changes to be effected by the amendment shall be given to each Voting Member entitled to vote on the proposed amendment.

15. Incorporator. The name and address of the incorporator of this corporation is:

Graydon E. Miars  
19850 Southern Hills Blvd.  
Brooksville, Florida 34601

16. Transactions in Which Directors or Officers are Interested. No contract or transaction between the Association and one (1) or more of its Directors or Officers or Developer, or between the Association and any other corporation, partnership, association, or other organization in which one (1) or more of its Officers or Directors are officers, directors or employees or otherwise interested shall be invalid, void, or voidable solely for this reason, or solely because the Officer or Director is present at, or participates in, meetings of the Board thereof which authorized the contract or transaction, or solely because said Officers' or Directors' votes are counted for such purpose. No Director or Officer of the Association shall incur liability by reason of the fact that such Director or Officer may be interested in any such contract or transaction. Interested Directors shall disclose the general nature of their interest and may be counted in determining the presence of a quorum at a meeting of the Board which authorized the contract or transaction.

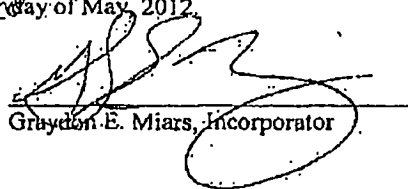
17. Conflicts. These Articles of Incorporation are to be interpreted, construed, and enforced together with Florida law, the Declaration and the By-Laws to avoid inconsistencies or conflicting results. If a conflict or inconsistency necessarily results, the provisions of Florida law, the Declaration, these Articles of Incorporation, and the By-Laws, in that order, shall prevail.

*[Signatures begin on Following Page]*

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IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Florida, the undersigned, being the incorporator of this Association, has executed these Articles of Incorporation as of this 22<sup>nd</sup> day of May, 2012.

  
\_\_\_\_\_  
Graydon E. Miers, Incorporator

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**CERTIFICATE OF DESIGNATION  
REGISTERED AGENT/REGISTERED OFFICE**


Pursuant to the provisions of Section 617.0501, Florida Statutes, the undersigned corporation, organized under the laws of the State of Florida, submits the following statement in designating the registered office/registered agent in the State of Florida:

1. The name of the corporation is Banyan Bay Property Owners' Association, Inc.
2. The name of the registered agent and office is:

DONNA J. FELDMAN  
19321-C US Highway 19N, Suite 600  
Clearwater, Florida 33764.

HAVING BEEN NAMED AS REGISTERED AGENT TO ACCEPT SERVICE AND PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

Dated this 23rd day of May, 2012.

By:   
DONNA J. FELDMAN

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12 MAY 24 PM 3:45  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

EXHIBIT "C"

BYLAWS  
OF  
BANYAN BAY STUART HOMEOWNERS ASSOCIATION, INC.

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**BYLAWS  
OF  
BANYAN BAY STUART HOMEOWNERS ASSOCIATION, INC.**

Section 1. Identification of Association

These are the Bylaws of **BANYAN BAY STUART HOMEOWNERS ASSOCIATION, INC.** ("Association") as duly adopted by its Board of Directors ("Board"). The Association is a corporation not for profit, organized pursuant to Chapters 617 and 720, Florida Statutes.

1.1. The office of the Association shall be for the present at P.O. Box 1699, Jensen Beach, Florida 34958, and thereafter may be located at any place designated by the Board.

1.2. The fiscal year of the Association shall be the calendar year.

1.3. The seal of the Association shall bear the name of the Association, the word "Florida" and the words "Corporation Not For Profit."

Section 2. Explanation of Terminology

The terms defined in the Articles of Incorporation of the Association ("Articles") as well as in the Declaration of Covenants, Conditions, Restrictions and Easements for Banyan Bay ("**Declaration**") are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in these Bylaws.

Section 3. Membership; Members' Meetings; Voting and Proxies

3.1. The qualification of Members, the manner of their admission to membership in the Association, the manner of termination of such membership and the voting by Members shall be as set forth in the Articles.

3.2. The Members shall meet annually ("Annual Members' Meeting"). The Annual Members' Meeting shall be held at the office of the Association or at such other place in the County as the Board may determine and on such day and at such time as designated by the Board in the notice of such meeting commencing with the year following the year in which the Articles are filed with the Secretary of State. The purpose of the Annual Members' Meeting shall be to hear reports of the officers, elect members of the Board (when that shall be appropriate as determined by the provisions of the Articles) and transact any other business authorized to be transacted at such Annual Members' Meeting.

3.3. Special meetings (meetings other than the Annual Members' Meeting) of the Members shall be held at the office of the Association or at such other place within the County whenever called by the President or Vice President or by a majority of the Board. A special meeting must be called by such President or Vice President upon receipt of a written

request from Members having the right to vote at least one-third (1/3) of the total number of votes entitled to be cast by Members at any such special meeting.

3.4. Except as otherwise provided in the Articles, a written notice of each Members' meeting, whether an Annual Members' Meeting or a special meeting (collectively "Meeting"), shall be given to each Member entitled to vote thereat at his last known address as it appears on the books of the Association and shall be mailed or hand delivered to the said address or electronically transmitted to the location furnished by the Member for that purpose not less than fourteen (14) days nor more than forty-five (45) days prior to the date of the Meeting. Proof of such mailing, delivery or electronic transmission shall be given by the affidavit of the person giving the notice. Any notice given hereunder shall state the time and place of the Meeting and the purposes for which the Meeting is called. The notices of all Annual Members' Meetings shall, in addition, specify the number of Directors of the Association to be designated by Declarant and the number of Directors to be elected by the Members, if applicable. Notwithstanding any provisions hereof to the contrary, notice of any Meeting may be waived before, during or after such Meeting by a Member or by the person entitled to vote for such Member by signing a document setting forth the waiver of such notice.

3.5. The Members may, at the discretion of the Board, act by written response in lieu of a Meeting provided written notice of the matter or matters to be agreed upon is given to the Members or duly waived in accordance with the provisions of these Bylaws. Unless some greater number is required under the Governing Documents and except as to the election of Directors, which shall be accomplished by plurality vote, the decision of a majority of the votes cast by Members as to the matter or matters to be agreed or voted upon shall be binding on the Members provided a quorum is either present at such Meeting or submits a response if action is taken by written response in lieu of a Meeting, as the case may be. The notice with respect to actions to be taken by written response in lieu of a Meeting shall set forth the time period during which the written responses must be received by the Association.

3.6. (a) A quorum of the Members shall consist of Members entitled to cast thirty percent (30%) of the total number of votes of the Members. A quorum of any class of Members shall consist of Class Members of such class entitled to cast thirty percent (30%) of the total number of votes of the class. "Proxies" (as hereinafter defined in Paragraph 3.10) may be used to establish a quorum.

(b) When a quorum is present at any Meeting and a question which raises the jurisdiction of such Meeting is presented, the holders of a majority of the voting rights present in person or represented by written Proxy shall be required to decide the question. However, if the question is one upon which a vote other than the majority vote of a quorum is required by express provision of the Governing Documents or by law, then such express provision shall govern and control the required vote on the decision of such question.

3.7. At any Annual Members' Meeting when elections of Directors are to occur, written ballots are to be supplied to Members for such purposes. Members may vote for Directors in person or by Proxy. Members are not permitted to vote for Directors by absentee ballot. Furthermore, at any Annual Members' Meeting at which Directors are to be elected, the

"Chairman" (as hereinafter defined in Paragraph 6.2) shall appoint an "Election Committee" consisting of three (3) Members to supervise the election, count and verify ballots, disqualify votes if such disqualification is justified under the circumstances and certify the results of the election to the Board. The Election Committee shall be able to determine questions within its jurisdiction by plurality vote of all three (3) members, but matters resulting in deadlocked votes of the Election Committee shall be referred to the entire Board for resolution.

3.8. If a quorum is not in attendance at a Meeting, the Members who are present, either in person or by Proxy, may adjourn the Meeting from time to time until a quorum is present with no further notice of such adjourned Meeting being required unless otherwise determined by the Board.

3.9. Minutes of all Meetings shall be kept in a businesslike manner and be available for inspection by the Members and Directors at all reasonable times. The Association shall retain minutes for at least seven (7) years subsequent to the date of the meeting the minutes reflect.

3.10. Voting rights of Members shall be as stated in the Articles with respect to the election of all Boards other than the First Board. Such votes may be cast in person or by absentee ballot. Proxies may be used to vote on other agenda items at meetings at which Directors are to be elected, and may also be used to establish a quorum. "Proxy" is defined to mean an instrument containing the appointment of a person who is substituted in the place and stead of the person or authorized representative of an entity entitled to vote. Proxies shall be in writing signed by the person or authorized representative of an entity giving the same and shall be valid only for the particular Meeting designated therein and, if so stated in the Proxy, any adjournments thereof, provided, however, any proxy automatically expires ninety (90) days after the date of the meeting for which it was originally given. A Proxy must be filed with the Secretary of the Association before the appointed time of the Meeting in order to be valid. Any Proxy may be revoked prior to the time a vote is cast in accordance with such Proxy.

3.11. The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of twenty percent (20%) of the votes represented at such Meeting and entitled to be cast on such matter, if such request is made prior to the vote in question.

#### Section 4. Board; Directors' Meetings

4.1. The business and administration of the Association shall be by its Board.

4.2. The election and, if applicable, designation of Directors shall be conducted in accordance with the Articles. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses of Members.

4.3. (a) Any person elected or designated as a Director shall have all the rights, privileges, duties and obligations of a Director of the Association.

(b) The term of a Director's service shall be as stated in the Articles and, if not so stated, shall extend until the next Annual Members' Meeting and thereafter until his/her successor is duly elected and qualified or until he/she resigns or is removed in the manner elsewhere provided.

4.4. The organizational meeting of a newly elected Board shall be held within ten (10) days of its election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. Provided the organizational meeting is held directly following the Annual Members' Meeting, no further notice of the organizational meeting shall be necessary; if not, however, notice of the organizational meeting shall be given in accordance with Section 720.303(2) of the HOA Act.

4.5. Regular meetings of the Board may be held at such times and places at the office of the Association or at such other place in the County as shall be determined from time to time by a majority of the Directors. Special meetings of the Board may be called at the discretion of the President or the Vice President. Special meetings must be called by the Secretary at the written request of at least one-third (1/3) of the Directors. Any such special meeting may be held at the office of the Association or at such other place in the County at such time and place as determined by the Directors requesting such meeting or in such other place as all of the Directors shall agree upon.

4.6. Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally, by mail, telephone or electronically transmitted if correctly directed to an electronic mail address at which the Director has consented to receive notice at least three (3) days prior to the day named for such meeting unless such notice is waived before, during or after such meeting. Any Director may waive notice of the meeting in writing before, during or after a meeting and such waiver shall be deemed equivalent to the receipt of notice by such Director.

4.7. Notice of all Board meetings shall be given to the members in accordance with the HOA Act.

4.8. A quorum of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board, except as may be otherwise specifically provided by law, by the Articles or elsewhere herein. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board.

4.9. The presiding officer at all Board meetings shall be the President. In the absence of the President, the Directors shall designate any one of their number to preside.

4.10. Directors' fees, if any, shall be determined by the Members.

4.11. Minutes of all meetings of the Board shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times.

4.12. The Board shall have the power to appoint an "Executive Committee(s)" of the Board consisting of not less than three (3) Directors. The Executive Committee(s) shall have and exercise such powers of the Board as may be delegated to such Executive Committee(s) by the Board.

4.13. Meetings of the Board shall be open to all Members. The Board may also hold closed meetings to the extent permitted by applicable law, including, by way of example but not by way of limitation, when the discussion at a meeting is governed by attorney-client privilege. Members shall have the right to participate in meetings with reference to all designated agenda items in accordance with the HOA Act and any rules and regulations promulgated by the Association. In the event a Member conducts himself or herself in a manner detrimental to the carrying on of the meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish said Member's expulsion. Also, any Director shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he or she is a Member or a duly authorized representative, agent or proxy holder of a Member, unless said person has been specifically invited by any of the Directors to participate in such meeting.

4.14. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof and such consent shall have the same force and effect as a unanimous vote of the Directors, provided, however, whenever assessments are to be considered, they may be considered only at a meeting of the Directors properly noticed in accordance with the HOA Act.

#### Section 5. Powers and Duties of the Board

5.1. All of the powers and duties of the Association shall be exercised by the Board. Such powers and duties of the Board shall include, but not be limited to, all powers and duties set forth in the Governing Documents, as well as all of the powers and duties of a director of a corporation not for profit not inconsistent therewith.

5.2. The Association may employ a manager to perform any of the duties, powers or functions of the Association. Notwithstanding the foregoing, the Association may not delegate to the manager the power to conclusively determine whether the Association should make expenditures for capital additions or improvements chargeable against the Association funds. The members of the Board shall not be personally liable for any omission or improper exercise by the manager of any duty, power or function delegated to the manager by the Association.

## Section 6. Officers of the Association

6.1. Executive officers of the Association shall be the President, who shall be a Director, one or more Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected annually by the Board. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board. The Board may, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. One person may hold any two offices simultaneously, except when the functions of such offices are incompatible, but no person shall hold the office of President and any of the following offices simultaneously: Vice President, Secretary or Assistant Secretary.

6.2. The President shall be the chief executive officer of the Association. He/She shall have all of the powers and duties which are usually vested in the office of the President of an association or a corporation not for profit, including, but not limited to, the power to appoint such committees from among the Members at such times as he/she may, in his/her discretion, determine appropriate to assist in the conduct of the affairs of the Association. If in attendance, the President ("Chairman") shall preside at all meetings of the Board and the Members; provided, however, that the President may appoint a substitute.

6.3. In the absence or disability of the President, the Vice President shall exercise the powers and perform the duties of the President. If there is more than one (1) Vice President, the Board shall designate which Vice President is to perform which duties. The Vice President(s) shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board. In the event there shall be more than one Vice President elected by the Board, then they shall be designated as "First Vice President", "Second Vice President", etc., and shall exercise the powers and perform the duties of the presidency in such order.

6.4. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times. The Secretary shall have custody of the seal of the Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. The Secretary shall be custodian for the corporate records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the Association as may be required by the Board or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary under the supervision of the Secretary.

6.5. The Treasurer shall have custody of all of the monies of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep the assessment rolls and accounts of the Members and shall keep the books of the Association in accordance with good accounting practices and he/she shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

6.6. The compensation, if any, of the officers and other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from hiring a Director as an employee of the Association or preclude contracting with a Director or a party affiliated with a Director for the management or performance of contract services for all or any part of the Banyan Bay Community.

#### Section 7. Resignations

Any Director or officer may resign his/her post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Homes owned by any Director or officer (other than appointees of Declarant) shall constitute a written resignation of such Director or officer.

#### Section 8. Accounting Records; Fiscal Management

8.1. The Association shall prepare financial reports and maintain accounting records in accordance with the HOA Act. The accounting records of the Association shall be open to inspection by Members and Institutional Mortgagees or their respective authorized representatives at reasonable times and in accordance with, but subject to the limitations of, the HOA Act. Such authorization as a representative of a Member must be in writing and signed by the person giving the authorization and dated within sixty (60) days of the date of the inspection. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; (ii) an account for each Lot within the Banyan Bay Community which shall designate the name and address of the Owner thereof, the amount of Individual Lot Assessments and all other Assessments, if any, charged to the Lot, the amounts and due dates for payment of same, the amounts paid upon the account and the dates paid, and the balance due; (iii) any tax returns, financial statements and financial reports of the Association; and (iv) any other records that identify, measure, record or communicate financial information.

8.2. The Board shall adopt a Budget (as defined and provided for in the Declaration) of the anticipated operating expenses for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board ("Budget Meeting") called for that purpose to be held during the month of November or December of the year preceding the year to which the Budget applies. Prior to the Budget Meeting, a proposed Budget for the operating expenses shall be prepared by or on behalf of the Board. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member, upon request, and each Owner shall be given notice of the Individual Assessment applicable to his/her Home(s). The copy of the Budget, if requested, shall be deemed furnished and the notice of the Individual Assessment shall be deemed given upon its delivery or upon its being mailed to the Owner shown on the records of the Association at his/her last known address as shown on the records of the Association.

8.3. In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between calendar years on a *pro rata* basis any expenses which are prepaid in any one calendar year for Operating expenses which cover more than such calendar year; (iv) Assessments shall be made quarterly in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Operating expenses and for all unpaid Operating expenses previously incurred; and (v) items of Operating expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received. Notwithstanding the foregoing, the Assessments for Operating expenses and any periodic installments thereof shall be of sufficient magnitude to insure an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the accrual basis method of accounting.

8.4. Individual Assessments shall be payable as provided in the Declaration.

8.5. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Operating expenses not budgeted or which shall exceed budgeted items, and no Board is required to engage in deficit spending. Should there exist any deficiency which results from there being greater Operating expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of a Special Assessment or an upward adjustment to the Individual Assessment.

8.6. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

8.7. A report of the accounts of the Association shall be made annually by an accountant and a copy of the report shall be furnished to each Member who requests same in writing no later than the first day of April of the year following the year for which the report is made. The report shall be deemed to be furnished to the Member upon its delivery or mailing to the Member at his/her last known address shown on the records of the Association.

## Section 9. Rules and Regulations

The Board may at any meeting of the Board adopt rules and regulations or amend, modify or rescind then existing rules and regulations for the operation of Banyan Bay; provided, however, that such rules and regulations are not inconsistent with the terms or provisions of the Governing Documents. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members at the last known address for such Members as shown on the records of the Association at the time of such delivery or mailing and shall not take effect until forty-eight (48) hours after such delivery or mailing, or, in the event both forms of notification are used, whichever is later. Notwithstanding the foregoing, when rules and regulations are to regulate the use of a specific portion of the Property, same shall be

conspicuously posted and such rules and regulations shall be effective immediately upon such posting. Care shall be taken to insure that posted rules and regulations are conspicuously displayed and easily readable and that posted signs or announcements are designed with a view toward protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced.

#### Section 10. Parliamentary Rules

The then latest edition of Robert's Rules of Order shall govern the conduct of all meetings of the Members and the Board; provided, however, if such rules of order are in conflict with any of the Governing Documents, Robert's Rules of Order shall yield to the provisions of such instrument.

#### Section 11. Roster of Owners

Each Owner shall file with the Association a copy of the deed or other document showing his or her ownership of a Lot in Banyan Bay. The Association shall maintain such information. The Association shall also maintain the electronic mailing addresses and numbers designated by Owners for receiving notices sent by electronic transmission of those Owners consenting to receive notice by electronic transmission. The electronic mailing address and numbers provided by Owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein.

#### Section 12. Amendment of the Bylaws

12.1. These Bylaws may be amended as hereinafter set forth in this Section 12.

12.2 After the Turnover Date, any Bylaw of the Association may be amended or repealed, and any new Bylaw of the Association may be adopted by either:

- (i) a majority vote of the Members at any Annual Members' Meeting or any special meeting of the Members called for that purpose or by majority action of the Members who have acted by written response in lieu of a Meeting as permitted by these Bylaws; or
- (ii) by the affirmative vote of a majority of the Directors then in office at any regular meeting of the Board or at any special meeting of the Board called for that purpose or by written instrument signed by all of the Directors as is permitted by these Bylaws, provided that the Directors shall not have any authority to adopt, amend or repeal any Bylaw if such new Bylaw or such amendment or the repeal of a Bylaw would be inconsistent with any Bylaw previously adopted by the Members.

12.3. Notwithstanding any of the foregoing provisions of this Section 12 to the contrary, until the Turnover Date, all amendments or modifications to these Bylaws and adoption or repeal of Bylaws shall only be made by action of the First Board as described in the Articles, which First Board shall have the power to amend, modify, adopt and repeal any Bylaws without the requirement of any consent, approval or vote of the Members.

12.4. Notwithstanding the foregoing provisions of this Section 12, there shall be no amendment to these Bylaws which shall abridge, prejudice, amend or alter the rights of: (i) Declarant, without the prior written consent thereto by Declarant for so long as Declarant holds title to at least one (1) Home; or (ii) any Institutional Mortgagee without the prior written consent of such Institutional Mortgagee.

12.5. Any instrument amending, modifying, repealing or adding Bylaws shall identify the particular section or sections affected and give the exact language of such modification, amendment or addition or of the provisions repealed. A copy of each such amendment, modification, repeal or addition attested to by the Secretary or Assistant Secretary of the Association shall be recorded amongst the Public Records of the County.

#### Section 13. Mediation

Pursuant to the HOA Act, mandatory mediation before the Department of Business and Professional Regulation ("Department") shall be required prior to institution of court litigation for disputes involving certain actions or inactions, as described therein.

#### Section 14. Recall of Board Members and Election Disputes

Pursuant to the HOA Act, mandatory binding arbitration before the Department shall be required for election disputes and disputes involving the recall of any member of the Board. Any member of the Board may be recalled and removed from office as provided for and described in the HOA Act.

#### Section 15. Notice and Hearing Procedure.

In those instances which specifically provide an Owner the right of Notice and a hearing, the following procedures and provisions shall apply:

A. Notice. The Association shall notify the Owner in writing of the noncompliance and set forth the corrective action to be taken. A fine or suspension of use rights may not be imposed without notice of at least fourteen (14) days to the Owner sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director, or employee of the Association. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. At the Association's option, any fine may be levied on a daily basis in the event of a continuing violation without the necessity of a new hearing and without any limitation on the amount of such fine.

B. Hearing. Should the Owner still be in noncompliance, the noncompliance shall be presented to the Board after which the Board shall hear reasons why a fine should or should not be imposed. A written decision of the Board shall be submitted to the Owner, as applicable, not later than twenty-one (21) days after said meeting.

C. Payment. A fine shall be paid not later than thirty (30) days after notice of the imposition of the fine.

D. Fines. An Owner shall be responsible for all Legal Fees incurred in connection with the collection of a fine whether or not an action at law to collect said fine is commenced. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration. A fine of less than One Thousand and No/100 Dollars (\$1,000.00) may not become a lien against a Lot.

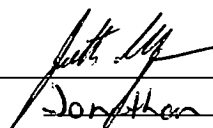
E. Failure to Pay Assessments. Notice and hearing as provided in Subparagraphs A and B above shall not be required with respect to the imposition of suspension of use rights or imposition of suspension of voting rights upon any Owner because of such Owner's failure to pay Assessments or other monetary obligations or charges which are due for more than ninety (90) days.

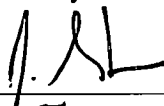
F. Access. Suspension of use rights to Association Property shall not impair the right of an Owner or tenant of a Home to have vehicular and pedestrian ingress to and egress from such Home, including, but not limited to, the right to park, nor to provide access to utility services provided to the Home.

Section 16. Interpretation

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the event of any conflict between the Articles and the Declaration, the Declaration shall control.

**BANYAN BAY STUART HOMEOWNERS ASSOCIATION, INC.**

By: , President

Attest: , Secretary

[CORPORATE SEAL]

EXHIBIT "D"

RULES AND REGULATIONS

Unofficial Copy

## RULES AND REGULATIONS FOR BANYAN BAY

The definitions contained in the Declaration of Covenants, Conditions, and Restrictions for Banyan Bay ("**Declaration**") are incorporated herein as part of these Rules and Regulations ("**Rules**").

1. No personal articles shall be allowed to stand overnight on the Association Property.
2. No Owner shall make or permit any noises that will disturb or annoy the occupants of any of the Homes nor do or permit anything to be done which will interfere with the rights, comfort or convenience of other Owners.
3. Each Owner shall keep his or her Home and Lot in a good state of preservation and cleanliness and shall not sweep or throw or permit to be swept or thrown any debris from the doors, balconies or windows thereof.
4. Among other acts of God and uncontrollable events, hurricanes have occurred in Florida and therefore the Property is exposed to the potential damages of hurricanes, including but not limited to, damages from storm surges and wind-driven rain. Water or other damages from this or other extraordinary causes shall not be the responsibility of Declarant. Each Owner who plans to be absent from his or her Home during the hurricane season must prepare his or her Home and Lot prior to his or her departure by:
  - (a) Removing all furniture, potted plants and other movable objects from outside his or her Home; and
  - (b) Designating a responsible firm or individual satisfactory to the Association to care for his or her Home should the Home suffer hurricane damage. Such firm or individual shall contact the Association for clearance to install or remove hurricane shutters.
5. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on the Lots and/or Association Property, except in sanitary, self-locking containers stored inside a Home or areas or dumpsters designated for such purpose by the Association, from time to time, and kept in a clean and sanitary condition, and no odor shall be permitted to arise therefrom so as to render Banyan Bay or any portion thereof unsanitary, offensive, detrimental or a nuisance to Owners or to any other property in the vicinity thereof or to its occupants. Garbage, trash, refuse or rubbish that is required to be placed at the front of the Home in order to be collected may be placed and kept at the front of the Home after 5:00 p.m. on the day before the scheduled day of collection but not sooner, and any trash facilities must be removed on the day of collection. No clothing or other household items shall be hung, dried, or aired in such a way as to be visible from the Association Property or another Lot. No stripped vehicles, non-functioning vehicles, lumber or other building materials, grass, tree clippings, metals, scrap, automobile pieces or parts, refuse, or trash shall be stored or allowed to accumulate on any portion of Banyan Bay (except when accumulated during construction by Declarant, during construction approved by the Association, or when accumulated by the Association for imminent pick up and discard).

6. No garage sales, estate sales, yard sales, moving sales, or any other sales that invite the public, shall be allowed on or about any portion of Banyan Bay without the prior written approval of the Association and without obtaining approvals from all applicable governmental authorities (if required).
7. Complaints regarding the management of the Association Property or regarding actions of other Owners shall be made in writing to the Association.
8. Any consent or approval given under these Rules by the Association shall be revocable at any time by the Board.
9. Owners are referred to the restrictions contained in the Governing Documents, which are binding upon all Owners.
10. These Rules may be modified, added to or repealed at any time by the Association.
11. These Rules shall not apply to Declarant as an Owner.

By Resolution of the Board of Directors of BANYAN BAY STUART HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit.