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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND  
EASEMENTS FOR  
HARTS RIDGE**

**THIS DECLARATION** of covenants, conditions, restrictions, and easements for **HARTS RIDGE** is made this 24 day of April, 2024 by **CLDG HARTS, LLC**, a Florida Limited Liability Company (“Declarant”), joined by **HARTS RIDGE OWNERS ASSOCIATION, INC.** (“Association”).

**WITNESSETH**

**WHEREAS**, Declarant is the owner of real estate situated in Duval County, Florida, more particularly described on **Exhibit A** attached hereto (the “Property”); and

**WHEREAS**, Declarant intends to develop the Property as a residential townhome development; and

**WHEREAS**, Declarant desires to establish a structure for the control, operation and maintenance of common areas and other facilities for the benefit of the development. Accordingly, Declarant has or will establish a not-for-profit corporation organized under the laws of the State of Florida, Harts Ridge Owner Association, Inc., which shall be responsible for performing the duties and exercising the rights contemplated by this Declaration and other duties and obligations properly delegated to it; and

**NOW, THEREFORE**, Declarant declares that the Property and each portion thereof shall be developed, improved, conveyed, used, and occupied subject to this Declaration, as it may be amended from time to time, which provisions shall constitute covenants at law and equitable servitudes running with the land described in **Exhibit A** and such additional land as may be subjected to the terms of this Declaration in the future in Declarant’s sole discretion, and which shall be binding on all persons having or in the future who may acquire any right, title, or interest in such lands or parts thereof, and which shall inure to the benefit and burden of each such person and their heirs, devisees, successors, and assigns.

**ARTICLE I  
DEFINITIONS**

**1.1 “Additional Property”** means any and all portions of real property not originally submitted to this Declaration but later submitted to this Declaration by the recording of a Supplementary Declaration by the Declarant, in its sole and absolute discretion.

**1.2** “**Architectural Review Committee**” or “**ARC**” shall refer to a committee established by the Board that is responsible for reviewing and determining whether any proposed or constructed Improvement complies with the Governing Documents, if and when Declarant specifically assigns such review and approval rights to the Association or ARC.

**1.3** “**Architectural Review Guidelines**” means the standards and criteria, including without limitation permitted and prohibited styles, colors, materials, dimensions, and other characteristics concerning the nature of any Improvements which may be constructed in the Property, as may be promulgated by the Declarant, or if and after Declarant’s assignment of the right to adopt such standards and criteria to the Association, the Board.

**1.4** “**Articles**” means the Articles of Incorporation for Harts Ridge Owners Association, Inc., attached as **Exhibit B** to this Declaration, as may be amended from time to time.

**1.5** “**Assessments**” means a sum or sums of money payable to the Association by the Owners of one or more Lots, as provided in the Governing Documents, which if not paid can result in a lien against the Lot. “Assessments” include General Assessments, Special Assessments, and Individual Assessments.

**1.6** “**Association**” means “Harts Ridge Owners Association, Inc.” a Florida corporation not-for-profit. When used herein, unless specifically stated otherwise in the pertinent provision hereof, reference to any action which the Association is required or permitted to undertake shall refer to action of the Association as determined by the Board.

**1.7** “**Association Property**” means any portion of the Property to which the Association holds legal title or in which the Association possesses a leasehold interest. Association Property shall also refer to personal property, fixtures, and Improvements erected or located on Association Property where the context indicates. In addition, Association Property shall refer to personal property and Improvements installed or placed on Lots by Declarant which are intended for the benefit, use, or enjoyment of all Owners and Lots.

**1.8** “**Board**” means the Association’s Board of Directors.

**1.9** “**Builder**” means CL Breeze, LLC, and its successors and assigns, and any Person other than the Declarant which purchases one or more Lots for the purposes of constructing improvements for later sale to consumers or parcels of land within the Property for further subdivision, development, and/or resale in the ordinary course of such Person’s business and which Declarant has approved and designated such Person as a Builder for the purposes of this Declaration.

**1.10** “**Building**” means the buildings containing Homes (single-family residential townhome dwellings).

**1.11** “**Bylaws**” means the Association’s Bylaws, attached as **Exhibit C** to this Declaration, as may be amended from time to time.

**1.12 “Common Area”** means all real property which is owned or leased by the Association or otherwise designated as Common Area by the Declarant, together with the Improvements thereon designated by Declarant for the use or benefit of Association Members. Portions of the Property included within the Lots may be designated as Common Area notwithstanding that legal title to such property is owned by a Member.

**1.13 “Common Expenses”** means the costs and expenses associated with the operation of the Association and performance of any duty, or exercise of any right, of the Association, which is financed through the levying of Assessments against the Members and their respective Lots.

**1.14 “Declarant”** means “CLDG Harts, LLC” and any party holding legal title to any portion of the Property who has been assigned one or more rights of the Declarant and specifically identified as a Declarant in an instrument recorded in the Official Public Records of Duval County, Florida.

**1.15 “Declarant Rights”** means the rights reserved by the Declarant in this Declaration, which may be assigned to one or more parties on a non-exclusive basis.

**1.16 “First Mortgagee”** means the owner of a first mortgage of record of a Lot.

**1.17 “Governing Documents”** means this Declaration, the Articles, Bylaws, Rules and Regulations, and Architectural Review Guidelines, all as may be amended from time to time.

**1.18 “Home”** means a single-family residential townhome dwelling constructed on a Lot for which a certificate of occupancy or equivalent instrument permitting occupancy of the residential dwelling has been issued by the appropriate governmental authority.

**1.19 “Homeowners’ Association Act”** means Chapter 720 of the Florida Statutes in effect as of the date of the recording of this Declaration.

**1.20 “Improvement”** means any structure constructed or placed, or proposed to be constructed or placed, on the Property or any alteration to an existing structure, and any other thing identified as an “Improvement” under the Governing Documents. “Improvement” shall also include trees, shrubs, grading, and other landscaping features or any alteration of existing trees, shrubs, grading, and other landscaping features.

**1.21 “Invitee”** means any person occupying or otherwise located within the Property at the invitation of, or with the consent of, an Owner or another Invitee of an Owner, including, but not limited to, residents, tenants, guests, contractors, and other invitees.

**1.22 “Limited Common Area”** means real property which is owned or leased by the Association, or which is otherwise designated by Declarant as Limited Common Area (regardless of who owns legal title to such property), and for which the right to use, obligation to maintain, repair, or replace, or obligation to pay Assessments, is delegated to fewer than all the Association’s Members. The initial Limited Common Area of a Lot shall consist of the portions of the Property between the front Lot line and the nearest edge of the paved road surface (as it exists from time to time) and between the rear Lot line and the nearest shore line of any lake contiguous to or within

forty (40) feet of the Lot, within the area bounded by the extension of the side Lot lines, together with any portion of the Property contiguous to a Lot which as a result of the natural configuration of the Property, is primarily of benefit to such Lot. Any question concerning the boundary of a Limited Common Area shall be determined by the Board of Directors of the Association.

**1.23 “Lot”** means a platted portion of the Property which is designated by Declarant for construction of a single-family residential townhome dwelling.

**1.24 “Member”** means a member of the Association, which is a record owner of a fee interest in a Lot.

**1.25 “Owner”** means a record owner of a fee interest in a Lot.

**1.26 “Permit”** means the stormwater management system permit issued by the SJRWMD identified in Article XII, Section 12.1, as it may be modified and extended from time to time.

**1.27 “Plat”** means any and all plats recorded in the Official Records of Duval County, Florida identifying any part of the Property encumbered by this Declaration.

**1.28 “Property”** means the real property described on **Exhibit A** attached hereto along with any Additional Property made subject to this Declaration by the recording of a Supplementary Declaration.

**1.29 “Qualifying First Mortgagee”** means a First Mortgagee that: (i) filed a mortgage foreclosure lawsuit against an Owner; (ii) initially joined the Association as a defendant in the mortgage foreclosure action; and (iii) complies with all requirements provided by the Homeowners’ Association Act, as such requirements may be amended from time to time, to become entitled to a limitation of liability for Assessments coming due prior to the Qualifying First Mortgagee’s acquisition of title to a Lot.

**1.30 “Rules and Regulations”** means the rules, regulations, requirements, and limitations adopted by the Declarant or Board concerning the conduct of Members and Invitees and use of the Property, as may be amended from time to time.

**1.31 “Shared Components”** means components of a townhome building which serve or benefit more than one Lot or Home and the Owners thereof, excluding Utilities serving the Property as a whole (i.e., components of Utilities that serve or benefit all Owners and Homes). Shared Components may (but will not necessarily) include partition walls within townhome buildings which form a shared boundary between two Homes, portions of townhome buildings which contribute to the structural support of more than one Home, Utilities which serve more than one Home (but not Utilities that serve the Property as a whole or all Lots, Homes, and Owners), and potentially the roofing system, if the roofing system is constructed in a manner such that part of it cannot be repaired or replaced without repairing or replacing the entirety of it or parts of it located above more than one Home.

**1.32** “**SJRWMD**” means the St. Johns River Water Management District.

**1.33** “**Stormwater Management System**” means 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. or regulations of similar import. The foregoing includes without limitation all drainage pipes, equipment, outflow control structures, retention and detention ponds and vaults, and underdrains and related drainage facilities: (i) located within the Property; and (ii) all such facilities located within drainage easements serving the Property to the extent the maintenance obligations under such easements are obligations that run with title to the lands within the Property.

**1.34** “**Transition**” (also called turnover) is the time at which the Members other than the Declarant are entitled to elect a majority of the Board, as further defined in Article IV.

**1.35** “**Utilities**” means water, electricity, gas, sewer, waste disposal, mail and parcel delivery, telephone, television, cable, and data communication (e.g., internet), along with the conduit, equipment, and facilities necessary to furnish or provide any of the foregoing items or services to the Property.

**1.36** “**Utility Provider**” means a person or entity that provides Utilities.

**1.37** “**Voting Interest**” means the voting interest appurtenant to each Lot or allocated to the Declarant.

## **ARTICLE II PROPERTY BOUND**

**2.1 Property Bound.** The Property described in **Exhibit A** hereto shall be bound by the provisions of this Declaration, which shall constitute covenants at law and equitable servitudes running with the land and binding all successors in title or interest to any part of the Property.

**2.2 Submission of Additional Property; Withdrawal of Property.** Declarant may submit Additional Property to this Declaration, in its sole discretion, by recording a Supplementary Declaration in the Official Records of Duval County, Florida. Declarant may withdraw property (including without limitation any part of the Property or Additional Property) and release it from this Declaration at any time, in its sole discretion, by recording a document in the Official Records evidencing Declarant’s withdrawal of property. The submission of Additional Property and the withdrawal or release of Property from the provisions of this Declaration by the Declarant shall be in Declarant’s sole discretion and shall not require the approval or joinder by any person.

### ARTICLE III THE DECLARANT

**3.1 Development Plans.** It is the Declarant's present intention to develop Harts Ridge as a single-family residential townhome development. The Property is presently anticipated to, but will not necessarily, include one hundred (100) Lots with single-family residential townhomes constructed thereon. The Property is also anticipated to, but will not necessarily include park and open space tracts and a Stormwater Management System, which if constructed will constitute part of the Common Area. However, nothing herein shall constitute a representation, warranty, or otherwise be construed to obligate the Declarant to: (i) submit or remove any of the Property or Additional Property to the provisions of this Declaration; (ii) construct any particular amenity, recreational facility, Utility, or other Improvement except as expressly represented herein or in a purchase and sale contract between Declarant and a third party; (iii) prevent Declarant from changing the plan of development; or (iv) convey or not convey any portion of real or tangible property to the Association. This Section is merely an expression of Declarant's present intentions, which are subject to change in the Declarant's sole discretion. All persons with any interest in any part of the Property, by acquiring such interest, acknowledge and agree that the general plan of development is an evolving plan which may change or be affected by market conditions and other factors, and therefore no amendment to the Governing Documents shall be deemed or interpreted to destroy the general plan of development. The general plan of development shall be deemed to potentially include any and all permissible uses of the Property in accordance with applicable law.

**3.2 Declarant Rights.** In addition to the rights otherwise provided herein, Declarant shall have the following rights:

- a) The right to submit Additional Property to this Declaration.
- b) The right to remove Property from being subject to this Declaration.
- c) The right to grant easements over the Property for ingress, egress, and access to adjacent lands and for the construction and maintenance of Utilities, whether to serve the Property or adjacent properties, and for such other purposes as the Declarant may desire in its sole discretion.
- d) The right to connect to Utilities serving the Property and to use or permit others to use Utility conduit, equipment, and facilities serving the Property on such terms and conditions as Declarant may determine.
- e) The right to impose additional covenants, conditions, restrictions, and easements on or to the Property.
- f) The right to designate property as being Association Property, Common Area, or Limited Common Area, and to compel the Association to accept title and maintenance and other obligations with respect to it.

**g)** The right to compel the Association to accept title to property, assignments of rights, and delegation of obligations, including responsibilities under any Stormwater Management System permits.

**h)** The right to review and approve all proposed Improvements to be constructed on, under, or within the Property and to exercise all rights related to architectural review and approval as contemplated by Article VI of this Declaration until such time as Declarant may, in its sole discretion, assign any or all of such rights to the Association.

**i)** The right to appoint all members of the Board of Directors until Transition, subject to Members' other than the Declarant right to elect one member of the Board after fifty percent (50%) of all parcels in all phases of the community which will ultimately be operated by the Association have been conveyed to Members other than the Declarant.

**j)** The right to carry out any activities on the Property, except within Homes not owned by Declarant, as may be desirable or beneficial for the marketing, sale, or lease of any part of the Property, without having to pay any fee or compensation in exchange therefor.

**k)** The right to move, remove, or plant trees and other landscaping features on any part of the Property, including without limitation within Lots, and the right to move, grade, install, or remove dirt or land on any portion of the Property, subject to applicable law.

**l)** The right to be exempt from Rules and Regulations promulgated by the Board;

**m)** The right (but not the obligation) to enforce the Governing Documents;

**n)** The right to unilaterally amend the Governing Documents and to record such amendment(s) in the Official Records (as required) without the consent or joinder by any person and for any reason deemed appropriate by Declarant except as expressly limited by applicable law. This right shall include (without limitation) the right to amend the Governing Documents to: create additional membership classes; to terminate and convert an existing membership class into another membership class; to change the voting interest appurtenant to any parcel or part of the Property, including appurtenant to Lots, regardless of whether such change would be deemed material or adverse; and to change the proportion or percentage by which a parcel or other part of the Property (or owners thereof) share in the Common Expenses of the Association, regardless of whether such change would be deemed material or adverse.

**o)** The right to veto and declare invalid and ineffectual any amendment to any Governing Documents, including any amendments proposed or recorded following Transition.

**p)** The right to amend, and seek the amendment of, any plat, PUD, zoning

ordinance or designation, and development orders without having to obtain the consent, approval, or joinder by any person other than applicable governmental entities with jurisdiction. To the extent the consent, approval, or joinder by any person with any interest in any part of the Property may be required by a governmental entity with jurisdiction, by acquiring any interest in any part of the Property, such persons (which includes without limitation the Association) shall be deemed to have consented to and approved any amendment to any plat, PUD, zoning ordinance or designation, or development order applicable to the Property proposed by Declarant and to have given Declarant an irrevocable power of attorney, coupled with an interest, to execute any instruments of any nature that may be required as a condition for amendment or implementation of any plat, PUD, zoning ordinance or designation, or development order applicable to the Property, in the name and on behalf of any such person with any interest in any part of the Property. Declarant shall further have the right to compel, through judicial proceedings if necessary, any person with any interest in any part of the Property to execute any instruments that may be necessary to permit Declarant to exercise the rights contemplated by this provision.

q) The right to cause any of the Property and Additional Property to be annexed into or otherwise subject to the jurisdiction of any county, municipality, special district, or other governmental or quasi-governmental unit without the consent or joinder of any person other than Declarant, in Declarant's sole discretion, regardless of whether any of the Property or Additional Property has been conveyed to persons other than Declarant.

r) The right to change the designation of area designated as a Common Area or Limited Common Area and to withdraw any designation of a Common Area or Limited Common Area and release such area from the terms of the designation, provided that no such withdrawal or release shall restrict or prohibit access by an Owner or their mortgagees to any Home.

s) The right, but not the obligation, to establish a guarantee of Common Expenses and Assessments.

t) The right to engage in any other activity necessary or proper for the development of the Development and to facilitate the sale or lease of any property within the Development, in Declarant's sole discretion. The foregoing right shall be exercised in accordance with applicable law.

**3.3 Assignment of Declarant Rights.** The rights reserved to Declarant under this Declaration may be assigned on a non-exclusive basis to any party acquiring a fee interest in any part of the Property subject to this Declaration. Such assignment shall be evidenced by a written instrument signed by the Declarant and recorded in the Official Records of Duval County, Florida. A deed from the Declarant conveying any portion of the Property will not impliedly include an assignment of the Declarant's rights hereunder.

## ARTICLE IV THE ASSOCIATION

**4.1 Organization.** The Association is a not-for-profit corporation incorporated under the laws of the State of Florida pursuant to Chapters 617 and 720 of the Florida Statutes. The Association shall be responsible for complying with obligations and exercising rights set forth in the Governing Documents. Reference in the Governing Documents to any power, duty, or action required or permitted to be taken by the Association shall be exercisable by the Board, without membership approval, unless membership approval is expressly required by law or the Governing Documents for any particular matter.

**4.2 Membership.** Every Owner of a fee interest in a Lot shall be a mandatory Member of the Association. Membership in the Association is appurtenant to, and inseparable from, ownership of a fee interest in a Lot and may not be conveyed, transferred, or hypothecated except through conveyance, transfer, or hypothecation of the Lot to which the membership interest is appurtenant. Membership may not be abandoned or surrendered, and no person may dissociate himself or herself without divesting himself or herself of a fee interest in the Lot to which the membership interest is appurtenant. The Association shall initially have two classes of membership, as set forth herein and in the Articles.

**4.3 Voting Interests.** Voting Interests with respect to matters for which Members have the right to vote by the Governing Documents or law shall be as follows:

a) **Class A Members.** The Class A Members are all Owners, excluding Declarant until Transition. After Transition, Declarant shall be a Class A Member with respect to any Lots owned by Declarant after Transition. There shall be one (1) Voting Interest per Lot for all matters for which Members are entitled to vote, irrespective of the number of Owners of the Lot. The Voting Interest shall be exercised by the Members in the manner provided by this Declaration, the Articles, and the Bylaws.

b) **Class B Member.** The Class B Member is the Declarant, who shall have a number of Voting Interests equal to the total number of Voting Interests of the Class A Members multiplied by one hundred (100) until Transition. The Class B Membership shall terminate at Transition, and after Transition Declarant shall be a Class A Member with respect to any Lots owned by Declarant after Transition.

c) **Cumulative Voting Prohibited.** With respect to all Member votes, cumulative voting is prohibited. Members shall only be permitted to vote on matters specifically authorized by the Governing Documents or specifically required or permitted by law.

**4.4 Powers and Duties.** The Association shall have the following powers and duties, which shall be exercised in the reasonable business judgment of the Board. The specific enumeration of powers and duties in this Section shall not be construed to imply the exclusion of any other right or duty necessary or proper for the operation of the Association.

- a) All powers provided in, and duties required by, Chapters 617 and 720 of the Florida Statutes;
- b) To levy Assessments against Owners of Lots to finance, among other Common Expenses, the costs of maintenance and operation of the Stormwater Management System;
- c) To operate, maintain, repair, and replace Association Property, including landscaping, waste removal, maintenance of open spaces, Common Areas, buffer areas, preservation areas, conservation areas, lakes, and wastewater facilities. The Association may maintain other adjacent property even if not owned by the Association if otherwise deemed by the Board to be in the interests of the Association;
- d) To operate and maintain the Stormwater Management System in accordance with applicable permits;
- e) To make contracts and guaranties, incur liabilities, borrow money at such rates of interest as the Association may determine, issue notes, bonds, and other obligations, and secure its obligations by mortgage and pledge of all or any of its property, franchises, or income;
- f) To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property, or any interest therein, wherever situated;
- g) To sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets;
- h) To establish, promulgate, amend, repeal, and enforce Rules and Regulations concerning the use of the Property by, and conduct of, Members and Invitees;
- i) To maintain Official Records to the extent required by the Homeowners' Association Act or other applicable law;
- j) To prepare an annual budget, which shall include estimated operating expenses and may include reserves for capital expenditures and deferred maintenance;
- k) To prepare and disseminate a financial report in accordance with the Homeowners' Association Act;
- l) To maintain insurance policies for Association Property, general liability, director and officer liability, fidelity insurance, and other insurance policies deemed appropriate by the Board;

- m) To grant easements and dedicate portions of the Property and Improvements thereon to Utility Providers;
- n) To pay taxes and assessments levied upon or assessed against the Association or Association Property;
- o) The power, but not the obligation in any instance, to enforce compliance with the Governing Documents and applicable law through any means available at law or in equity, including the power to levy fines and suspensions of use and voting rights;
- p) To sue and be sued;
- q) To contract with third parties to perform or assist in the performance of its obligations under the Governing Documents and law;
- r) To maintain, replace, and install landscaping, sod, grass, and plant material on Common Area, Limited Common Area, and adjacent to streets and sidewalks within the Property;
- s) To perform any act and exercise any power conferred on the Association by the Governing Documents or law.
- t) To perform any act whether or not specifically contemplated by the Governing Documents or law if necessary or proper to fulfill any obligation delegated to it;

**4.5 Association Actions & Decisions.** Unless otherwise specifically provided in the Governing Documents or applicable law, all actions and decisions of the Association shall be as determined by a majority of a quorum of the Board of Directors. Any action or decision of the Association shall not require approval of the Voting Interests or Members unless specifically required by the Governing Documents or applicable law. Where approval of the Voting Interests is specifically required, reference in the Governing Documents to approval of a percentage of the Voting Interests shall refer to a percentage of the Voting Interests voting in person or by proxy at which a quorum is attained and not a percentage of the total (or entire) Voting Interests unless the provision specifically references the approval of a percentage of the total Voting Interests.

**4.6 Enforcement of Governing Documents.** All Members and Invitees are obligated to comply with the Governing Documents. The covenants and restrictions herein are mutually enforceable by all Owners within the Property. The Association shall have the authority but not the obligation in any instance to pursue any remedies available at law or in equity against a Member or Invitee for violating or attempting to violate any provision of the Governing Documents or law. Such action may include, but shall not be limited to:

- a) Imposing a fine against a Member and Invitees up to the maximum amount permitted by law, which may be imposed jointly and severally against a Member and a Member's Invitee for violations by a Member's Invitee. A fine shall be deemed an

Individual Assessment and shall become a lien against an Owner's Lot upon reaching \$1,000.00 in the aggregate;

b) Suspending rights to use Common Area, Limited Common Area, and Association Property, except as necessary to provide Utilities or ingress and egress to a Lot;

c) Suspending the voting rights of a Member for the nonpayment of a fee, fine, or other monetary obligation due to the Association that is more than ninety days delinquent;

d) Requiring pre-suit mediation;

e) Instituting arbitration proceedings;

f) Filing a lawsuit for damages or injunctive relief, or both. The prevailing party in any lawsuit concerning an alleged failure to comply with the Governing Documents shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party; and

g) After providing at least fourteen (14) days' notice to the Owner providing an opportunity for the Owner to correct a violation, the Association may enter the Lot, correct the violation, and levy an Individual Assessment against the Owner and Lot for the associated costs.

Owners shall be jointly and severally liable with their tenants and Invitees for any violations committed, fines imposed, and damages caused by or recovered against (including without limitation attorneys' fees and costs) a tenant or Invitee. The Board may exercise business judgment in determining whether, and which type of action, if any, to enforce the Governing Documents in any particular instance. The Association has the right, but not the obligation in any particular instance, to enforce the provisions of the Governing Documents, and the Association may not be compelled by a Member or any other party, except by the Declarant and the St. Johns River Water Management District (but only with respect to any obligations the Association may have under any applicable permit issued by the District), to pursue any enforcement action against any party. The Association's decision to pursue enforcement action in one instance shall not compel it to pursue enforcement action in any other instance, and the Association's decision to not pursue enforcement action in any instance shall not operate as a waiver or estop the Association from pursuing enforcement action in any other instance, regardless of the similarity of the circumstances. Owners are jointly and severally liable with their tenants and Invitees to the Association for any amount (as determined in the sole discretion of the Association) which is required by the Association to repair any damage to any portion of the Property or to pay any claim for personal injury, death, or damage to property caused by the act or omission of the lessee, tenant, or Invitees. The Association may levy Individual Assessments against the Lot and Owner(s) thereof for such amounts.

In the event an Owner or that Owner's tenants, Invitees or guests fail to comply with the restrictions, covenants, architectural guidelines, or rules and regulations adopted by the Board of Directors, the Association has the right employs an attorney in its effort to seek compliance. The Owner shall pay all reasonable attorney's fees and costs incurred by the Association in seeking compliance, including without limitation, attorneys' fees and costs related to demand letters, presuit mediation demands, which shall be recoverable whether or not suit is brought. In the event litigation shall be brought by any party to enforce any provisions of this Declaration, the prevailing party in such proceedings shall be entitled to recover from the non-prevailing party or parties, reasonable attorneys' fees and costs related to enforcement attempts, including without limitation, presuit demands, mediation, arbitration, pre-trial preparation, trial, and appellate proceedings. The remedies in this section shall be construed as cumulative of all other remedies now or hereafter provided or made available elsewhere in this Declaration, or by law.

**4.7 Obligation to Accept Property from Declarant.** The Association is obligated to accept any property conveyed to it by the Declarant. The foregoing shall include any responsibilities and obligations to operate and maintain the Stormwater Management System. The Association is obligated to accept all such Property conveyed to it by the Declarant in "as-is" condition without representations or warranties of any nature, unless otherwise agreed in writing by Declarant.

**4.8 Transition of Association Control.** Transition of Association control is the point at which Members other than the Declarant are entitled to elect a majority of the members of the Board. For the purposes of this Section, "Members other than the Declarant" shall not include builders, contractors, or others, who purchase a Lot for the purpose of constructing Improvements thereon for resale on behalf of Declarant, if any. Transition shall occur on the earliest of the following events:

- a) Three months after ninety percent (90%) of all the Lots in all phases of the community that will ultimately be operated by the Association have been conveyed to Members other than the Declarant;
- b) Upon the Declarant abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the Governing Documents;
- c) Upon the Declarant filing a petition seeking protection under Chapter 7 of the federal Bankruptcy Code;
- d) Upon the 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 rights and responsibilities first arising after the date of such assignment;
- e) Upon a receiver for the Declarant being appointed by a circuit court and not being discharged within 30 days after such appointment, unless the court determines within 30 days after such appointment that transfer of control would be detrimental to the Association or its Members; or

f) At such other time as Declarant may determine, which may be achieved by Declarant causing a majority of the Declarant-appointed directors to resign and the Association conducting an election to fill a majority of the positions on the Board by non-Declarant Members.

When Transition is required to occur in accordance with this Section, the Association shall provide notice of a Membership meeting for the purpose of conducting an election to accomplish Transition. In addition, Declarant is entitled to elect at least one member of the Board as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots in all phases of the community. After Declarant relinquishes control of the Association, the Declarant may exercise the right to vote any Declarant Voting Interests in the same manner as any other Member, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board.

**4.9 Members' Right to Elect Pre-Transition Director.** Members other than the Declarant are entitled to elect one Member of the Board when fifty percent (50%) of all Lots in all phases of the community which will ultimately be operated by the Association have been conveyed to Members other than the Declarant.

## ARTICLE V ASSESSMENTS

**5.1 Assessment Purposes & Categories.** To pay for the expenses of maintaining the Common Areas, Limited Common Areas, and Association Property, fulfilling its duties and obligations, and exercising its rights, the Association shall be entitled to levy Assessments against all Owners and Lots as provided herein. Assessments shall also be used for the maintenance and repair of the surface water or Stormwater Management System in accordance with the Permit(s), including but not limited to work within retention areas, drainage structures, and drainage easements. The obligation to pay Assessments shall constitute a personal obligation of the Owner(s) of fee interests in Lots and shall also constitute an *in rem* obligation of each Lot within the Property. Any part of the Property owned by a governmental entity shall not be subject to Assessments unless otherwise agreed in writing by such governmental entity. Unless otherwise provided by the Board or by law, all Assessments shall be payable on demand. The procedure for levying Assessments shall be as stated in the Bylaws. Such Assessments may include:

a) **General Assessments.** General Assessments are Assessments proportionately levied against all Lots and the Owners thereof to pay for the Association's anticipated, budgeted operating expenses and reserves for capital assets and deferred maintenance, if such reserves are established by the Declarant, Board, or express vote of the Voting Interests. The General Assessment required to be paid by each Lot and the Owner(s) thereof is calculated by taking the total expenses anticipated to be incurred by the Association according to its most recently adopted budget (the Common Expenses) and dividing it by the total number of Lots in the Property, and each Lot and the Owner(s) thereof shall be obligated to pay their pro rata share of the General Assessments. Notwithstanding, expenses related to Limited Common Areas may be allocated and

charged exclusively to Members who have an interest in, or benefit from, such Limited Common Areas.

**b) Special Assessments.** Special Assessments are Assessments proportionately levied against all Lots and the Owner(s) thereof to pay for unanticipated operating expenses, unanticipated maintenance, repair, or replacement of Association Property for which adequate reserves have not been collected, or to pay for any other unanticipated or unbudgeted monetary obligation of the Association. Special Assessments may also be levied to fund shortfalls in the budget for General Assessments. Special Assessments required to be paid by each Lot and the Owner(s) thereof are calculated by taking the total expenses which are the subject of the Special Assessment and dividing it by the total number of Lots in the Property.

**c) Individual Assessments.** Individual Assessments are Assessments levied against a particular Owner and Lot for the purposes otherwise stated in the Governing Documents.

**5.2 Creation of the Lien and Personal Obligation for Assessments.** Declarant, as a Member of the Association and Owner of the Property, hereby covenants and agrees, and each Owner, by acceptance or recordation of a deed, muniment of title, or other instrument evidencing the Owner's fee interest in a Lot, whether or not it is expressed in such deed, muniment of title, or other instrument evidencing an Owner's interest, shall be deemed to have covenanted and agreed to pay the Association all Assessments levied by the Association. All Assessments, together with interest, late fees, costs, and attorneys' fees incident to collection shall constitute a charge on the Property subjected to this Declaration, including any Additional Property subjected to this Declaration by the recordation of a Supplementary Declaration, and shall constitute a continuing lien upon the Lot and interest of the Owner upon which each Assessment is made. The lien for Assessments, interest, late fees, costs, and attorneys' fees incident to collection shall relate back to the recording of this Declaration in the Official Records of Duval County, Florida, except as to Qualifying First Mortgagees. For Qualifying First Mortgagees holding a first mortgage of record, the lien for Assessments shall be effective from and after the recordation of a claim of lien in the Official Records of Duval County, Florida. All Assessments shall also constitute the personal obligation of each Owner of a Lot, jointly and severally, at the time the Assessment became due and payable. An Owner, regardless of how title to a Lot has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments that come due while he or she is an Owner and shall also be jointly and severally liable with all previous Owners for all Assessments, interest, late fees, costs, and attorneys' fees incident to collection which came due prior to the current Owner's acquisition of title. An Owner's liability may not be avoided by waiver or suspension of the use or enjoyment of any Common Area or by abandonment of the Lot upon which the Assessments are made.

**5.3 Subordination of Lien & Liability of Qualifying First Mortgagees.** The lien for Assessments provided herein shall be subordinate to the lien and operation of any first mortgage which is recorded prior to the recording of a claim of lien for Assessments. Further, and notwithstanding anything herein to the contrary, a Qualifying First Mortgagee's liability for Assessments, interest, late fees, costs, and attorneys' fees accruing prior to its acquisition of title

to a Lot shall be limited to the lesser of (i) the Common Expenses and regular periodic assessments, Special Assessments, and Individual Assessments (as applicable) that accrued or came due during the twelve (12) months immediately preceding the Qualifying First Mortgagee's acquisition of title and for which payment in full has not been received by the Association; or (ii) one percent (1%) of the original mortgage debt. The person or entity acquiring title shall pay the amount owed to the Association within thirty (30) days of transfer of title. Any share of Common Expenses, Assessments, interest, late fees, costs, attorneys' fees, and other charges that are uncollectable from a Qualifying First Mortgagee after acquisition of title shall be collectable from all of the other Owners subject to the uncollectable Assessments, including such acquirer and its successors and assigns; provided, however, that this shall not be interpreted to waive the Association's right to pursue an action for damages against any previous Owner. A Qualifying First Mortgagee acquiring title to a Lot as a result of foreclosure or a deed in lieu of foreclosure may not be excused from payment of the Common Expenses and Assessments coming due during its period of ownership.

**5.4 Date of Commencement of Assessments; Due Dates.** All General Assessments shall be payable annually in advance or in installments as determined by the Board. The obligation to pay assessments shall commence as to each Lot on the date of conveyance of the Lot to an Owner other than Declarant or Builder. At the closing of the sale of each Lot in the Community to an Owner other than Declarant or Builder, said purchaser shall pay to the Association: the General Assessment, 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 the year. At the option of the Board, the payment of assessments may be changed to a more frequent basis. The due date of any Special Assessment or Individual Assessment provided for herein shall be set in the resolution authorizing such assessment.

**5.5 Declarant Assessments.** Notwithstanding anything to the contrary herein, Declarant shall have no obligation to pay Assessments to the Association for so long as Declarant elects to fund any deficit in the Association's operating expenses. Declarant shall have the option to: (i) pay Assessments on the Lots owned by it; (ii) pay Assessments on certain designated Lot (e.g., Lots under construction or Lots for which a certificate of occupancy has been issued); or (iii) not pay Assessments on any Lots and instead fund any deficit in the Association's operating expenses for a fiscal year. The Declarant's deficit funding obligation in any given fiscal year, should it so elect, shall be equal to the total operating expenses of the Association (excluding reserves and any capital improvement costs), less any operating surplus carried over from any prior fiscal years and less Assessments and other monies received by the Association from sources other than the Declarant (including Assessments, late fees, interest, fines, and any other income). Declarant shall not be subject to any Individual Assessment or Special Assessment. Declarant may elect any of the options above and may change its election from time to time. Declarant shall have no further liability to the Association for payment of Assessments or any obligation to fund any deficit when all Lots in the Property are conveyed to purchasers.

**5.6 Working Fund Contribution.**

a) Each Owner who purchases a Lot from the Declarant or Builder, and each Owner thereafter upon each sale or transfer of title of a Lot, shall pay to the Association at the time legal title is conveyed to such Owner, a "Working Fund Contribution." The Initial Working Fund Contribution shall be an amount equal to Five Hundred Dollars (\$500.00) per Lot. The Declarant may

waive this requirement for some Lots, including, but not limited to, if the first purchaser is a Builder and the Builder becomes unconditionally obligated to collect and pay the Working Fund Contribution upon the subsequent sale of each Lot to an end purchaser. At any time and from time to time, the Declarant or Association may increase the Working Fund Contribution. The foregoing sum shall be collectible in the same manner as the General Assessment. The Working Fund Contribution may be used for any purpose authorized by this Declaration, the Bylaws, Articles of Incorporation, or Florida law, including, without limitation, paying for initial startup expenses, operating expenses, unforeseen expenses, maintenance obligations, or reserve (if reserves are established) of the Association. It is the express intent that Working Fund Contributions may be used to offset operating expenses and deficit funding obligations of Declarant, including before, during, or after any Guarantee Period.

b) Exempt Transfers. Notwithstanding the above, no Working Fund Contribution shall be levied upon transfer of title to a Lot:

- i. by or to Declarant, Builder or any party who becomes a successor Declarant;
- ii. by a Builder who held title solely for purposes of development and resale;
- iii. by an Owner to a trust, partnership, corporation, or other entity so long as such entity is and remains wholly-owned by the Owner or by such Owner and the Owner's spouse and/or children; provided, however, if the immediately preceding transfer of the Lot was exempted from payment of the Working Fund Contribution pursuant to this subsection, then this subsection shall not apply and the Lot shall be subject to the Working Fund Contribution;
- iv. by an Owner or such Owner's estate to the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Lot was exempted from payment of the Working Fund Contribution pursuant to this subsection, then this subsection shall not apply and the Lot shall be subject to the Working Fund Contribution;
- v. of an undivided interest in a Lot by the Owner thereof to any then existing co-Owner(s) of such Lot.

**5.7 Reserve Budget and Capital Contribution.** The Board may, but shall not be obligated to, prepare reserve budgets as it deems reasonable or necessary on an annual basis for (i) working capital, (ii) contingencies, (iii) deferred maintenance, (iv) replacements, and (v) general purposes for the performance of such other coordinating or discretionary functions not contrary to the terms of this Declaration, which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual General Assessments over the budget period.

While Declarant is in control of the Association, Declarant may, but is not required to, include reserves in the budget. If Declarant includes reserves in the budget, Declarant may determine the amount of reserves included. Declarant is not obligated to pay for: (i) contributions to reserve accounts for capital expenditures and deferred maintenance, as well as any other reserves that the Association or the Declarant may be required to fund pursuant to any state, municipal, county, or other governmental statute or ordinance; (ii) operating expenses; or (iii) any other assessments related to the Declarant's Lots for any period of time for which the Declarant has provided in the Declaration that in

lieu of paying any assessments imposed on any parcel owned by Declarant, Declarant need only pay the deficit, if any, in any fiscal year of the Association, between the total amount of the assessments receivable from other members plus any other association income (including operating surplus carried over from any prior fiscal year) and the lesser of the budgeted or actual expenses incurred by the association during such fiscal year, excluding capital improvements costs, depreciation and amortization, and Individual Assessment or Special Assessments arising as a result of any unusual loss or liability.

**5.8 Estoppel Certificates.** The Association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, in an amount not to exceed the maximum amount permitted by Florida law.

## **ARTICLE VI ARCHITECTURAL CONTROL**

**6.1 Requirement to Obtain Approval for All Improvements.** No land clearing, filling, grading, shrub or tree removal, or any landscaping or other work shall be done; no building, structure, fence, wall, swimming pool, screened enclosure, patio, porch, deck, or other structure or Improvement (including landscaping) shall be commenced, placed, erected, painted, altered, constructed, or reconstructed in the Property, nor shall any addition, change, or alteration visible from the exterior of a Home be made; nor shall any awning, canopy, or shutter be attached to or placed upon outside walls or roofs of Buildings or other Improvements, until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the proposed Improvements have been submitted to, and approved in writing, by the Declarant. All decorative or artistic elements and landscaping features including plaques, pots, boulders, sculptures, and lawn ornaments, whether free-standing or attached to a structure, shall constitute Improvements and are subject to Declarant review and approval in accordance with this Article.

**6.2 Composition of Architectural Review Committee.** If and after Declarant specifically assigns any or all of the rights contemplated by this Article to the Association, the Association shall exercise the rights and perform the functions delegated to it. The Association may appoint an Architectural Review Committee ("ARC") consisting of at least three (3) members who shall be appointed by the Board. If, after assignment by Declarant, the Board is unable to appoint an ARC because of lack of volunteers or otherwise, the Board shall constitute and perform the functions of the ARC.

**6.3 Review of Proposed Improvements.** The Declarant shall review all proposed Improvements, including landscaping, in accordance with the Architectural Review Guidelines and following provisions. The Declarant may promulgate Architectural Review Guidelines and may supplement such standards with additional requirements, limitations, criteria, and conditions for development that are not in conflict with (but may be more restrictive than) the requirements of any development orders pertaining to the Property or applicable law. If and after the right to review and approve proposed Improvements is assigned by Declarant to the Association, the Board may also promulgate additional Architectural Review Guidelines which may be more restrictive than, but which may not conflict with the provisions of, any development orders pertaining to the Property or applicable law.

**6.4 Review & Approval Process.** The Declarant will approve proposals or plans and specifications submitted for its approval only if it deems that the Improvements contemplated thereby in the locations indicated will not violate the Governing Documents, development orders pertaining to the Property, or applicable law, be detrimental to the appearance of the Property as a whole, or negatively affect the Declarant's ability to market, develop, or sell any of the Property, and that the appearance of any proposed Improvement will be in harmony with the surrounding structures and is otherwise desirable, in Declarant's sole discretion. However, because of the anticipated design and layout of the community and Homes, the surrounding urban environment and vision for development, and the fact that Members and their Invitees have easements of ingress and egress over Lots, it is anticipated that Owners' ability to make Improvements on their respective Lots outside the boundaries of their Homes will be limited.

**a) Conditions for Approval.** The Declarant may condition its approval of proposed Improvements and plans and specifications as it deems appropriate and may require submission of additional plans and specifications or other information prior to approving or disapproving the proposed Improvement. The Declarant may also issue rules or guidelines setting forth procedures for the submission of plans for approval. The Declarant may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, landscaping plans, elevation drawings, surveys, and descriptions and samples of materials and colors.

**b) Response Time Period.** After receipt by the Declarant of all required plans and specifications of all proposed Improvements, it shall have thirty (30) business days to approve or reject them. If the plans and specifications are not approved or rejected within the 30-day period, the plans will be deemed approved except to the extent any part of the proposed Improvements is not compliant with an express provision of the Governing Documents, a development order pertaining to the Property, or applicable law. The Declarant's approval does not constitute any representation or warranty that any proposed Improvement complies with any applicable law and those submitting plans and specifications for approval to the Declarant shall also be responsible for obtaining any necessary approvals from applicable governmental authorities.

**c) Authority to Charge Fees.** The Declarant shall be entitled to charge a reasonable fee for review of plans and specifications provided that the amount of the fee is adopted and included in the Governing Documents. In addition, the Declarant may require a bond or construction deposit to ensure an Owner's compliance with the approved plans and specifications and to reimburse the Declarant or Association for any damages to Declarant or Association Property arising out of or related to the construction or making of an Improvement. In addition, the Declarant may permit the Association to use the construction deposit or bond to pay any fine levied by the Association for violations of the Governing Documents incident to the construction or making of such Improvements. Any fee charged shall be payable to the Declarant or Association, in Declarant's discretion, and the Declarant may condition approval of any proposed Improvement on payment of the fee. Applicants shall not be entitled to interest on any funds held by the Declarant or Association pursuant to this paragraph.

**6.5 No Waiver of Future Approvals.** Declarant's approval of any proposals, plans, or specifications for any Improvements constructed or proposed, or in connection with any other matter requiring the approval or consent of the Declarant, will not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans, specifications, or other matters submitted to the Declarant for approval.

**6.6 Variance.** The Declarant may authorize variances from compliance with any of the Governing Documents when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations would make issuance of a variance appropriate, in Declarant's sole discretion. Variances must be evidenced in writing and must identify the provision(s) of the Governing Documents for which a variance is being granted, and no approval of any proposed Improvement shall be deemed to implicitly include the granting of a variance. The granting of such a variance shall not operate to waive any of the terms and provisions of the Governing Documents for any purpose except as to the particular Improvement and provisions covered by the variance, nor will it affect the Applicant's obligation to comply with all governmental laws and regulations concerning the Owner's use of the Lot. Further, the Declarant may not grant a variance if it would conflict with the requirements of a development order pertaining to the Property or applicable law without obtaining the consent of the appropriate governmental authority.

**6.7 Declarant Exemption.** Declarant shall be exempt from the provisions of this Article requiring Association or ARC approval for proposed Improvements (even after such rights may be assigned to the Association or ARC). The Declarant may grant waivers or variances of the foregoing provisions to builders or developers that have acquired Lots for the purpose of constructing Improvements thereon for resale. Any such waiver shall be in writing. Notwithstanding the foregoing, the Declarant shall be obligated to comply with any architectural standards, setback limitations, or other limitations imposed by governmental authorities upon which the development of the Property was conditioned unless otherwise agreed by the appropriate governmental authority.

**6.8 Declarant's Assignment of Rights under this Article.** Declarant may, but shall not be obligated to, assign its rights under this Article to the Association or to any third party, which shall unless otherwise stated in such assignment instrument be deemed on a non-exclusive basis, and Declarant may retain all such rights assigned such that Declarant and the assignee may simultaneously possess and exercise such rights. If Declarant and the Association or any third party simultaneously possess such rights, the Declarant's decisions shall be controlling. With respect to any assignment by Declarant of any of the rights under this Article, Declarant reserves the right to revoke such assignment upon written notice to the assignee if Declarant believes such revocation is appropriate in its sole discretion. Assignments shall be evidenced by a written instrument signed by the Declarant.

**6.9 Disclaimer.** Declarant, its principals, managers, members, employees, agents, and assigns, Association, its directors, officers, or agent, the ARC, or any person acting on behalf of any of the foregoing shall not be liable to any person for any claim, damage, expense, or loss of any nature (the foregoing collectively, "Claims") arising out of or related to the exercise of its right

to review and approve or deny any proposed Improvements. All persons with any interest in the Property or otherwise associated with a proposed Improvement acknowledge and agree that Declarant's exercise of its right to review and approve or deny proposed Improvements is exclusively for Declarant's benefit and is not exercised on behalf, or for the benefit, of any other person. Declarant's approval of any proposed Improvement does not constitute a representation or warranty that the proposed Improvement complies with applicable law (including applicable building codes) or that it will be structurally sound or otherwise safe for occupancy or use for its intended purpose. The Association does hereby indemnify, defend, and hold Declarant, the Committee, and each of their members, officers, and directors harmless from and against all costs, expenses, and liabilities, including, without limitation, legal fees, of all nature resulting from the acts of the Owners, the Association, the Committee, or any of the foregoing's members, officers and directors. Declarant, the Association, its directors or officers, the Committee or its members, or any person acting on behalf of any of them, shall not be responsible for any defects in any plans or specifications or the failure of same to comply with applicable laws or code nor for any defects in any Improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto. By way of example, and not of limitation, the approval of hurricane shutters shall not be deemed an endorsement or guarantee of the effectiveness of such hurricane shutters. **ALL PERSONS WITH ANY INTEREST IN THE PROPERTY OR OTHERWISE ASSOCIATED WITH ANY PROPOSED IMPROVEMENT, INCLUDING WITHOUT LIMITATION OWNERS, RELEASE AND HOLD HARMLESS DECLARANT, ASSOCIATION, AND ARC FROM AND AGAINST ANY AND ALL CLAIMS OF ANY NATURE ARISING OUT OF OR RELATED TO DECLARANT'S, ASSOCIATION'S, OR ARC'S EXERCISE OF ITS RIGHT TO REVIEW AND APPROVE OR DENY ANY PROPOSED IMPROVEMENTS IN THE PROPERTY.**

## **ARTICLE VII USE RESTRICTIONS**

**7.1 Residential Purposes.** Each Lot and Home shall be used exclusively for single-family residential purposes only, and no Improvement, including any appurtenant structures, shall be erected on any such Lot other than for use as a single-family residence and approved accessory structures (if any). No Improvement or part thereof on any Lot shall be rented separately from the rental of an entire Home and Lot (e.g., individual rooms in a Home may not be rented separately from the entire Home and Lot). No business may be conducted in a Home or on a Lot; provided, however, that nothing herein shall be construed to prohibit any action deemed appropriate by the Declarant to facilitate the sale of Lots and Homes or development of the Property. Notwithstanding the general prohibition of commercial or business use of Lots and Homes, Owners and residents of a Home may conduct home-based business, like those which are internet based, if:

- a) The business activity is not perceptible from outside of the Home;
- b) The business activity does not result in additional vehicular traffic to the Property above what would be expected from ordinary, residential use of a Home;
- c) The business does not require routine delivery of equipment, supplies, products, or other materials to the Home;

- d) The business does not involve visitation by customers or clients above what would be expected from ordinary, residential use;
- e) The business does not involve storage of hazardous materials within the Property or storage of equipment, supplies, products, or other materials in the garage such that the garage is made unavailable for vehicle parking;
- f) The business does not generate excessive noise, odors, or other noxious or offensive externalities, as determined in the Declarant or Board's discretion;
- g) The business does not negatively affect any insurance policies maintained by the Association or increase the premiums associated with any insurance the Association maintains or desires to maintain; and
- h) The business does not create adverse parking issues or impede the safe flow of traffic and accessibility by emergency vehicles.

The Declarant, and after the Declarant no longer owns any part of the Property and has completed construction of all proposed Improvements, the Board of Directors, shall have the exclusive authority and discretion to determine whether any use of a Lot or Home is compliant with this Section, which decision shall be final and binding.

**7.2 Permitted Uses.** Lots may only be used for purposes permitted by, and in accordance with, the Governing Documents and applicable law.

**7.3 Occupancy & Lease Restrictions.** Declarant intends the Lots and Homes within the Property to be for non-transient use and occupancy. The occupancy and leasing of Lots and Homes shall comply with the following provisions.

- a) **Occupancy.** Lots and Homes shall only be occupied by the Owner or lessee, members of their family, and nonpaying social guests. Timeshare interests, fractional ownership arrangements, interval exchanges or exchange programs, membership plans, and any other arrangement in which a person acquires a fractional ownership interest in a Lot or Home, or a beneficial interest in a non-natural person who owns a Lot or Home, or an interest in a trust in which an interest in a Lot or Home is held, with associated rights of periodic use and occupancy or in which a person acquires contract rights to periodic use and occupancy of a Lot or Home are prohibited. All Owners who are non-natural persons (including without limitation the trustee(s) of a Lot or Home held in trust, corporations, limited liability companies, and partnerships) must designate one primary occupant of the Lot or Home, who must be a natural person, in writing to the Association before any Lot or Home owned by a non-natural person may be occupied and as a continuing condition of occupancy of a Lot or Home. After a primary occupant has been designated in writing to the Association, the Lot or Home may exclusively be occupied by the designated primary occupant and his or her family, and provided that no consideration is exchanged, on a temporary basis by his or her genuine social guests. Owners who are non-natural persons may not designate a different primary occupant of a Lot or Home within twelve (12) consecutive months of the preceding designation of a primary occupant of a Lot or Home. Similarly, Owners who are non-natural persons may not permit a Lot or Home to be occupied by anyone other than the designated primary occupant and his or her family, and provided that no consideration is exchanged, on a temporary basis by his or her genuine

social guests, for a period of twelve (12) consecutive months after it has designated a primary occupant in writing to the Association. Non-natural Owners may designate a different primary occupant of a Lot or Home after twelve (12) consecutive months have expired since the Owner last designated a primary occupant of a Lot or Home in writing to the Association.

**b) Leases.** All leases of a Lot or Home must be in writing and must include the address of the Lot or Home, the names of all tenants and occupants, the lease commencement date, and the term of the lease. All leases must be for a minimum term of twelve (12) consecutive months. Only an entire Lot and Home may be leased; leases of parts of a Lot and individual rooms of a Home are prohibited. In addition, subleasing is not permitted and no Lot or Home may be leased more than two (2) times in a calendar year. When a Lot or Home is subject to a lease, the Owner shall not have the right to use any Common Areas, Limited Common Areas, or recreational facilities (if any), except as necessary to access the Lot or Home and to park a vehicle, and such rights associated with the Lot and Home (excluding the Voting Interests of the Owner) shall be exercisable exclusively by the tenants and occupants during the term of the lease. The Association may require a copy of the lease to be submitted for review and approval as to the form and term of the lease.

**c) Compliance.** All tenants shall be subject to the terms and conditions of the Governing Documents. Each Owner agrees to cause all lessees and Invitees to comply with the Governing Documents. Owners are responsible for the actions of his or her tenants and Invitees and shall be liable with all tenants and Invitees for all violations, damage, and losses caused by such tenants and Invitees, notwithstanding the fact that the tenants and Invitees are also fully liable for any violation of the Governing Documents. If a lessee or Invitee violates a provision of the Governing Documents, the Board of Directors shall have the right to bring legal proceedings against the lessee, Invitee, and Owner to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity. Owners shall also be jointly and severally liable with their tenants and Invitees to the Association for any amount (as determined in the sole discretion of the Association) which is required by the Association to repair any damage to any portion of the Property or to pay any claim for personal injury, death, or property damaged caused by the act or omission of the tenant or Invitees. The Association may levy Individual Assessments against the Owner and Owner's Lot for such amounts. The Board may adopt additional reasonable rules and regulations concerning the leasing of Lots and Homes.

**7.4 Nuisances.** No noxious, destructive, or offensive activities shall be permitted on any portion of the Property. No activity which is or may become a nuisance or annoyance to any Owner or other person lawfully occupying any portion of the Property shall be permitted on the Property. No activity is permitted, nor shall any object or substance be kept, stored, or emitted, within the Property in violation of law. Excessively loud music or other unreasonable sounds that can be heard beyond the boundaries of a Lot or Home and which occur after ten o'clock (10:00) p.m. Sunday through Thursday or eleven o'clock (11:00) p.m. Friday or Saturday, are hereby deemed to be nuisances, unless any exceptions to this provision are approved by Declarant. The Declarant, and after the Declarant no longer owns any part of the Property, the Board, shall have

the authority to determine whether any use or activity constitutes a prohibited nuisance, which decision shall be final and binding.

**7.5 Detached Structures and Objects.** Except as to items or Improvements initially approved or installed by Declarant, no sheds, tanks, storage buildings, basketball hoops or support structures, recreation structures, dog houses, gazebos, swimming pools, or structures of any type, whether similar or dissimilar to those herein enumerated and whether intended to be temporary or permanent, may be erected or kept on any part of the Property. No construction materials or other construction items shall be stored on the Lots, Common Area, Limited Common Area, or Association Property in a manner visible from anywhere outside of the Lot or Home except as approved by Declarant, provided, however, that this prohibition shall not apply to sheds, trailers, or construction materials used by the contractors during construction of the original Improvements on a Lot by Declarant. All construction equipment and materials shall be stored in a secured, orderly, and attractive manner when not actively being used incident to construction of an Improvement.

**7.6 Temporary Structures.** Except for temporary construction sheds and sanitary toilet facilities used during actual construction of permitted Improvements, no shed, shack, trailer, mobile home, tent, or other temporary or moveable building or structure of any kind shall be erected or permitted to remain on any Lot, Common Area, Limited Common Area, or Association Property except with the prior written consent of the Declarant, or if and after Declarant assigns the right to review and approve Improvements to the Association, the Association or ARC. Declarant reserves the right to demand the immediate removal of any temporary structure for any reason. Notwithstanding the foregoing, Declarant reserves the right for itself and its successors and assigns to place temporary construction or sales trailers upon any part of the Property in connection with the development and sale of the Property.

**7.7 Waste.** Burning of trash, rubbish, garbage, leaves, or other materials on a Lot, Common Area, Limited Common Area, or Association Property by an incinerator or otherwise is prohibited. All garbage and waste must be stored in closed containers and hidden from view from any adjacent Lot, Home, Common Area, Limited Common Area, Association Property, and roadways within the Property unless placed in the appropriate location for collection by the Utility Provider on the date on which the Utility Provider is scheduled to collect such materials. The Association may adopt rules and regulations regarding the time and location for placement of waste receptacles for collection by the Utility Provider and removal. Waste receptacles must be stored in a manner hidden from view from any adjacent Lot, Home, Common Area, Limited Common Area, Association Property, and roadways within the Property by the end of the day on which it or they are collected by the Utility Provider.

**7.8 No Window Air Conditioning.** No window air conditioning unit shall be installed in any Home or other Improvement within the Property without Declarant approval, or if and after Declarant assigns the right to review and approve Improvements to the Association, the Association or ARC.

## 7.9 Fences, Hedges, & Walls.

a) **Master Walls/Fences.** The Declarant and/or Association may install retaining walls and/or fences (“Master Walls/Fences”) on certain Lots within the Property (the Owner of any Lots within a portion of such retaining walls and/or fences located thereon are collectively referred to herein as the “Retaining Wall/Fence Owners”). Owners hereby grant to Declarant and the Association, and their successors, assigns, designees, agents, and contractors, a perpetual non-exclusive easement in, on, over and upon such portions of the Property as may be reasonably necessary for the purpose of installing, maintaining, repairing, and replacing Master Walls/Fences, including, without limitation, the right to enter upon any portion of Owner’s Lots for such purposes. The Retaining Wall/Fence Owners specifically acknowledge and agree that such Master Walls/Fences may not be removed or altered without Declarant’s prior written consent. The Association shall be responsible for maintaining any portion of the Master Walls/Fences located on or about any Lots or any other portion of the Property and the cost of maintenance shall be a Common Expense of the Association.

No Owner shall damage, destroy or otherwise interfere with any such Master Walls/Fences. As to any damage or injury to such Master Walls/Fences caused by an Owner, or his/her family, guests, Invitees, contractors, or agents, such Owner shall reimburse the Association for the repair costs incurred by the Association within fifteen (15) days of receipt of an invoice thereof. The associated costs may be recovered by levying an Individual Assessment against the Owner and Lot.

b) **Approval Required.** Except as to items initially approved by the Declarant, no fences or walls of any kind shall be placed or installed on the Property. Because of the anticipated design and layout of the community and Homes, the surrounding environment and vision for development, and the fact that Members and their Invitees have easements of ingress and egress over Lots, no fences will be approved by Declarant or the Association on Lots.

c) **Property Boundary Fence or Wall.** If Declarant elects to construct a Property boundary fence or wall, the fence or wall may not be removed, altered, or modified without the approval of the Declarant, or if and after Declarant assigns the rights of architectural review and approval to the Association, the Association or ARC.

d) **Easements.** No fence, wall, or other Improvement may be constructed within any easement area if it would interfere with the rights of the beneficiary of the easement. Any fence, wall, or other Improvement constructed in a manner which interferes with the rights of a beneficiary of an easement may be removed by Declarant or the Association at the expense of the Owner, and the associated costs may be recovered by levying an Individual Assessment against the Owner and Lot.

**7.10 Antennas.** Subject to applicable law, unless otherwise approved by Declarant, no antennas, masts, towers, poles, aerials, satellite dishes, or similar apparatuses shall be erected, constructed, or maintained on the exterior of any Lot or Home, except that one (1) satellite dish of

one (1) meter in diameter or less may be installed on each Lot or Home subject to the Architectural Review Guidelines and approval of the Declarant. The Architectural Review Guidelines may require, and the Declarant's approval may be conditioned upon, the installation of the satellite dish (or other antenna, if Declarant permits it) within a specified location and the installation of appropriate screening mechanisms to shield the satellite dish (or other antenna, if Declarant permits it) from view from other parts of the Property, provided that the Owner or tenant is still able to receive an acceptable quality signal. The Owner(s) of the Lot shall be jointly and severally liable to the Association for any amount (as determined in the sole discretion of the Association) which is required by the Association to repair any damage to the roof or portions of the Building for which the Association has a maintenance obligation, caused by the act or omission related to the installation of such apparatuses. The Association may levy Individual Assessments against the Owner and Owner's Lot for such amounts.

**7.11 Signs.** All signs of any nature constitute Improvements subject to Declarant review and approval. No signs or advertising posters of any kind, including without limitation "For Rent," "For Sale," and other, similar signs shall be maintained or permitted within any windows or on the exterior of any Home or other Improvements or on any Lot (or vehicle on a Lot) within the Property without the express written permission of the Declarant, and must comply with the uniform signage criteria as may be adopted by the Association, which may be amended from time to time. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the Declarant. Notwithstanding the foregoing, the restrictions of this subparagraph shall not apply to Declarant, and Declarant shall have the right to install or approve the installation of signs necessary or appropriate in Declarant's sole opinion incident to the development and sale of the Property. In addition, the Association shall have the right to repair and replace existing directional, traffic, street name, or other signs installed by Declarant on the Property in accordance with architectural standards adopted by the Declarant. Should it be determined that a sign erected on any part of the Property does not conform with the Governing Documents or was installed or erected without approval, the Association and Declarant shall have the right to enter said portion of the Property without any liability for damage, wrongful entry, trespass, or otherwise for the purpose of removing the nonconforming sign. Notwithstanding, Owners may install signs for security subject to standards adopted by the Declarant.

**7.12 Parking.** No vehicle, vessel, recreational vehicle, mobile home, or trailer may be parked, stored, or repaired anywhere within the Property except that functional passenger automobiles, vans, motorcycles, and non-commercial trucks of GVWR Class 4 or less (collectively "Permitted Vehicles") may be parked in the garage of the Home or in any designated parking areas on the Lot, Common Areas, Limited Common Areas, and Association Property approved by Declarant. Vessels, trailers, motor homes, recreational vehicles, and other vehicles that are not Permitted Vehicles may be parked only in the garage of a Home or in other areas within the Property designated by Declarant, if any. No parking places may be constructed on any Lot except as constructed in accordance with plans and specifications approved by Declarant. No parking is permitted within the roadways except in parking areas designated by Declarant, if any. No parking of any vehicle, vessel, or trailer is permitted on any grassed areas of a Lot or in a manner as to block or impede the use of the sidewalk. No inoperative vehicle of any type shall be allowed to remain either on or adjacent to any Lot, Common Area, Limited Common Area, Association

Property, or roadways within the Property for a continuous period exceeding forty-eight (48) hours; provided, however, this provision shall not apply to any such vehicle being kept in the garage of a Home or within portions of the Property approved by Declarant, if any, and not visible from the street or neighboring Lots, Common Areas, Limited Common Areas, Association Property, or roadways within the Property. Additional rules and regulations regarding the use, repair, parking, and storage of vehicles, vessels, and trailers on the Property may be promulgated from time to time by the Declarant and Association. The Association may enforce the foregoing restrictions in any lawful manner, including the imposition of fines and causing improperly parked vehicles, vessels, and trailers to be towed at the owner's expense. Nothing in this paragraph prohibits the emergency repair or servicing of Permitted Vehicles, so long as such repair or servicing is completed within forty-eight (48) hours, the occasional parking of vehicles by delivery personnel or service providers of Owners on the street for a reasonable period of time to perform such delivery or service, or the temporary parking of a van or recreational vehicle for the purpose of picking up, loading, or cleaning the van or recreational vehicle in a manner that does not inhibit ingress and egress.

**7.13 Clotheslines, Solar Collectors, & Other Energy Devices.** Clotheslines, solar collectors, and other energy devices constitute Improvements subject to Declarant review and approval. All such items which may be permitted by the Declarant shall be installed in a manner shielded from view from other Lots, Common Areas, Limited Common Areas, Association Property, and roadways within the Property. No solar collector or other renewable resource device may be installed on the portion of the roof of a Home facing any roadway. Owner shall be responsible for the maintenance and repair of any permitted Improvements installed on the roof and for the cost of any maintenance and repair to the roof resulting from such installation, including, without limitation, any costs related to the removal or replacement of such Improvements incident to any roof maintenance, repair, or replacement. Owner(s) of a Lot shall be jointly and severally liable to the Association for any amount (as determined in the sole discretion of the Association) which is required by the Association to repair any damage to the roof or portions of the Building for which the Association has a maintenance obligation, caused by the act or omission related to the installation of such apparatuses. The Association may levy Individual Assessments against the Owner and Owner's Lot for such amounts.

**7.14 Animals.** No animals, reptiles, wildlife, livestock, or poultry of any kind shall be raised, bred, or kept on any Lots except common household pets may be kept within Homes provided they are not kept, bred, or maintained for any commercial purposes and provided that they do not become a nuisance, unreasonable source of annoyance, or danger to any person by creating excessive noise or otherwise. No animals may be maintained, kept, cared for, or boarded for hire or remuneration and no kennels for boarding are permitted within the Property. All permitted animals must be kept on a leash and under the full control of the handler when they are outside the Owner's Home and must remain on a leash if within an Owner's Lot unless the part of the Lot in which the animal is located is fully enclosed. Owners shall be responsible to immediately remove and clean up any solid waste within the Property emanating from their animals. Animals are only permitted on portions of the Common Areas, Limited Common Areas, and Association Property expressly designated by the Board. For purposes of this provision, "household pets" shall mean dogs, cats, domestic birds, and fish, and other animals expressly permitted by the Rules and Regulations, if any. The Board shall have the authority to adopt reasonable rules and regulations

regarding the keeping of animals within the Property, which includes the right to restrict the number of animals and require registration of all permitted animals and to collect a DNA sample of such animals for the purposes of enforcing compliance with restrictions requiring Owners and Invitees to remove animal waste. The Board shall have the right to impose fines and to require the removal of any animal from the Property if such animal becomes a nuisance, an unreasonable source of annoyance, or danger to any Owner within the Property, or for violations of the Governing Documents.

**7.15 Recreational Equipment & Structures.** Recreational equipment of a permanent or semi-permanent nature (e.g., basketball goals installed in the ground) are not permitted. All other recreational equipment, including, but not limited to, soccer goals, basketball hoops, sporting equipment, and toys, shall be kept within the Home and concealed from view from adjacent Lots, Common Areas, Limited Common Areas, Association Property, and roadways when not actively being used. Basketball hoops or support structures may not be attached to a Home. Above-ground pools, playsets, and swing sets are not permitted.

**7.16 Mining; Wells; Underground Installations.** No drilling for or excavation of any oil, minerals, or other resources is permitted within the Property without Declarant approval. Any underground improvement or subsurface installation of any structure, equipment, or facility within the Property shall constitute an Improvement subject to Declarant review and approval.

**7.17 Subdivision.** No Lot in the Property shall be subdivided without Declarant's express written approval.

**7.18 Additional Covenants, Restrictions, and Encumbrances.** No Owner of any portion of the Property shall impose or attempt to impose any additional covenants, restrictions, or encumbrances on the Property without the prior written approval of the Declarant, or after the Declarant no longer owns any of the Property and has completed construction of all proposed Improvements, the prior written approval of the Association; provided, however, that this provision shall not preclude the mortgaging of any portion of the Property. No person shall record or attempt to impose any covenant, restriction, or encumbrance which prejudices or negatively affects the rights of Declarant, or which may be detrimental to the Declarant's improvement, marketing, and sale of the Property, in Declarant's sole discretion, without Declarant's express written approval.

**7.19 Solicitation.** No soliciting is permitted within the Property.

**7.20 Exclusion of Above Ground Utilities.** Unless otherwise approved by Declarant, all electrical service, telephone lines, data transmission lines, and other conduit shall be placed underground and no outside lines or conduit shall be placed above ground. However, transformers and other equipment normally used in conjunction with such underground utilities shall be permitted within the Property subject to Declarant approval. If approved by Declarant, temporary utilities shall be permitted above ground during the construction period and until they can be placed underground.

**7.21 Fuel Tanks & Storage.** The installation and location of all tanks, cylinders, or containers for the storage of liquified petroleum, gas, or other fuels, must be in compliance with the requirements of all applicable laws and ordinances, the Governing Documents, and are Improvements subject to Declarant approval. Any permitted above-ground fuel containers, if any, must be completely screened from view of adjacent Lots, Common Areas, Limited Common Areas, Association Property, and roadways within the Property.

**7.22 Mailboxes.** Mailboxes shall be of a design, color, and materials designated by the Declarant, and may not violate U.S. Postal Service standards. Declarant reserves the right, but is not obligated, to provide a location for one or more cluster mailboxes for the Property or parts thereof. In the event Declarant provides a location for cluster mailboxes for the use of certain Owners, individual mailboxes shall not be permitted within the Property with respect to Owners served by a cluster mailbox. To the extent the community cluster-type mailbox unit is not owned and installed by the U.S. Post Office, such cluster-type unit shall be owned and maintained by the Association, at the Association's sole cost and expense. The individual compartments assigned to each Lot, along with the locks/keys for each of the compartments shall be maintained, repaired, and replaced by each Owner, at their sole cost and expense. The Board shall have the right to establish, modify and enforce policies and procedures for the use of such cluster-type mailboxes, which shall include, without limitation, a charge for repairs or replacement resulting from damage caused by an Owner, an Owner's family, tenant, guest or Invitee.

**7.23 Artificial Vegetation, Exterior Sculpture, & Similar Items.** No artificial grass, plants, or other vegetation shall be permitted outside a Home on the exterior of any portion of a Lot without Declarant's approval. Exterior sculpture, fountains, flags, and similar items are Improvements subject to prior approval by the Declarant; provided, however, that nothing contained herein shall prohibit the appropriate, respectful display of the United States flag or other flags which must be permitted by law in the manner strictly complying with law.

**7.24 Utilities.** All potable water and sewage facilities and service to the Property shall be supplied by the central water supply and sewage system installed by or with the approval of Declarant. Otherwise, except as may be provided in any purchase contracts, Declarant makes no representations or warranties in this Declaration as to the nature of any Utilities that Declarant may choose to install or cause to be installed, and the installation of any such Utilities by Declarant shall be in Declarant's sole discretion. No well of any kind shall be dug or drilled on any Lot. No septic tank may be constructed on any Lot, and no wastewater may be discharged on the open ground or into the Stormwater Management System.

**7.25 Indemnity.** Each Owner shall indemnify, defend, and hold the Declarant, Association, their respective principals, employees, managers, and agents, and other Owners harmless against all claims, damages, expenses, and losses of any nature (the foregoing collectively, "Claims") associated with damage or waste caused by such Owner, or by any occupant or Invitee of such Owner's property. Notwithstanding the foregoing, if the Association receives proceeds from an insurer associated with an insurance policy maintained by the Association covering the damage or waste committed by an Owner or Invitee of such Owner, the liability of the Owner or his or her Invitee shall be reduced by the insurance proceeds received by the Association. To the extent from time to time available, the Association's insurance policies

must provide for a waiver of subrogation by the Association's insurer against an Owner for claims arising out of or related to an unintentional and not grossly negligent act or omission for which such Owner is responsible under this Section, if such Owner is obligated to pay for part of the insurance policy through Assessments levied by the Association, and provided that such Owner's insurance policies also include waivers of subrogation against the Declarant, Association, and their respective principals, employees, managers, and agents.

**7.26 Sidewalks.** Any Owner of a Lot developing a Residential dwelling Unit on such Lot shall construct any sidewalk on or in front of such Lot, in accordance with the subdivision construction plans submitted to and approved by Duval County, Florida. Such sidewalk shall be completed prior to the issuance of a certificate of occupancy for such Lot.

**7.27 Drainage Flow.** Drainage flow shall not be obstructed or diverted from drainage easements. The Declarant or the Association may, but shall not be required to, cut drainways for surface water wherever and whenever such action may appear to be necessary to maintain reasonable aesthetic standards relative to the Property and surrounding properties. These easements include the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other reasonable action necessary to install utilities and to maintain reasonable aesthetic standards, but shall not include the right to disturb any permanent improvements erected upon a Lot which are not located within the specific easement area designated on the plat or otherwise reserved in this Declaration. All Lots shall at all times be graded so as to comply with the Neighborhood Grading Plan approved by the St Johns County, Florida and all permits issued by the St. Johns River Water Management District.

**7.28 Unsightly Disrepair.** No Home or Building shall be allowed by the Owner to fall into the condition of unsightly use, misuse, or disrepair. The minimum but not exclusive standard for maintenance of Improvements shall be consistency with the approved plans thereof and with the general appearance of the other occupied improvements in the Property as a whole when initially constructed and improved (taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness).

**7.29 Rules and Regulations.** The Association may promulgate reasonable Rules and Regulations concerning the Property, its use by Owners and Invitees, and the conduct of Owners and Invitees.

## **ARTICLE VIII EASEMENTS**

**8.1 Access Easement.** There is hereby created and granted to the Owners, Utility Providers, the U.S. Postal Service, fire, police, and emergency personnel, governmental agencies, and the providers of other services to the Owners and the Property in, on, under, across, and to the Property, a non-exclusive easement and right-of-way of pedestrian and vehicular access, ingress, and egress over the internal streets, drives, and walkways now or hereafter constructed within the Property. Such easement shall be subject to the Declarant and Association's right to regulate access to the Property (e.g., by installing gates), vehicle speed, and parking on any internal streets.

**8.2 Owners' Easements.** There is hereby created and granted a nonexclusive easement and right for the use and enjoyment of the Common Area in favor of all Owners, subject to: (a) the Association's right to promulgate Rules and Regulations concerning the use of Common Area; (b) the Association's right to suspend the rights of a Member and his or her Invitees to use Common Area for violation of the Governing Documents or nonpayment of a monetary obligation due to the Association; (c) the right of Declarant to designate parts of the Common Area as Limited Common Area and usable only by certain Owners to the exclusion of others, in which case the easement granted herein shall be limited accordingly; (d) the right of the Association to borrow money for the purpose of improving the Common Areas, or any portion thereof or for construction, repair, or improving any facilities located or to be located thereon, and give as a security for the payment of any such loan a mortgage encumbering all or any portion of the Common Area, provided, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner, or a holder of any mortgage, irrespective of when executed or given by Declarant or any Owner, encumbering any Lot or other property located within the Property; (e) the right of the Association to grant easements across the Common Areas to persons or entities who are not Owners; (f) the right of the Association to dedicate or transfer all or any portion of the Common Areas, subject to such conditions as may be agreed to by a majority of the Members of the Association (after the Turnover Date) and subject to the approval requirements of Declarant; (g) the right of the Association to dedicate or transfer all or any portion of the Common Areas, subject to such conditions as may be agreed to by a majority of the Members of the Association (after the Turnover Date) and subject to the approval requirements of Declarant; and (h) the rights of Declarant reserved hereunder. The foregoing easement and right shall be appurtenant to all Lots and shall inure to the benefit of the Association and each Owner.

**8.3 Sidewalk and Utility Easements.** Each Lot and Association Property shall have an easement appurtenant for the use, maintenance, repair, alteration, and replacement of all pipes, wires, ducts, vents, cables, conduits, Utility lines, and similar or related facilities located within, under, above, or through the Lot or Association Property for the purposes of providing Utilities to each respective Lot and Association Property. The nature and location of all such pipes, wires, ducts, vents, cables, conduits, Utility lines, and similar or related facilities shall be subject to Declarant's approval. Declarant shall have an easement on and through the Property for the purposes of installing sidewalks; provided, however, that Declarant shall have no obligation to construct any sidewalks in front of or adjacent to any Lots or otherwise.

**8.4 Support Easements.** If any structure on Association Property or a Lot adjoins any structure included in any other portion of the Property, each structure shall have and be subject to an easement of support in favor of the other structure.

**8.5 Easement for Maintenance.** The Declarant, the Association, and their respective agents, employees, contractors, successors and assigns, shall each have a non-exclusive and perpetual easement to enter upon, across, above and under each Lot within the Property, including the Common Areas, at reasonable hours for the purpose of performing any obligation or exercising any right provided by law or the Governing Documents, to perform its responsibilities of maintenance, inspection and repair, including, without limitation, the right but not the obligation to enter upon each Lot for the purpose of maintaining and landscaping the yards of Lots and for

the purposes of exterior pest control (provided that the burden of such obligations of landscaping and pest control lie with the Lot Owner, and nothing herein shall be construed to obligate the Association to bear such responsibility). The Association may, but shall not be obligated to provide exterior pest control. The rights of Declarant and Association described herein include the right to enter upon Lots to maintain, repair, and replace any perimeter wall or fence installed by Declarant and an easement for access to all Lots and Homes as necessary or appropriate for the Association to perform any maintenance obligation or exercise any right provided by law or the Declaration, including, without limitation, the right to connect to any exterior spigot of a Lot in order to facilitate the maintenance and/or landscaping of the Lot. No Lot Owner may erect any structure or improvement that will deny or impede the Association's access to the exterior spigots and irrigation controls of that Lot. Except in an emergency or to prevent imminent damage to Homes or any property which the Association is obligated to maintain, the Association shall provide forty-eight (48) hours' notice to the Owner before entering a Home.

**8.6 Easements for Encroachment.** If (a) any portion of the Improvements on a Lot or Association Property encroaches upon any portion of another Lot or Association Property; or (b) any encroachment shall occur as the result of (i) construction of any Improvement as approved by Declarant; (ii) settling or shifting of any Improvement; or (iii) any alteration or repair to the Property or Improvements thereon after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of the Property or Improvements thereon, an easement shall be deemed to have been granted to permit the encroachment and shall exist for so long as the encroachment remains. The foregoing easement shall include an easement to maintain any encroaching structure for so long as the encroachment exists, but nothing herein shall be deemed to permit an intentional encroachment, an encroachment resulting from Improvements that were not approved by Declarant, or to create an easement in such instance.

**8.7 Easement for Entry.** The Association shall have an easement to enter into any Lot for emergency, security, safety and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Board of Directors, its officers, agents, employees, managers, and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after forty-eight (48) notice to the Owner. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon the request by the Board.

**8.8 Declarant's Easements.** Declarant hereby declares, reserves, and grants to itself, its successors, and assigns, the following nonexclusive easements and rights in, on, under, across, and to the Property:

- a) A nonexclusive easement and right-of-way of pedestrian and vehicular access, ingress, and egress over the internal streets, drives, and walkways now or hereafter constructed on the Property, and a nonexclusive easement and right-of-way to construct internal streets, drives, and walkways over and on the Property; provided, however, that

this provision shall not be construed to create an obligation by Declarant to construct any such streets, drives, or walkways;

b) A nonexclusive easement and right-of-way for access, installation, repair, maintenance, connecting to, and use of Utility lines, irrigation lines, pipes, tanks, conduits, cable, water and sewer lines, pump stations, drainage systems, swales, equipment, and facilities in, on, under, across, and to the Property, whether serving the Property or other property not subject to this Declaration; provided, however, that this provision shall not be construed to create an obligation by Declarant to construct, maintain, or repair any such items;

c) A nonexclusive easement and right-of-way for access and maintenance of all water bodies and the Stormwater Management System within or adjoining the Property; provided, however, that this provision shall not be construed to create an obligation by Declarant to maintain any such items;

d) A nonexclusive right to travel upon, place equipment upon, and otherwise use any portion of the Association Property or the Property (except within Homes that have been conveyed to Owners other than Declarant) reasonably necessary to allow the Declarant to construct Improvements related to the development or another development, or to sell, lease, or promote any Lots or other property within the development, and to use such property for offices, sales offices, samples, or models, and to maintain thereon sales information signs and such other signs as Declarant may desire;

e) A nonexclusive easement to perform any action required by any federal, state, or local governmental authority as may be necessary to carry out the development of the Property. This shall specifically include without limitation the right to move, remove, or plant trees on any part of the Property and the right to install, remove, and grade dirt or land on any portion of the Property, irrespective of whether expressly required by a governmental authority.

**8.9 Easement for Maintenance, Access and Drainage Purposes.** The Declarant hereby grants to the Association and its successors, assigns, agents, and contractors, an easement in, on, over and upon those portions of the Property as may be reasonably necessary for the purpose of maintaining the Common Area, including the Stormwater Management System, or other portions of Property to be maintained by Association, in accordance with the requirements of this Declaration. The Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any Lot which is a part of the Stormwater Management System, at reasonable times and in a reasonable manner, to operate, maintain or repair the Stormwater Management System as required by the SJRWMD permit. 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 prior written approval of the SJRWMD. The easement granted hereby shall not be exercised by any party in a manner which unreasonably interferes with the use, occupancy, or enjoyment of any

improved portion of the Property. Further, in the event that any portion of the Property shall be damaged or altered in any way as the result of the exercise of the easement rights granted hereby, such portions of the Property shall be immediately restored to the condition that existed immediately prior to such damage or alteration by the party exercising such rights.

Owners shall have an easement for drainage over Common Area, Limited Common Area, Association Property, and Lots within the Property provided that an Owner does not undertake any action or construct any Improvement which artificially increases the natural flow of water from a Lot or directs the flow of water in a manner that is noncompliant with the SJRWMD Permit. The Property shall be subject to a blanket easement for the benefit of the Declarant, the Association, and the St. Johns River Water Management District for the purposes of operation, inspection, maintenance, and repair of the Stormwater Management System. By this easement, the Declarant and Association shall have the right to enter upon any portion of any Lot, Common Area, Limited Common Area, and Association Property 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 St. Johns River Water Management District Permit. Additionally, the Declarant and Association shall have a perpetual nonexclusive easement for drainage through the lakes, retention ponds, marshes, and other wetland areas situated in whole or part on the Property that are part of the Stormwater Management System for use and maintenance as an outfall for the drainage of storm and surface waters. No person shall alter the drainage flow of the Stormwater Management System, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District and Declarant.

**8.10 Easements for Utility Providers.** A non-exclusive easement is hereby granted to Utility Providers on and within locations depicted on any Plat, and in such locations as may be subsequently designated by Declarant, for the purposes of installation, maintenance, repair, and replacement of conduits, equipment, and facilities used to furnish Utilities to the Property. The initial installation of, and any relocation of, all such conduits, equipment, and facilities used to furnish Utilities to the Property shall be subject to Declarant's approval.

**8.11 Easement for Irrigation/Sprinkler System.** Declarant hereby reserves to itself and grants to the Association, its employees, subcontractors, agents and designees, a non-exclusive, perpetual easement over, through, across and under each Lot for the installation, maintenance, operation, repair and replacement of sprinkler system lines and sprinkler heads, which lines and heads are hereby deemed to be the property of the Association; provided, however, no lines shall be located under a Home on a Lot. Should a sprinkler line(s) or sprinkler head(s) be required to be maintained, repaired or replaced as a result of the negligence by an Owner, his family, tenants, or Invitees, the applicable Owner shall be responsible for the costs thereof, and the Association shall have the right to levy an assessment against the Owner of said Lot for same, which assessment shall have the same force and effect as all other assessments.

## **ARTICLE IX MAINTENANCE, REPAIR, REPLACEMENT, & ALTERATION**

### **9.1 Maintenance, Repair, & Replacement – Association Responsibilities.**

a) **Common Areas.** The Association shall be responsible for maintaining, repairing, and replacing all Common Areas, Association Property, and Improvements thereon, which shall include, but need not be limited to:

i) The operation, maintenance, repair, and replacement of the Stormwater Management System in accordance with the Permit;

ii) Maintaining, repairing, and replacing any perimeter fencing, perimeter walls, and entry feature constructed within the Property, including such portions that may be located on Lots;

iii) All landscaping and other flora, parks, recreation facilities, signage, structures, and Improvements, including pedestrian pathways/trails, if any, situated upon the Common Area;

iv) Any property and facilities owned by the Declarant or Association and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to thereafter remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and

v) The Association shall also be responsible for maintaining, repairing, and replacing conduit, equipment, and facilities necessary to furnish or provide Utilities to Common Area, Association Property, or the Property as a whole (i.e., components of Utilities that serve or benefit all Owners and Homes), as applicable, and to the extent such maintenance, repair, and replacement responsibility is not borne by the Utility Provider.

b) The Association shall perform such responsibilities as and when determined by the Board in its reasonable discretion, and except as otherwise provided herein, the costs thereof shall constitute a Common Expense.

## **9.2 Maintenance, Repair, & Replacement – Owner Responsibilities.**

a) Each Owner shall maintain in good repair, and replace as necessary, the landscaping on the Lots and Limited Common Areas. Landscape maintenance shall include, without limitation, irrigation, fertilization, weeding, mowing, trimming, spraying for insects and disease, and periodic replacement of dead, damaged or diseased plantings. The yard shall be kept free of weeds and bare spots. Each Owner shall maintain and irrigate his or her Lot (including the area from the front lot line to the curb of the street right-of-way), and shall be responsible for the replacement of any portion or portions of such Lot Owner's yard, Lot, Limited Common Area, landscaping, shrubbery and any flora associated therewith which may be damaged, whether due to disease, storms, hurricane, natural disaster, cold freeze or other Act of God, provided that such replacement must be in accordance with the Architectural Review Guidelines and be approved by the Architectural Review Committee, including the area from the front lot line to the curb of the street right-of-way. Owners of

Lots abutting a stormwater management facility must maintain the yard and landscaping on the Lot to the waterline including, but not limited to, mowing, trimming, and replacing damaged landscaping, to the waterline. The Lot Owners shall be required to maintain such grass, planting, or other lateral support to prevent erosion of the embankment and shall be responsible for repairing and replacing any erosion washout.

b) Each Owner's responsibility and obligation to keep all parts of his or her Lot free and clear of trash and debris. The minimum but not exclusive standard for maintenance of landscaping shall be consistency with the approved plans thereof and with the general appearance of the other occupied Lots in the Property as a whole when initially landscaped (taking into account, however, the natural and orderly growth and maturation of applicable landscaping, as properly trimmed and maintained).

c) Owners shall maintain in good repair and in a neat and clean manner, repair, and replace all portions of their respective Lots, components of their respective Homes, and any Improvements permitted to be installed on their Lots by Declarant (or if and after Declarant assigns the right to review and approve Improvements to the Association, permitted by the Association or ARC) except such portions and components the Association is specifically obligated to maintain, repair, and replace by this Declaration. The minimum but not exclusive standard for maintenance of improvements shall be consistency with the approved plans thereof and with the general appearance of the other occupied Improvements in the Property as a whole when initially constructed and improved (taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness). The components of the Home for which the Owners are obligated to maintain, repair, and replace at their expense include (without limitation) the following:

i) Painting the exterior, paintable walls of each Home, repairing and replacing all portions of the exterior finish material of each Home, maintaining, repairing and replacing the roof, including patio roofs, if any, periodically cleaning the exterior portions of the Home, and maintaining, repairing or replacing any gutters, and downspouts. All maintenance and repair shall be performed by each Owner at regular intervals as shall be necessary to keep the Lot and Home in an attractive conditions and in substantially the same condition and appearance as existed at the time of completion by the Declarant, subject to normal wear and tear that cannot be avoided by normal maintenance.

ii) All structural and load-bearing components of the Home, including the foundation, structural framing, structural partition walls dividing Homes, and the roof system. Notwithstanding the foregoing, the Association reserves the right but no obligation, in its sole and absolute discretion, if an Owner fails to do so, to make repairs and replacements of those exterior portions of a Building, roof, and interior portions of a Building contributing to the support of the Building, with the cost of such repairs being the sole responsibility of that Owner as an Individual Assessment, payable by the responsible Owner immediately upon receipt of a written invoice or statement.

iii) All windows, screens, doors (including sliding glass doors), skylights, and any other fixture within any aperture of a Home, including all components, frames,

hardware, weather stripping, casing, and glass or other surface thereof, and garage doors located on or attached to the Home and to maintain, repair and replace concrete walkways, driveways, and patios located on any portion of the Lot and sidewalks located on any portion of a Lot or Limited Common Area of a Lot. Such maintenance shall include periodic cleaning.

iv) The conduit, ducts, wiring, pipes, facilities, and equipment for the furnishing of Utilities to the Home or a group of Homes; provided, however, that the Association shall be responsible for maintaining, repairing, and replacing conduit, equipment, and facilities necessary to furnish or provide Utilities to the Property as a whole (i.e., components of Utilities that serve or benefit all Owners and Homes), as applicable, to the extent such maintenance, repair, and replacement responsibility is not borne by the Utility Provider.

v) All drywall, gypsum board, Sheetrock, plasterboard, and wallboard, and all insulation within all wall cavities, including without limitation within each Owner's respective part of the partition wall dividing two Homes.

vi) All interior finishes, including without limitation all floor covering materials, wall texture, trim, casings, wallpaper, and painting of all interior wall and ceiling surfaces.

vii) All cabinetry, shelves, counters, closets, storage areas, and other Home fixtures.

viii) All household fixtures, furnishings, appliances, and equipment, including without limitation all stoves, ovens, refrigerators, water heaters, dishwashers, garbage disposals, HVAC systems, lighting fixtures (including lighting fixtures on the exterior of the Home), and kitchen and bathroom sinks and fixtures;

ix) All hurricane shutters (as applicable);

x) All non-structural, non-load bearing walls, including room dividing walls, and including all framing thereof;

xi) The driveway serving the Lot (including periodic cleaning).

xii) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to the Home and/or the security alarm system and fire alarm serving the Home, whether such conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services, security alarm system and fire alarm are located within the Home or within the Building where the Home is located.

xiii) Any and all Life Safety Systems serving the Home. Life Safety System includes without limitation, any sprinklers, emergency lighting, audio and visual signals, safety systems, and related equipment, and smoke detection systems,

which are now or hereafter installed in the Building, whether or not within the Home. All such Life Safety Systems, together with all conduits, plumbing, wiring, electrical connections and systems related thereto, regardless of where located, shall be maintained, repaired, and replaced by the Owner. The Association shall have the right, but not the obligation in any instance, to enter upon any portion of a Lot or Building, including within Homes after reasonable notice, to inspect the sprinkler system and/or any Life Safety Systems serving a Building or Home and perform any maintenance, repair, or replacement an Owner fails to perform and to levy an Individual Assessment against the Owner and his or her respective Lot for all costs associated with the Association's action under this provision. However, prior to exercising this right, except in an emergency, the Association shall provide at least seven (7) days' written notice to the Owner outlining the nature of the maintenance, repair, or replacement the Association deems necessary or appropriate and providing a time period within which the Owner must perform such maintenance, repair, and replacement.

xiv) Each Owner shall also be responsible for providing pest control for their Lot and Home.

xv) Each Lot shall be individually metered for water, and each Lot Owner shall be responsible for the payment of the utility charges associated with all water usage associated with that Lot.

xvi) All other portions of the Lot and Home for which the obligation to maintain, repair, and replace have not been specifically delegated to the Association in this Declaration. The omission of a component of the Property from this Section does not imply that the Association is responsible for the maintenance, repair, or replacement of any such component.

xvii) If any Association-maintained Common Areas or areas or Association Property are damaged or destroyed as a result of the negligence, misuse, error, act or the failure to act by an Owner or any of his guests, tenants, invitees, agents, employees, or family members, the Association may, in its sole and absolute discretion, may repair the damaged area, with the cost of such repairs being the responsibility of that Owner as an Individual Assessment, payable by the responsible Owner immediately upon receipt of a written invoice or statement.

**9.3 Shared Components.** This Section provides the process for maintaining, repairing, and replacing components of a townhome building which serve or benefit more than one Lot or Home and the Owners thereof, and the process for allocating the associated costs among the Owners. This Section is anticipated to apply to partition walls within townhome Buildings which form a shared boundary between two Homes ("Party Wall"), portions of townhome Buildings which contribute to the structural support of more than one Home, Utilities which serve more than one Home (but not Utilities that serve the Property as a whole or all Lots, Homes, and Owners), and potentially the roofing system, if the roofing system is constructed in a manner such that part of it cannot be repaired or replaced without repairing or replacing the entirety of it or parts of it located above more than one Home. Components of the townhome Buildings and Utilities which

serve or benefit more than one Lot or Home, such as (but not exclusively limited to) the components listed above, are referred to herein as "Shared Components."

**a) Affirmative Obligation, Use, Maintenance, Repair and Replacement of the Party Wall.** Each Owner shall each be responsible, at its sole cost and expense and subject to the terms of this Declaration, for the maintenance and repair of its respective interior face of the Party Wall. Should the Party Wall, or any portion thereof, be damaged or destroyed by the intentional act, gross negligence or negligence of either Owner, their respective agents, guests, licensees or invitees, such Owner shall immediately: (i) repair or replace the Party Wall, or the damaged or destroyed portion thereof, at that Owner's sole cost and expense; and (ii) compensate the other Owner for all resulting damages to the property of the other Owner. Any maintenance, repair or replacement of the Party Wall shall: (i) be of the same material, or similar material of the same quality, as that originally used in the Party Wall; (ii) be completed in a good and workmanlike manner, as expeditiously as reasonably possible; (iii) not change the location or size of the Party Wall; (iv) not impair the strength of the Party Wall nor damage the foundations located on either Parcel; and (v) be performed by a licensed contractor, subject to the approval of the Association.

**b) Determination of Need for Maintenance.** In the event one Owner believes that maintenance, repair, or replacement of a Shared Component is reasonably necessary, he or she shall provide written notice to the other Owner(s) served by, or who benefit from, the Shared Component describing the item(s) of maintenance, repair, or replacement he or she deems reasonably necessary and the estimated cost, as established by a bid from a licensed contractor. The other Owner(s) shall have twenty (20) days after receipt of the written notice to consent or object to the proposed maintenance, repair, or replacement, which shall be in writing. If the other Owner(s) consent(s) or fail(s) to object within twenty (20) days after receipt of written notice, then the maintenance, repair, or replacement as reasonably described in the written notice may be undertaken and the associated costs shall be shared equally by the Owners served by, or who benefit from, the Shared Component. To clarify, each Lot served by, or that benefits from, a Shared Component shall bear an equal proportionate share of the costs associated with maintaining, repairing, or replacing a Shared Component (regardless of the number of Owners of each such Lot). If another Owner served by, or who benefits from, the Shared Component objects in writing within twenty (20) days of receipt of written notice, then the Owners served by, or who benefit from, the Shared Component may: (i) informally discuss and agree upon a resolution; (ii) mutually agree to resolve the disagreement by mediation and share the costs thereof equally; (iii) mutually agree to submit the matter to binding or nonbinding arbitration; or, if the Owners are unable to agree on any of the preceding alternatives, (iv) any Owner may proceed to resolve the dispute in a court of competent jurisdiction. In the resolution of any such dispute, the deciding authority shall determine whether the maintenance, repair, or replacement is or was reasonably necessary and whether the associated costs are reasonable. Notwithstanding the foregoing, if any maintenance, repair, or replacement of a Shared Component constitutes an emergency or is reasonably necessary to prevent imminent damage to property or injury to person, any Owner served by, or who benefits from, a Shared Component may take immediate action to maintain, repair, or replace a

Shared Component, and all Owners served by, or who benefit from, the Shared Component shall be obligated to contribute a proportionate share of the expenses thereof. In such an event, and to the extent reasonably possible under the circumstances, the performing Owner shall attempt to provide notice to the other Owners served by, or who benefit from, the Shared Component before undertaking such maintenance, repair, or replacement of a Shared Component, but Owners acknowledge and agree that in some situations, notice may not be possible or may only be able to be given a short time before such maintenance, repair, or replacement is undertaken to address an emergency. In addition, for the purposes of notice under this Section, notice shall be deemed given when placed in the mail or personally delivered and addressed to the Owner using the address last furnished by the Owner to the Association for the purpose of receiving notices, or if no such address has been provided, the mailing address for the Owner identified in the records of the Duval County Property Appraiser.

**c) Casualty, Negligence, & Intentional Damage.** If a Shared Component is damaged or destroyed by fire or other casualty, any Owner served by, or who benefits from, the Shared Component may restore it and seek contribution from the other Owner(s) who are served by, or who benefit from, the Shared Component. If a Shared Component is damaged by the negligence, recklessness, or intentional act or omission of an Owner or any of his or her Invitees, the Owner and his or her Invitee(s) who caused the damage or destruction, as the case may be, shall be jointly and severally liable for the full costs of repair or replacement of the Shared Component. If the repairs or replacement are not promptly made, any Owner who is served by, or benefits from, the Shared Component may perform the required repairs or replacements and exercise the remedies for nonpayment outlined in this Section, including without limitation recording a claim of lien against the nonperforming or nonpaying Owner.

**d) Remedies for Nonpayment.** If an Owner fails to pay his or her proportionate share of the maintenance, repair, or replacement costs for a Shared Component, the Owner(s) served by, or who benefit from, the Shared Component and who have paid their proportionate shares of such costs shall have a lien on the nonpaying Owner's Lot to secure payment of such nonpaying Owner's proportionate share, together with interest and reasonable attorneys' fees and costs incident to collection of such Owner's proportionate share of the expenses. The Owner(s) who has or have paid their proportionate share(s) of such costs may record a claim of lien in the Official Records of Duval County, Florida against the nonpaying Owner(s)' Lot to secure payment. The lien provided for herein shall be effective from and after the recording of a claim of lien in the Official Records of Duval County, Florida; however, it shall be inferior in priority to any lien of the Association, including liens of the Association arising after the recording of a claim of lien by an Owner. In addition to any other remedy available at law or in equity, the Owner(s) seeking recovery of maintenance, repair, or replacement costs for a Shared Component may petition a court of competent jurisdiction to foreclose the claim of lien without waiving any other available causes of action or remedies. The prevailing party in any action to recover an Owner's proportionate share of maintenance, repair, or replacement expenses associated with a Shared Component shall be entitled to recover reasonable attorneys' fees and costs.

e) **Easement for Maintenance, Repair, & Replacement.** All Lots shall have a perpetual, non-exclusive easement appurtenant for ingress and egress onto other Lots that are served by, or benefit from, a Shared Component for the purposes of maintaining, repairing, or replacing Shared Components. Such easement shall be exercised at reasonable times, and upon reasonable notice, except in the event of an emergency, so as to not unreasonably interfere with the possession and use of a Home by another Owner.

f) **Approval of Alterations.** Notwithstanding any other provision in this Section, Owners shall not alter any part of any townhome Building, Home, Shared Component, or other Improvement visible from the exterior of any Home without Declarant's express written approval, or if and after Declarant assigns the right to review and approve Improvements to the Association, the written approval of the Association or ARC. This includes (without limitation) any alteration of exterior colors, materials, fixtures, sconces, and any other component visible from the exterior of any Home.

**9.4 Maintenance Standards; Association's Right to Require Maintenance.** Owners shall maintain, repair, and replace the portions of their Lots and Homes for which they are responsible (including without limitation Shared Components) as necessary, and at sufficient intervals, to promote a positive, well-maintained appearance of the Property. The Association shall have the right, but not the obligation in any instance, to enter upon any portion of the Property, including within Homes after reasonable notice, and perform any maintenance, repair, or replacement an Owner fails to perform and to levy an Individual Assessment against the Owner and his or her respective Lot for all costs associated with the Association's action under this provision. However, prior to exercising this right, except in an emergency, the Association shall provide at least fourteen (14) days' written notice to the Owner outlining the nature of the maintenance, repair, or replacement the Association deems necessary or appropriate and providing a time period within which the Owner must perform such maintenance, repair, and replacement.

**9.5 Maintenance by Association.** The Board is entitled to exercise reasonable business judgment in determining the timing and scope of maintenance, repair, and replacement for which it is responsible. Notwithstanding, for so long as Declarant owns any part of the Property and until Declarant has constructed all proposed Improvements on the Property, if Declarant determines in its sole discretion that it is necessary or desirable for the Association to maintain, repair, or replace a component within its responsibility, Declarant may provide written notice to the Association describing the nature of maintenance, repair, or replacement Declarant deems necessary or desirable and providing a reasonable time (in Declarant's sole discretion) within which the Association must perform such maintenance, repair, or replacement. If the Association fails to perform the maintenance, repair, or replacement identified by Declarant, Declarant may perform such maintenance, repair, or replacement on behalf of the Association and the Association shall pay Declarant upon demand all costs associated therewith, plus ten percent (10%) of such costs as an administrative expense.

**9.6 Alterations & Additions.** Alterations of and additions to the Property must comply with the following provisions:

a) **Common Areas & Association Property.** There shall be no material alteration of or substantial additions to Common Area or Association Property unless approved by the Board and a majority of the total Voting Interests. Notwithstanding, changes to and replacement of landscaping, and any alteration of or addition to Common Area or Association Property for which the associated cost does not exceed ten percent (10%) of the Association's budget for Assessments, including reserves (if the Association chooses to levy Assessments for reserves), made by the Association shall not constitute a material alteration or substantial addition and shall only require Board approval. In addition, any alteration of or addition to Common Area or Association Property undertaken by the Association which the Board deems necessary or beneficial in the maintenance, repair, replacement, or protection of the Property, regardless of cost, shall not constitute a material alteration or substantial addition and may be undertaken with Board approval. Further, any alteration of or addition to the Common Area or Association Property required by a governmental entity or to comply with any applicable law or permit issued by a governmental entity shall not constitute a material alteration or substantial alteration and may be undertaken by the Association, regardless of cost. No Owner shall make any alteration or addition to Common Area or Association Property without Declarant approval, or if and after Declarant assigns the right to review and approve Improvements to the Association, the Association or ARC.

b) **Lots & Homes.** Owners shall not make any alteration or addition to any portion of a Lot or Home visible or perceptible from outside of the Home without the prior written approval of the Declarant, or if and after Declarant assigns the right to review and approve Improvements to the Association, the approval of the Board. The foregoing limitation includes, but is not limited to, painting the exterior portion of any Home a different color (including without limitation doors and garage doors), and replacing any lighting sconces or fixtures on the exterior of, or otherwise visible from the exterior of, the Home with a sconce or fixture of a different type, style, or color. In addition, Owners shall not make any alteration or addition to any Home which would adversely affect the safety or structural integrity of any Home. Owners shall not alter any structural or load-bearing component of any Home. However, Owners may alter the interior portions of their Homes not visible or perceptible from the exterior of the Home, such as removing non-load bearing interior partition walls (but not the partition wall dividing two Homes) and painting and otherwise decorating the interior of the Home. If an Owner desires to make an alteration or addition for which Declarant or Association approval is required, the Owner shall submit an application for the proposed Improvement in accordance with Article VI.

c) **Declarant Exemption & Approval.** The provisions of this Section do not apply to Declarant, and Declarant may make any alterations or additions to any part of the Property in its sole discretion, except to the interior of Homes that have been conveyed to third parties, so long as it owns any part of the Property or until it has completed construction of all proposed Improvements on the Property. In addition, until Declarant no longer owns any part of the Property, and until Declarant has completed construction of all proposed Improvements on the Property, any alteration of or addition to the Property visible or perceptible from outside of a Home, and any alteration of or addition to a Home

that could affect the safety or structural integrity of a Home, shall require Declarant's prior express written approval.

**9.7 Hurricane Shutters.** Owners may, subject to the provisions of the Governing Documents and Declarant approval (or if and after Declarant assigns the right to review and approve Improvements to the Association, Association or ARC approval), install hurricane shutters that comply with applicable building code and the standards, criteria, and specifications adopted by the Declarant (or if and after Declarant assigns the right to review and approve Improvements to the Association, the Association or ARC). If not previously established by Declarant, if and after the Declarant assigns the right to review and approve proposed Improvements to the Association, the Board shall adopt standards, criteria, and specifications for hurricane shutters which may include regulation of color, style, material, and other factors deemed relevant by the Board, and Owners who desire to install hurricane shutters may be required to install the same type, color, style, and material of shutter to maintain a harmonious and consistent exterior appearance of the Homes. The installation of hurricane shutters constitutes an Improvement subject to Article VI, and an Owner is responsible for the operation, maintenance, repair, and replacement of any hurricane shutters installed by an Owner at the Owner's sole expense.

**9.8 Duty to Mitigate & Report Damage.** Owners shall undertake all action necessary to mitigate the potential for damage to components of the Property for which the Association is obligated to maintain, repair, or replace and to other Homes. Regardless of whether their Home is occupied, Owners shall operate their HVAC systems to reduce humidity in the Home and to prevent mold growth, periodically inspect all drains, plumbing, and drip pans and keep them free from stoppages and clogs, and shut off the water supply to the Home when the Home will be unoccupied for more than forty-eight (48) hours. Owners shall cause their Homes to be periodically inspected when not occupying or otherwise absent from their Homes for more than forty-eight (48) hours, and Owners shall promptly inform the Association of any event or issue which has caused or may cause damage to components of the Property for which the Association is obligated to maintain, repair, or replace or to other Homes.

**9.9 Damage Caused by Owner or Invitee.** Owners are responsible for the costs of repair or replacement of any part of the Property not paid by insurance proceeds if such damage is caused by the intentional conduct, negligence, or failure to comply with the terms of the Governing Documents by an Owner, the members of his or her family, Home occupants, tenants, guests, licensees, or other Invitees, without compromise to the subrogation rights of the insurer. All such costs shall constitute an Individual Assessment against the Lot and Owners thereof who, or whose family, Home occupants, tenants, guests, licensees, or other Invitees, caused the damage.

**9.10 Mold & Other Microbials.** The Property is located in a geographic area in which mold and other microbials are naturally present and may be present in indoor environments. Mold and other microbials may enter Homes through apertures, such as doors and windows, and may become present within wall cavities. Excess moisture and humidity within a Home can lead to the accumulation of excess levels of mold and other microbials. Owners shall be solely responsible to remove visible moisture accumulation, repair leaks, and prevent and eliminate excess humidity in Homes immediately upon discovery thereof, and Owners shall perform periodic inspections of

plumbing, drains, condensate lines, air handlers, and ducts within or serving their Homes to prevent the spread of water, prevent leaks, and avoid the growth or accumulation of mold or other microbial contamination in the Homes. In addition, Owners shall continuously cause their HVAC systems to be operated at sufficient levels and intervals to manage the relative humidity in their Homes and to prevent mold and microbial growth, regardless of whether the Home is occupied. Each Owner shall promptly notify the Association in writing of any leaks, water penetration, or excess humidity, and any mold or other microbial contamination discovered in his or her Home. If required by the Association, the Owner shall engage an indoor environmental specialist acceptable to the Association to determine the cause of any leaks, water penetration, or excess humidity, the extent of any microbial contamination, and the appropriate course of repair and remediation. The applicable Owner, at the Owner's sole cost and expense, shall promptly undertake all repairs and remediation in order to repair such leaks, water penetration, or excess humidity in accordance with nationally accepted remediation standards. Additionally, Owners shall prevent the accumulation of other contaminants, including but not limited to, carbon dioxide, volatile organic compounds, formaldehyde, and other chemicals or gases in his or her Home, or spreading from his or her Home, that are or might be injurious to human health. Owners shall not use any biocides or chemicals in their Home for removal of any contamination that are not EPA-registered for that particular purpose or which could be harmful to other Homes or their occupants.

**DECLARANT AND ASSOCIATION MAKE NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR QUALITY OF WORKMANSHIP AS TO BUILDING MATERIALS OR CONSTRUCTION MEANS AND METHODS WITH REGARD TO INDOOR AIR QUALITY OR THE PRESENCE OR ABSENCE OF MOLD OR OTHER MICROBIALS AND ANY CHEMICAL OR TOXIN SECRETED OR EMITTED IN PROXIMITY TO A HOME, OR REGARDING THE EFFECTIVENESS OF AN ARCHITECTURAL OR ENGINEERING FIXTURE OR DESIGN FOR REDUCING THE PRESENCE OR GROWTH OF MOLD OR OTHER MICROBIALS, THE RESPONSIBILITY FOR THE PREVENTION OF THESE ITEMS BEING THAT OF THE OWNER THROUGH PROPER INSPECTION AND MAINTENANCE OF THE HOME.**

## **ARTICLE X INSURANCE**

**10.1 Property Insurance.** The Association shall keep all Improvements located on Association Property and Common Area (if any) insured against loss and damage by fire or other casualty for the full insurable replacement values, subject to policy exclusions and deductibles deemed acceptable by the Board. The Association shall also, to the extent possible, maintain insurance for Association Property installed by Declarant on Lots which are intended for the benefit, use, or enjoyment of all Owners and their Invitees, which may but will not necessarily include or be limited to perimeter fences, perimeter walls, and components of the Stormwater Management System. Nothing herein shall be construed to require the Association to procure or maintain insurance for Owners' Homes, Lots, or any Improvements located thereon (except

Improvements or personal property installed or placed on Lots by Declarant which are intended for the benefit, use, or enjoyment of all Owners and their Invitees).

**10.2 Flood Insurance.** The Association may maintain flood insurance with respect to any Association Property, Common Area, and Improvements for which the Association is obligated or permitted to maintain property insurance in such scope, coverage amounts, and deductibles as deemed appropriate by the Board.

**10.3 Liability Insurance.** The Association shall maintain comprehensive general liability insurance with coverage of at least \$1,000,000.00 per occurrence to insure against liability for bodily injury (including death) and property damage occurring on the Property or as the alleged result of an unintentional act or omission of the Association, its Directors, Officers, and employees; provided, however, that nothing herein obligates the Association to insure Owners for liability for occurrences on their respective Lots. In addition, the Association may procure a Directors and Officers liability insurance policy covering claims of alleged wrongful acts of Directors and Officers in their capacities as Directors and Officers, with such scopes of coverage, coverage limits, retentions, and deductibles as the Board may determine.

**10.4 Fidelity Insurance or Bonds.** The Association shall maintain insurance or a fidelity bond for all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time.

**10.5 Other Insurance.** The Association may obtain such other insurance as the Board may deem appropriate.

**10.6 Owners' Property Insurance.** All Owners are obligated to procure and maintain property insurance on a replacement cost basis insuring their respective Homes against loss and damage by fire or other casualty. Owners shall provide proof of the required insurance to the Association upon request. If an Owner fails to furnish proof of insurance to the Association upon request, the Association may, but shall not be obligated to, provide written notice to the Owner informing the Owner that if he or she does not procure the required insurance and provide proof to the Association within fourteen (14) days of the date of the notice, the Association may procure such insurance and may levy an Individual Assessment against the Owner and his or her Lot for the associated costs. If the Owner fails to procure or provide proof of insurance within fourteen (14) days of the date of the notice, the Association may, but shall not be obligated to, procure such insurance, either in the Association's name or in the name of the Owner(s), and levy an Individual Assessment against the Owner and his or her Lot for the associated costs. By acquiring a fee interest in a Lot, all Owners shall be deemed to have granted the Association an irrevocable power of attorney, coupled with an interest, to procure property insurance on each Owner's behalf if the Owner fails to procure and maintain the property insurance and provide proof to the Association as required by this Section.

**10.7 Waiver of Subrogation.** Unless any insurance policy would be voided by the existence of this provision, the Association hereby waives and releases all claims against Association Directors, Officers, Members, the Declarant, and the agents and employees of the

Association and Declarant, but only to the extent that insurance proceeds are received in full compensation for a loss. All appropriate insurance policies maintained by the Association shall include waivers of subrogation compatible with this Section.

## ARTICLE XI CONDEMNATION AND CASUALTY

**11.1 Condemnation.** If any or all of the Association Property is taken by condemnation or government action, the Association shall have the sole and exclusive right and obligation to apply for and receive any award or other compensation given as a result, to be held by the Association and retained or disbursed as provided in this Section.

**a) Partial.** If part of the Association Property is taken by condemnation or government action, the remainder of the Association Property shall be restored as nearly as possible to its condition prior to the taking. The cost of such restoration shall be paid first from the award, if any, recovered by the Association, and thereafter by Assessments of all Owners for the remaining costs of restoration. If the part of the property subject to the taking has been designated as a Limited Common Area, then Assessments for restoration shall be levied exclusively against the Owners and their respective Lots who otherwise bear Assessment liability with respect to such Limited Common Area. Any surplus award remaining after such restoration shall be held by the Association for the benefit of the Association and may be used for operating costs or held in reserves as the Board may determine.

**b) Total.** If the entire Association Property, or an entire parcel of Association Property, is taken by condemnation or government action, then the Association may retain the funds recovered by the Association incident to the taking, if any, which may be used for any proper purpose as the Board may determine. If the Board determines to distribute the proceeds of the taking, the Board shall cause any prorated distribution of such funds to be payable jointly to the Owners and their mortgagees as their interests may appear. The Association shall not be obligated to issue a joint payment instrument if the mortgagee has not provided notice to the Association, or the Association is otherwise unable to identify the mortgagee by reviewing the Official Records.

**11.2 Casualty.** If all or part of the Association Property is destroyed by fire, storm, accident, or any other casualty, the Association shall be solely responsible for filing and adjusting claims under any insurance policies maintained and shall hold and apply any such insurance proceeds as described herein.

**a) Rebuild or Replacement.** Unless the Members elect to not rebuild or replace the Association Property as described in (b) below, the Association shall rebuild or replace any casualty damage as nearly as possible to its condition prior to the casualty by first applying any insurance proceeds received by the Association and thereafter levying Assessments against the Owners for any deficiency necessary to complete the rebuilding or replacement. If the casualty affects a Limited Common Area, any Assessment to repair, rebuild, or replace the Limited Common Area and Improvements thereon shall be levied

against the Owners and their respective Lots who have the right to use or otherwise benefit from such Limited Common Areas. Any excess insurance proceeds remaining after all costs of repairing or replacing the casualty damage have been paid shall be held by the Association for the benefit of the Association to defray future Association expenses as the Board may determine.

**b) Election to Not Rebuild or Replace.** Upon the occurrence of any casualty damage to the Association Property, if all of the Owners elect in writing to not rebuild or replace the Association Property, the Association shall either retain any net insurance proceeds to offset future Common Expenses or distribute any net insurance proceeds (after deducting administrative and professional costs incurred by the Association, including the costs of filing and adjusting the insurance claims) to the Owners jointly with their mortgagee(s), if any, pro rata.

**11.3 Casualty Damage to Owners' Property.** In the event of damage or destruction by fire or other casualty to a Home or Improvements on a Lot which the Owners are obligated to independently insure, the Owner thereof shall immediately remove all debris and render the Lot and adjacent parts of the Property free from hazards resulting from the casualty. In addition, the Owner shall repair, restore, or otherwise reconstruct the Home in accordance with the original design and construction in a good workmanlike manner within a reasonable time not to exceed one (1) year from the date of the damage or destruction and in accordance with Article VI of this Declaration. If any Owner fails to comply with this provision, the Declarant and Association shall have the right, but not the obligation, to enter the Lot, demolish, repair, restore, or otherwise reconstruct the Home, remove any debris, mitigate any hazards, restore such portion of the Property to an orderly condition, and levy an Individual Assessment against the Owner and Owner's Lot for all associated costs.

## ARTICLE XII STORMWATER MANAGEMENT SYSTEM

**12.1 Compliance with Permits.** No person shall engage in any act or omission, or construct or make any Improvement, in a manner which would violate the St. Johns River Water Management District Permit Nos.: 36309-3 and 183822-1, as amended and extended, for the Stormwater Management System.

**12.2 Operation and Maintenance of the Stormwater Management System.** The Association shall maintain all lakes, drainage areas, drainage easements, and control structures, and shall preserve and protect all current and future conservation areas (including, without limitation, any wetland or conservation areas created or enhanced before or after control over the Association has been turned over from the Declarant to the Owners) and littoral zones located within, adjacent, or in near proximity to the Property, in accordance with the terms and provisions of any conservation easements and all permit requirements and conditions contained in applicable dredge fill, consumptive use, surface water permits, or any other applicable permits issued by the United States Army Corps of Engineers ("ACOE"), Florida Department of Environmental Protection ("FDEP"), St. Johns River Water Management District ("SJRWMD"), and the St Johns

County, Florida and all statutes, rules, regulations and requirements pertaining to surface water management, drainage and water quality promulgated by the SJRWMD, the FDEP, and all other local, state and federal authorities having jurisdiction. The Association shall maintain those portions of the Common Area designated by applicable permit or other instrument as conservation tracts, stormwater management tracts or similar designations, in accordance with all permit requirements, rules, and regulations promulgated by all local, state and federal authorities having jurisdiction. The Association shall be responsible for the maintenance, operation and repair of 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 St. Johns River Water Management 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 St. Johns River Water Management District. All maintenance obligations of the Association shall be performed as ordered by the Board of Directors of the Association, and all or any portion of the cost of such maintenance incurred by the Association pursuant to this shall be a common expense of the Association to be collected and paid in the manner prescribed by this Declaration.

**12.3 Compliance by Members.** All Owners shall, by acceptance of title to a Lot, be deemed to have assumed the obligation to comply with the requirements of the Stormwater Management System Permit as it relates to the Lot. Except as required or permitted by permits issued by the SJRWMD, no Owner shall alter, fill, dredge, place sod or excavate, or perform similar activities on any portion of his, her, or its Lot which contains jurisdictional wetlands, upland buffers, or conservation areas as established by the SJRWMD, or which would otherwise be in violation of the Permit, unless and until such activity is authorized by the SJRWMD and approved by Declarant. In the event that an Owner or his or her Invitee violates the terms and conditions of such Permit and for any reason the Declarant or the Association is cited therefor, the Owner agrees to indemnify, defend, and hold the Declarant and the Association harmless from all costs arising in connection therewith, including without limitation all costs and attorneys' fees as well as costs of curing such violation, which shall constitute an Individual Assessment against such Owner and his or her Lot.

**12.4 Enforcement by SJRWMD.** The St. Johns River Water Management 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.

**12.5 Amendment.** Any amendment to this Declaration that alters any provision relating to 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 St. Johns River Water Management District. This Declaration may not be terminated unless adequate provision for transferring perpetual maintenance responsibility for the Stormwater Management System obligation to the then Owners of the Lots is made, and said transfer obligation is permitted under the then existing requirements of the St. Johns River Water Management District or its successors and the County or any other governmental body that may have authority over such transfer.

**12.6 Jurisdictional Areas and Permits.** THE PROPERTY HAS BEEN OR WILL BE DEVELOPED IN ACCORDANCE WITH REQUIREMENTS OF ST. JOHNS RIVER WATER MANAGEMENT DISTRICT PERMIT NUMBERS 36309-3 and 183822-1, AS MAY BE AMENDED (THE "PERMIT"). THE PERMIT IS OR WILL BE OWNED BY THE ASSOCIATION AND THE ASSOCIATION HAS THE OBLIGATION TO ASSURE THAT ALL TERMS AND CONDITIONS THEREOF ARE ENFORCED. THE ASSOCIATION SHALL HAVE THE RIGHT TO BRING AN ACTION, AT LAW OR IN EQUITY, AGAINST ANY OWNER VIOLATING ANY PROVISION OF THE PERMIT. THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT SHALL HAVE THE RIGHT TO ENFORCE, BY A PROCEEDING AT LAW OR IN EQUITY, THE PROVISIONS CONTAINED IN THE COVENANTS AND RESTRICTIONS WHICH RELATE TO THE MAINTENANCE, OPERATION AND REPAIR OF THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM.

FURTHER, ANY OWNER OWNING A LOT WHICH CONTAINS OR IS ADJACENT TO JURISDICTIONAL WETLANDS OR CONSERVATION AREAS AS ESTABLISHED BY THE ACOE OR SJRWMD OR BY ANY APPLICABLE CONSERVATION EASEMENT SHALL BY ACCEPTANCE OF TITLE TO THE LOT, BE DEEMED TO HAVE ASSUMED THE OBLIGATION TO COMPLY WITH THE REQUIREMENTS OF THE PERMIT AS THE SAME RELATE TO SUCH OWNER'S LOT AND SHALL AGREE TO MAINTAIN SUCH JURISDICTIONAL WETLANDS AND CONSERVATION AREAS IN THE CONDITION REQUIRED UNDER THE PERMIT. IN THE EVENT THAT AN OWNER VIOLATES THE TERMS AND CONDITIONS OF THE PERMIT AND FOR ANY REASON THE DECLARANT OR THE ASSOCIATION IS CITED THEREFORE, THE OWNER AGREES TO INDEMNIFY AND HOLD THE DEVELOPER AND THE ASSOCIATION HARMLESS FROM ALL COSTS ARISING IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION ALL COST AND ATTORNEYS' FEES, AS WELL AS ALL COSTS OF CURING SUCH VIOLATION. NO PERSON SHALL ALTER THE DRAINAGE FLOW OF THE STORMWATER MANAGEMENT SYSTEM OR ANY PORTION OF THE JURISDICTIONAL WETLANDS OR CONSERVATION AREAS, INCLUDING WITHOUT LIMITATION, ANY BUFFER AREAS, SWALES, TREATMENT BERMS OR SWALES, WITHOUT THE PRIOR WRITTEN APPROVAL OF THE SJRWMD, AS APPLICABLE.

**12.7 Indemnity.** Upon the transfer of the Permit by Declarant to the Association, the Association shall indemnify, defend, and hold harmless Declarant, its principals, employees, managers, and agents, against all claims, damages, expenses, and losses of any nature (the foregoing collectively, "Claims") arising out of or related to the Stormwater Management System

### **ARTICLE XIII DISCLAIMERS & ALTERNATIVE DISPUTE RESOLUTION**

**13.1 Declarant Representations & Warranties.** THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF, EXPRESS OR IMPLIED. ALL IMPROVEMENTS CONSTRUCTED ON THE PROPERTY BY DECLARANT, ITS PRINCIPALS, AGENTS, SUCCESSORS, AND ASSIGNS, OR OTHERWISE CONVEYED TO THE ASSOCIATION OR OTHER PERSONS SHALL BE CONVEYED IN "AS IS"

CONDITION, UNLESS EXPRESSLY STATED OTHERWISE IN ANY PURCHASE AND SALE CONTRACT FOR A SPECIFIC IMPROVEMENT. ALL PERSONAL AND REAL PROPERTY CONVEYED TO THE ASSOCIATION SHALL BE ACCEPTED BY ASSOCIATION IN "AS IS" CONDITION AND WITHOUT WARRANTY, EXPRESS OR IMPLIED. WITH RESPECT TO ALL IMPROVEMENTS, TO THE GREATEST EXTENT PERMITTED BY LAW, ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, AN IMPLIED WARRANTY OF FITNESS AND MERCHANTABILITY, IMPLIED WARRANTY THAT ANY CONSTRUCTION CONFORMS TO PLANS OR SPECIFICATIONS, AND IMPLIED WARRANTY FOR COMPLIANCE WITH BUILDING CODES, ARE HEREBY EXPRESSLY DISCLAIMED. WITH RESPECT TO ANY CLAIMS BASED ON WARRANTIES THAT CANNOT BE DISCLAIMED AS A MATTER OF LAW OR OTHERWISE ARISING OUT OF OR RELATED TO THE CONSTRUCTION OR DESIGN OF ANY IMPROVEMENT CONSTITUTING PART OF THE PROPERTY, THE ASSOCIATION AND ALL OWNERS WAIVE ALL CLAIMS FOR INCIDENTAL, CONSEQUENTIAL, AND SPECIAL DAMAGES AGAINST DECLARANT, ITS PRINCIPALS, AGENTS, CONTRACTORS, MANAGERS, AND EMPLOYEES.

**13.2 Safety & Security.** THE DECLARANT, ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, PRINCIPALS, AGENTS, AND EMPLOYEES (COLLECTIVELY, "LISTED PARTIES") SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY, OR WELFARE OF ANY OWNER, OCCUPANT, OR USER OF ANY PORTION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, OWNERS, RESIDENTS, AND THEIR FAMILIES, GUESTS, AGENTS, CONTRACTORS, AND OTHER INVITEES, OR FOR ANY PROPERTY OF ANY SUCH PERSONS. NONE OF THE LISTED PARTIES HAVE UNDERTAKEN, OR SHALL BE DEEMED TO HAVE EVER UNDERTAKEN, ANY DUTY TO PROVIDE SECURITY OR ENSURE THE SAFETY OF ANY PERSON OR PROPERTY AND SHALL NOT BE HELD LIABLE FOR FAILURE TO PROVIDE SECURITY OR FOR THE EFFECTIVENESS OR INEFFECTIVENESS OF ANY SECURITY MEASURES UNDERTAKEN. ALL PERSONS OCCUPYING OR LOCATED WITHIN ANY PART OF THE PROPERTY ARE SOLELY RESPONSIBLE FOR ENSURING THEIR PERSONAL HEALTH AND SAFETY. BY VIRTUE OF THEIR ACCEPTANCE OF AN INTEREST IN, OR USE OF, ANY PORTION OF THE PROPERTY, ALL PERSONS SHALL BE DEEMED TO HAVE AGREED TO RELEASE AND HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, AND INJURIES (INCLUDING DEATH) OCCURRING ON OR ADJACENT TO THE PROPERTY RESULTING FROM THE UNLAWFUL OR TORTIOUS ACTS OF ANY PERSON.

**13.3 Liability Regarding Property.** THE USE OF THE PROPERTY SHALL BE AT THE USER'S SOLE RISK. THE DECLARANT, ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, PRINCIPALS, AGENTS, AND EMPLOYEES (COLLECTIVELY, "LISTED PARTIES") SHALL NOT HAVE ANY DUTY OR OBLIGATION, NOR SHALL THEY EVER BE DEEMED TO HAVE UNDERTAKEN ANY DUTY OR OBLIGATION, TO ENSURE THAT ANY OF THE

PROPERTY, OR ANY IMPROVEMENTS AND PERSONAL PROPERTY WITHIN OR THEREON, ARE IN A REASONABLY SAFE CONDITION AND FREE FROM HAZARDS, INCLUDING FREE FROM VIRUS OR OTHER DISEASE. FURTHER, THE LISTED PARTIES SHALL NOT HAVE ANY DUTY OR OBLIGATION, NOR SHALL THEY EVER BE DEEMED TO HAVE UNDERTAKEN ANY DUTY OR OBLIGATION, TO WARN OF ANY DANGERS OR HAZARDS WHICH MAY BE PRESENT ON THE PROPERTY. BY ACQUIRING ANY INTEREST IN ANY PART OF THE PROPERTY, AND BY USE OF ANY PART OF THE PROPERTY, ALL SUCH PERSONS SHALL BE DEEMED TO HAVE AGREED TO RELEASE AND HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL CLAIMS, DAMAGES, EXPENSES, LIABILITIES, INJURIES (INCLUDING DEATH), AND LOSSES OF ANY NATURE OCCURRING ON OR ADJACENT TO THE PROPERTY FROM ANY CAUSE OF ANY NATURE WHATSOEVER, TO THE GREATEST EXTENT PERMITTED BY LAW.

13.4 Notices and Disclaimers as to Water Bodies. NEITHER DECLARANT, THE ASSOCIATION, NOR ANY OF THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN THE COMMUNITY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. THERE IS NO GUARANTY BY THE LISTED PARTIES THAT WATER LEVELS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES SHALL, FROM TIME TO TIME, EXCAVATE, CONSTRUCT AND MAINTAIN WATER BODIES WITHIN PROXIMITY TO THE PROPERTY. NOTWITHSTANDING THE FOREGOING, EXCAVATION OR CONSTRUCTION OF WATER BODIES SHALL BE PROHIBITED UNLESS OTHERWISE AUTHORIZED BY THE PERMITS. IN THE EVENT THAT THE EXCAVATION OR CONSTRUCTION OF WATER BODIES IS NOT AUTHORIZED BY SAID PERMITS, SUCH EXCAVATION OR CONSTRUCTION MAY ONLY TAKE PLACE IF A PERMIT MODIFICATION IS OBTAINED. BY THE ACCEPTANCE OF HIS OR HER DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTY, EACH SUCH OWNER, OCCUPANT OR USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES: (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW CHILDREN, GUESTS OR OTHER PERSONS UNDER

**THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY WATER BODY WITHIN THE PROPERTY EXCEPT AS SPECIFICALLY PERMITTED BY THIS DECLARATION OR THE RULES AND REGULATIONS ADOPTED BY THE ASSOCIATION; (iii) DECLARANT, THE ASSOCIATION, AND THE OTHER LISTED PARTIES SHALL NOT BE LIABLE BUT, RATHER, SHALL BE HELD HARMLESS FROM ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES; (iv) ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (v) THIS ACKNOWLEDGEMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT TO SELL, CONVEY AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE PROPERTY.**

**FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY WATER BODY, ALL PERSONS USING SAME DOING SO AT THEIR OWN RISK.**

**ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN OR NEARBY THE COMMUNITY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.**

**NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE OBLIGATED TO ERECT FENCES, GATES OR WALLS AROUND OR ADJACENT TO ANY WATER BODY WITHIN THE COMMUNITY. MODIFICATION OF THE SHORELINE BY AN OWNER IS STRICTLY PROHIBITED.**

**13.5 Alternative Dispute Resolution. DECLARANT, ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, PRINCIPALS, AGENTS, AND EMPLOYEES, AND ALL OWNERS OF ANY INTEREST IN ANY PART OF THE PROPERTY, INCLUDING ALL PERSONS WHO MAY BECOME OWNERS OF ANY PART OF THE PROPERTY AFTER THE RECORDING OF THIS DECLARATION, AND ANY PERSON TRAVELING UPON, USING, OR OCCUPYING ANY PORTION OF THE PROPERTY (COLLECTIVELY, THE "PARTIES"), AGREE THAT ANY "DISPUTE" (AS DEFINED IN THIS SECTION) SHALL FIRST BE SUBMITTED TO MEDIATION BEFORE BEING SUBMITTED TO ANY OTHER FORUM FOR RESOLUTION, WHICH ALTERNATIVE FORUMS ARE ESTABLISHED BY THIS SECTION. IF THE DISPUTE IS NOT FULLY RESOLVED THROUGH MEDIATION, THE DISPUTE SHALL BE SUBMITTED TO BINDING ARBITRATION AS PROVIDED BY THE REVISED FLORIDA ARBITRATION CODE AND NOT BY A COURT OF LAW OR EQUITY, EXCEPT ONLY AS TO DISPUTES PERMITTED TO BE**

**RESOLVED IN SMALL CLAIMS COURT AS PROVIDED BELOW. ALL DISPUTES NOT RESOLVED THROUGH MEDIATION SHALL BE SUBMITTED TO BINDING ARBITRATION WITHIN THE APPLICABLE STATUTES OF LIMITATIONS AND STATUTES OF REPOSE THAT WOULD APPLY TO THE CAUSES OF ACTION ASSERTED IN THE DISPUTE, AND NOTHING HEREIN SHALL EXTEND OR TOLL THE TIME WITHIN WHICH A DISPUTE MUST BE SUBMITTED TO ARBITRATION UNDER THE APPLICABLE STATUTES OF LIMITATIONS AND STATUTES OF REPOSE. NO DISPUTE SHALL BE SUBMITTED TO ARBITRATION IF THE CAUSE(S) OF ACTION FOR THE DISPUTE WOULD BE BARRED BY THE APPLICABLE STATUTE(S) OF LIMITATION OR STATUTE(S) OF REPOSE.**

a) **Dispute Defined.** "Dispute" shall mean any and all controversies, claims, liabilities, demands, causes of action, and disputes of any nature in which Declarant, its partners, limited partners, directors, officers, shareholders, managers, managing members, members, employees, principals, agents, successors, or assigns (collectively when used in this article, "Listed Parties") is or may become a party, whether sounding in contract, tort, statute, or otherwise, arising out of or related to:

- i) any property conveyed or dedicated by Declarant to Association;
- ii) the purchase and sale transaction with respect to any part of the Property, including any improvements constructed thereon, and any instrument of title, use, or possession conveyed pursuant thereto;
- iii) any alleged fraud, misrepresentation, or the communications or business dealings involving any of the Listed Parties;
- iv) the Governing Documents, the Florida Not For Profit Corporation Act (Chapter 617, Florida Statutes), or the Homeowners' Association Act (Chapter 720, Florida Statutes);
- v) any alleged breach of duty (including fiduciary duty) by any of the Listed Parties regarding the Association, its Members, or the Property;
- vi) any alleged representations, promises, warranties, or covenants made by any of the Listed Parties;
- vii) personal injury (including death) or property damage;
- viii) the Property, including improvements thereon or otherwise benefitting it, such as the Stormwater Management System, Utility, and other infrastructure;
- ix) the design or construction of any improvements on the Property;
- x) any alleged violation of civil law;
- xi) the formation, validity, or enforceability of this Section or of any agreement involving any of the Listed Parties, whether written or verbal.

b) **Mediation.** Mediation required by this Section shall be conducted by a Florida Certified Mediator in accordance with the Florida Rules for Certified and Court-Appointed Mediators in effect on the date the Dispute is submitted to mediation. If any issues related to the Dispute involve alleged defects or deficiencies in the design or construction (including construction materials and products used) of any improvement, all parties and their experts shall be permitted to inspect and test (including destructive testing)

the improvement, alleged defects, and deficiencies before mediation. Unless waived in writing by all parties to the Dispute, mediation in accordance with this Section is a condition precedent to the submission of any Dispute to any other formal dispute resolution proceeding, which is intended by the Parties and this Section to be arbitration, except with respect to limited matters that may be filed in small claims court as provided below. If, following mediation, the Dispute is submitted by a Party to small claims court, and if Declarant is made a party to the Dispute, Declarant agrees to pay the fees and costs of the mediator for one day of mediation. All other fees and costs of the mediator shall be shared equally by the parties to the Dispute.

**c) Arbitration.** If the Dispute is not fully resolved at mediation, the Dispute, or any remaining part of it, shall be submitted to binding arbitration conducted in accordance with the Revised Florida Arbitration Code and the Florida Rules for Court-Appointed Arbitrators. If the amount in controversy involving the Dispute exceeds \$300,000.00, the Dispute shall be heard and decided by three arbitrators unless the parties all agree to have the Dispute heard and decided by one arbitrator. The arbitrators shall have experience with the subject matters of the Dispute, which must include legal expertise if legal issues are part of the subject matter of the Dispute. At the request of any party, the arbitration award shall be accompanied by detailed written findings of fact and conclusions of law. Except as required by law, and except as necessary to seek confirmation of the award in a court of competent jurisdiction, no party shall disclose the existence, content, conclusions, or results of any arbitration proceeding or award with respect to the Dispute without the prior written consent of all parties to the Dispute. Any judgment upon the award rendered by the arbitration may be enforced by any court with competent jurisdiction.

**d) Limited Right to Add Parties to the Dispute.** If any Party believes that another person other than a Party may be liable in whole or part for the claims asserted in the Dispute, that Party may join and assert claims against any such person in the Dispute resolution proceedings, the forums of which are limited as provided in this Section.

**e) Collateral Estoppel & Issue Preclusion.** The Parties agree that no finding or stipulation of fact, no conclusion of law, no arbitration award in any other arbitration proceeding other than the proceeding in which the Dispute between the Parties is pending, and no judgment in any other proceeding shall be given preclusive effect, nor shall the doctrine of collateral estoppel be applied in the Dispute unless:

- i)** the identical issues in the Dispute were at issue in the other proceeding;
- ii)** there was a full and fair opportunity to litigate the issues in the prior, other proceeding;
- iii)** the issues in the prior litigation were a critical and necessary part of the prior determination in the other proceeding;
- iv)** the party to the Dispute and the party to the prior, other proceeding against whom a determination of issue preclusion or collateral estoppel is sought in the Dispute were identical or the party to the prior, other proceeding was a privy of the party to the Dispute; and

v) the issues were actually litigated in the other, prior proceeding.

f) **Disputes in Small Claims Court.** As provided by the Consumer Due Process Protocol developed by the National Consumer Dispute Advisory Committee, the Parties agree that notwithstanding the agreement to arbitrate provided in this Section, a Party desiring to assert a Dispute may, after the conclusion of mediation as required in this Section, seek relief in small claims court for Disputes within the scope of jurisdiction for small claims court in lieu of filing a petition to arbitrate.

g) **Preliminary or Emergency Injunctive Relief – Non-Waiver.** Notwithstanding anything to the contrary in this Section, if any Party seeks temporary, preliminary, or emergency injunctive relief, and not damages, from a court because of an allegation that irreparable harm will be suffered by any Party before mediation or arbitration would be concluded, any such action shall not be construed as a waiver of any Party's right and agreement to mediate or arbitrate any Dispute. A Party's filing of defenses, motions, counterclaims, or its other participation in such court proceedings shall not constitute a waiver of a Party's right and agreement to mediate and arbitrate the Dispute as provided in this Section.

h) **Waiver of Class and Representative Actions.** The Parties agree that the Parties may bring claims with respect to Disputes only on an individual basis and not as a member in any class, representative action, or collective proceeding. Without limiting the foregoing, the arbitrator(s) shall not conduct class arbitration, shall not consolidate or join any claims with respect to Disputes that involve more than one Lot or Home, and shall not otherwise preside over any form of a class, representative, or consolidated proceeding. Arbitrators shall not have the authority to award any relief with respect to a Dispute in favor of any non-party to the Dispute, and no non-party shall have any right to enforce any arbitration award. Further, the arbitrator shall not have the authority to award relief on a class-wide or mass-party basis. **THE PARTIES UNDERSTAND AND AGREE THAT THEY ARE WAIVING THEIR RIGHTS TO SERVE AS A REPRESENTATIVE OF A CLASS, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, WITH RESPECT TO ANY DISPUTE.**

i) **Waiver of Jury Trial.** Notwithstanding the Parties' obligation to submit all Disputes (except only with respect to Disputes that may be submitted to small claims court as provided in this Section) to mediation and arbitration, if any Dispute is deemed not subject to arbitration (which the Parties do not anticipate will be any Dispute), and with respect to permitted small claims proceedings, the Parties agree to have the Dispute, and all other claims of any nature involving any of the Listed Parties not falling within the definition of Dispute in this Section, decided by a judge and not a jury. **THE PARTIES EXPRESSLY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY WITH RESPECT TO ALL DISPUTES AND ALL OTHER CLAIMS OF ANY NATURE INVOLVING ANY OF THE LISTED PARTIES NOT FALLING WITHIN THE DEFINITION OF DISPUTE IN THIS SECTION.**

**j) Attorney Fees & Costs.** Unless prevailing party attorney fees and costs are recoverable by law with respect to a claim asserted in the Dispute, each Party shall bear its own attorney fees and costs incurred with respect to the Dispute. In addition, with respect to arbitration, all parties to the Dispute shall bear a pro-rata share of the costs of the arbitrators and the arbitration service provider. Notwithstanding, if a Party contests the validity or scope of arbitration required by this Section in a court of law or equity, the non-contesting Party shall be entitled to recover from the contesting Party all reasonable attorney fees and costs if the non-contesting Party prevails in such action. In addition, if a Party fails to comply with any mediation settlement agreement or arbitration award, the other Party shall be entitled to recover reasonable attorney fees and costs incurred in enforcement of such mediation settlement agreement or arbitration award. For the purposes of this Section, "attorney fees and costs" shall include all fees incurred by the Party for the services of the law firm representing it, including the reasonable fees charged for attorneys, paralegals, and other professional assistants, and all costs associated with the proceeding, including filing fees, costs charged by the law firm representing the party, and witness costs, all as incurred in any stage of the proceedings, including through trial, all appellate proceedings, all proceedings in aid of execution or to collect on any judgment, and all proceedings to determine the amount and reasonableness of attorney fees and costs to be awarded, irrespective of the jurisdiction in which the proceeding was conducted.

**k) Savings Clause.** If any provision of this Section shall be deemed by a court of competent jurisdiction to be unconscionable, void as violative of public policy, or otherwise unenforceable for any reason, the Parties agree that the provisions of this Section are intended to be severable. In such an event, the Parties agree that the unconscionable, void, or otherwise unenforceable provision shall be excluded to the extent of such unenforceability, and that all other terms of this Section shall remain valid and enforceable. Further, to the extent possible, the invalid or unenforceable term shall be deemed replaced or reformed by a term that is valid and enforceable and that most closely expresses the intention of the Parties with respect to such invalid or unenforceable term, and for such purposes, the Parties clearly state that their intentions are to resolve all Disputes first through mediation, then if unresolved, through binding arbitration, except for the specific limited right to pursue certain Disputes in small claims court as stated above.

**l) Proviso.** Nothing herein shall obligate the Association or Owners, their tenants, guests, or Invitees, to engage in any of the procedures contemplated by this Section exclusively with respect to claims of any nature asserted between them for violations of the Governing Documents or the Homeowners' Association Act, where such claims do not involve a Dispute or any of the Listed Parties as defined above. In addition, the provisions of this Section requiring mediation and arbitration of Disputes do not apply to any proceedings by Declarant or Association to foreclose any lien.

#### **ARTICLE XIV GENERAL PROVISIONS**

**14.1 Binding Effect.** This Declaration shall constitute covenants at law and equitable servitudes running with the land which shall bind the Property and inure to the benefit of the

Declarant, Association, Owners, and their respective legal representatives, heirs, successors and assigns. By acquiring an interest in any portion of the Property, such person shall be subject to the provisions of this Declaration and shall be entitled to its benefits and subject to its burdens.

**14.2 Duration.** The covenants, conditions, easements, and restrictions set forth in this Declaration shall be effective for thirty (30) years from its recordation in the Official Public Records of Duval County, Florida, after which they shall automatically renew and be extended for successive ten-year periods unless a written instrument is executed by all Owners and their mortgagees agreeing to terminate this Declaration, in addition to the Declarant so long as Declarant owns any part of the Property. All easements shall be perpetual in duration and no amendment shall eliminate the Association's lien rights. In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Stormwater Management System must be transferred to and accepted by an entity which complies with Rule 62-330.310, F.A.C., and Applicant's Handbook Volume I, Section 12.3, and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

**14.3 Amendment.** Subject to applicable law, this Declaration may be unilaterally amended by the Declarant for so long as Declarant owns any part of the Property or any other property which Declarant may intend to subject to this Declaration, and for so long as Declarant is constructing or causing to be constructed any Improvements on the Property. After Declarant no longer owns any part of the Property or any other property which Declarant may intend to subject to this Declaration, and after Declarant is no longer constructing or causing to be constructed any Improvements on the Property, this Declaration may be amended by the written consent or affirmative vote (or a combination thereof) of two-thirds (2/3) of the total Voting Interests of the Members; provided, however that (i) no amendment shall alter or affect the rights of the Declarant without the Declarant's written consent; and (ii) no amendment shall alter the responsibilities to operate and maintain the Stormwater Management System without the St. Johns River Water Management District's consent. The Declarant may veto any amendment to the Governing Documents for so long as it owns any part of the Property or any other property which Declarant may intend to subject to this Declaration, and for so long as Declarant is constructing or causing to be constructed any Improvements on the Property. Declarant's right to unilaterally amend the Governing Documents shall include the right to amend for any reason except as expressly limited by applicable law and may be accomplished by the recordation of an instrument in the Official Records of Duval County, Florida executed by Declarant without the requirement of joinder or execution by any other person. In the event it is finally adjudicated that Declarant's rights to unilaterally amend the Declaration are limited by applicable law, Declarant shall be deemed to have the broadest rights to amend the Declaration not prohibited by applicable law.

**14.4 Amendments & Matters Affecting Declarant's Rights.** No person, including without limitation the Association, Members, and their tenants, guests, and Invitees, may engage in any action or omission which negatively affects, or may be harmful to, Declarant's development and sale of the Property, in Declarant's sole discretion or opinion. Such prohibited action includes without limitation effectuating or attempting to effectuate any amendment to the Governing Documents which may negatively affect or be detrimental to Declarant's development and sale of

the Property, in Declarant's sole discretion or opinion, without Declarant's express written consent.

**14.5 No Vested Rights.** Owners and other persons who may acquire an interest in any part of the Property acknowledge and agree that the plans for Development expressed herein or in any other form of communication are precatory and subject to change. Further, Owners and other persons who may acquire an interest in any part of the Property acknowledge and agree that there are no vested rights created by the Governing Documents, and that the Governing Documents are subject to change, which, except as expressly limited by law, shall be in Declarant's sole discretion for so long as Declarant owns an interest in any part of the Property.

**14.6 Amendment of Plats, Ordinances, & Development Orders.** Declarant reserves the right to amend, and seek the amendment of, any plat, PUD, zoning ordinance or designation, and development orders pertaining to the Property without having to obtain the consent, approval, or joinder by any person other than applicable governmental entities with jurisdiction, as may be necessary or appropriate in Declarant's sole discretion to develop the Property. To the extent the consent, approval, or joinder by any person with any interest in any part of the Property may be required by a governmental entity with jurisdiction, by acquiring any interest in any part of the Property, such persons (which includes without limitation the Association) shall be deemed to have consented to and approved any amendment to any plat, PUD, zoning ordinance or designation, and development orders applicable to the Property proposed by Declarant and to have given Declarant an irrevocable power of attorney, coupled with an interest, to execute any instruments of any nature that may be required as a condition for amendment or implementation of any plat, PUD, zoning ordinance or designation, or development orders applicable to the Property, in the name and on behalf of any such person with any interest in any part of the Property. Declarant shall further have the right to compel, through judicial proceedings if necessary, any person with any interest in any part of the Property to execute any instruments that may be necessary to permit Declarant to exercise the rights contemplated by this Section.

**14.7 Reservation of Intellectual Property Rights.** All intellectual property rights (including without limitation copyrights and trademarks) related to the name or term "Harts Ridge" are expressly reserved by Declarant.

**14.8 Severability.** If any provision of this Declaration shall for any reason be held invalid, illegal, or unenforceable, such provision shall not affect the validity or enforceability of any other provision of this Declaration. Any such provision shall be construed in the broadest manner possible to effectuate the intended purpose of the provision while avoiding the invalid, illegal, or unenforceable portion thereof to the narrowest extent possible to effectuate the intended purpose. In any such event, the remaining provisions of this Declaration shall remain valid and enforceable.

**14.9 Waiver; Estoppel; Abandonment.** The failure of the Declarant or Association to require strict compliance with any provision of the Governing Documents or exercise any particular right or remedy contemplated therein shall not preclude the Declarant or Association from demanding strict compliance or exercising any particular right or remedy thereafter. Neither the Association nor the Declarant shall be estopped or deemed to have waived or abandoned any

particular claim, right, or remedy for failing to assert any claim or exercise any particular right or remedy in any particular instance or within any particular time.

**14.10 Reliance.** Owners acknowledge and agree that they are not entitled to reasonably rely upon, and have not relied upon, any statements or assertions, whether written or verbal, of any real estate, sales, or other agents of Declarant regarding the development of the Property or the nature of any Improvements that may or may not be constructed by Declarant thereon, except as may be included in a written instrument signed by an authorized representative of Declarant.

**14.11 Usage of "Include" & "Including."** When used in the Governing Documents, "include" or "including" shall mean "include or including without limitation" and shall be deemed followed by a non-exhaustive example or list of examples for illustrative purposes and shall not be deemed to be followed by an exclusive or exhaustive list of examples unless the word "include" or "including" is preceded by the word "exclusively."

**14.12 Notices.** Any notices permitted or required to be disseminated to Members shall be deemed given when placed in the mail, postage prepaid, and addressed to the Member to the most recent address provided by the Member in writing to the Association for the purposes of receiving official correspondence. Any notices permitted or required to be disseminated to the Association shall be sent to the Registered Agent or other address designated by the Board and shall be deemed given on the date indicated as received on the return receipt or other receipted delivery document.

**14.13 Attorneys' Fees.** When used in the Governing Documents, the term "attorneys' fees" shall include any and all fees charged by a law firm for its services and the services of attorneys, paralegals, legal assistants, law clerks, and experts (including consulting, non-testifying experts and testifying experts), whether incurred before or after a lawsuit or other adjudicatory proceeding is commenced, and incurred irrespective of whether a lawsuit or other adjudicatory proceeding has commenced, including all appeals, post-judgment execution, collection, or other efforts, and any hearings or proceedings to determine the reasonableness and amount of attorneys' fees to be awarded to a prevailing party. Any provision of this Declaration providing for the right of a party to recover prevailing party attorneys' fees shall not apply to actions in which the SJRWMD is a party.

**14.14 Applicable Law.** This Declaration shall be subject to, and construed in accordance with, applicable law as it exists on the date of recordation of this Declaration in the Official Records of Duval County, Florida. This Declaration does not incorporate future amendments to law that are enacted after the date of recordation of this Declaration in the Official Records unless otherwise expressly provided in another Section of this Declaration.

**14.15 Conflict.** In the event of conflict between any provisions of the Governing Documents, the provisions of each shall be deemed to control according to the following hierarchy: This Declaration (including any amendments and Supplementary Declarations); the Articles; the Bylaws; the Architectural Review Guidelines; and the Rules and Regulations.

**14.16 Representations and Warranties.** All Owners, by acquiring any interest in any part of the Property, represent and warrant:

- a) that they have read this Declaration, specifically including Article 13.
- b) that they believe all provisions of this Declaration are, and should be determined to be, valid, enforceable, conscionable, and in accordance with public policy;
- c) that they will cause all provisions of Section 13.5 to be included in any purchase and sale or other transactional documents concerning the transfer of any interest in the Property (except for mortgages) and in any instrument conveying title to any interest of the Property to any third party (except for mortgages, but a mortgagee who becomes an Owner shall be bound by this Section), and that if they do not do so, such provisions shall be deemed incorporated into such transactional documents and instruments of title, use, or possession; and
- d) that they have had the opportunity to consult with legal counsel of their choice to in part discuss the terms of this Declaration and specifically Article 13 before entering into any transaction for the transfer of any interest of the Property.**

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date written above.

Witnesses

CLDG HARTS, LLC, a Florida Limited Liability Company

[Signature]  
Signature of Witness 1

By: [Signature]  
Printed: Christian Allen

Justin Westmoreland  
Printed  
Address: 1000 Riverside Ave, Suite 600  
Jacksonville FL 32204

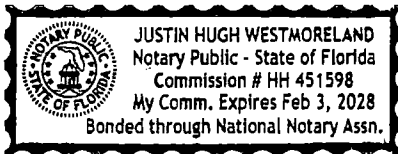
As its: Manager  
Address: 1000 Riverside Ave, Suite 600  
Jacksonville, FL 32204

[Signature]  
Signature of Witness 2

Michael O'Neil  
Printed  
Address: 1000 Riverside Ave, Suite 600  
Jacksonville, FL 32204

STATE OF Florida  
COUNTY OF Duval

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 24 day of April, 2024, by Christian Allen, as manager of CLDG HARTS, LLC, on behalf of the company.



[Signature]  
(Signature of Notary Public)  
# HH 451598  
(Print, Type of Stamp Commissioned Name)  
My Commission Expires: 2-3-28

Personally Known or  Produced Identification  
Type of Identification Produced: \_\_\_\_\_

CONSENT AND JOINDER

IN WITNESS WHEREOF, this consent and joinder to the Declaration is executed by the undersigned on this 24 day of April 2024.

Witnesses

[Signature of Justin Westmoreland]
Signature of Witness 1

Justin Westmoreland
Printed
Address: 1000 Riverside Ave Ste 600
Jacksonville FL 32204

[Signature of Michael O'Neil]
Signature of Witness 2

Michael O'Neil
Printed
Address: 1000 Riverside Ave, Suite 600
Jacksonville, FL 32204

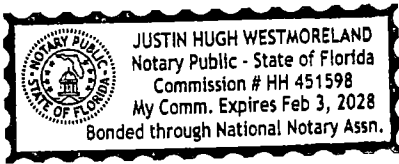
HARTS RIDGE OWNERS ASSOCIATION, INC. a Florida not for profit corporation.

[Signature of Christian Allen]
By: Christian Allen
Printed:

As its: President
Address: 1000 Riverside Ave, Suite 600
Jacksonville, FL 32204

STATE OF Florida
COUNTY OF Duval

The foregoing instrument was acknowledged before me by means of [X] physical presence or [ ] online notarization this 24 day of April, 2024, by Christian Allen, as President of Harts Ridge Owners Association, Inc., a Florida not for profit corporation, on behalf of the corporation.



[Signature of Notary Public]
(Signature of Notary Public)
HH 451598
(Print, Type of Stamp Commissioned Name)
My Commission Expires: 2-3-28

[X] Personally Known or [ ] Produced Identification
Type of Identification Produced:



**CONSENT OF MORTGAGEE REGARDING DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HARTS RIDGE**

DLP LENDING FUND LLC, a Delaware limited liability company (the "Mortgagee"), is the holder of the Mortgage executed by CLDG HARTS, LLC, a Florida limited liability company ("Mortgagor") in favor of Mortgagee dated November 3, 2022 and recorded in Official Records Book 20488, Page 2172 in the Public Records for Duval County, Florida (the "Mortgage"), which mortgage constitutes a lien and encumbrance upon the real property described in the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Harts Ridge (the "Declaration"). Mortgagee hereby consents to Mortgagor subjecting the real property described in the Declaration to the provisions of the Declaration and agrees that the Declaration shall be binding upon the present and future owners of the real property covered by the Declaration.

Notwithstanding the execution of this consent, nothing herein shall be construed to render the Mortgagee responsible or liable for the performance of any of the covenants or undertakings of the Mortgagor under the Declaration nor shall this consent affect the priority of the lien of the Mortgage or the interest of the Mortgagee.

IN WITNESS WHEREOF, this Consent is executed by the undersigned on this 24th day of April, 2024.

Witnesses:

DLP LENDING FUND LLC, a Delaware limited liability company

Matthew Latour

Print Name: Matthew Latour  
Address: 405 Golfway W Drive, Suite 300  
St. Augustine, FL 32095

By: Christopher B. Roemer

Christopher B. Roemer  
Authorized Signatory

Matthew S Geitz

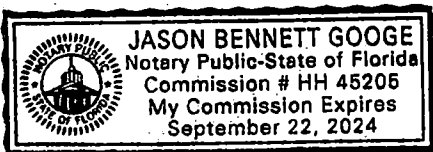
Print Name: Matthew S Geitz  
Address: 405 Golfway W Drive, Suite 300  
St. Augustine, FL 32095

STATE OF FLORIDA  
COUNTY OF ST JOHNS

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 24th day of April, 2024, by Christopher B. Roemer, as Authorized Signatory of DLP Lending Fund LLC, a Delaware limited liability company.

Jason Bennett Googe

(Signature of Notary Public – State of Florida)  
(Print, Type, or Stamp Commissioned Name of Notary Public)



Personally Known or Produced Identification

Type of Identification Produced: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description of the Property**

HARTS RIDGE EAST, according to the plat thereof recorded in Plat Book 82, Pages 80, 81 and 82, of the public records of Duval County, Florida

HARTS RIDGE WEST, according to the plat thereof recorded in Plat Book 81, Pages 164, 165, 166, and 167, of the public records of Duval County, Florida.

EXHIBIT B

# State of Florida Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of HARTS RIDGE OWNERS ASSOCIATION, INC., a Florida corporation, filed electronically on April 22, 2024, as shown by the records of this office.

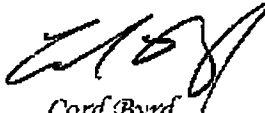
I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N24000005025.

Authentication Code: 240424152033-700428324217#1

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capital, this the  
Twenty Fourth day of April, 2024



  
Cord Byrd  
Secretary of State

# Electronic Articles of Incorporation For

N24000005025  
FILED  
April 22, 2024  
Sec. Of State  
tscott

HARTS RIDGE OWNERS ASSOCIATION, INC.

The undersigned incorporator, for the purpose of forming a Florida not-for-profit corporation, hereby adopts the following Articles of Incorporation:

## Article I

The name of the corporation is:

HARTS RIDGE OWNERS ASSOCIATION, INC.

## Article II

The principal place of business address:

1000 RIVERSIDE AVE  
SUITE 600  
JACKSONVILLE, FL. 32204

The mailing address of the corporation is:

1000 RIVERSIDE AVE  
SUITE 600  
JACKSONVILLE, FL. 32204

## Article III

The specific purpose for which this corporation is organized is:

PERFORMING THE DUTIES AND EXERCISING THE RIGHTS  
CONTEMPLATED BY THE DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENTS FOR HARTS RIDGE  
(“DECLARATION”) AND ANY LAWFUL PURPOSE UNDER THE LAW.

## Article IV

The manner in which directors are elected or appointed is:

AS PROVIDED FOR IN THE BYLAWS.

## Article V

The name and Florida street address of the registered agent is:

TOTAL PROFESSIONAL ASSOCIATION MANAGEMENT  
100 SR 13 N  
SUITE A  
ST. JOHNS, FL. 32259

I certify that I am familiar with and accept the responsibilities of registered agent.

Registered Agent Signature: MICHAEL MURRAY

N24000005025  
FILED  
April 22, 2024  
Sec. Of State  
tscott

### Article VI

The name and address of the incorporator is:

CHRISTIAN A ALLEN  
1000 RIVERSIDE AVE  
SUITE 600  
JACKSONVILLE, FL 32204

Electronic Signature of Incorporator: CHRISTIAN A ALLEN

I am the incorporator submitting these Articles of Incorporation and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of this corporation and every year thereafter to maintain "active" status.

### Article VII

The initial officer(s) and/or director(s) of the corporation is/are:

Title: P  
CHRISTIAN A ALLEN  
1000 RIVERSIDE AVE., SUITE 600  
JACKSONVILLE, FL. 32204

Title: VP  
GEORGE LEONE  
1000 RIVERSIDE AVE., SUITE 600  
JACKSONVILLE, FL. 32204

Title: S, T  
MICHAEL O'NEAL  
1000 RIVERSIDE AVE, SUITE 600  
JACKSONVILLE, FL. 32204

**EXHIBIT C**

**BYLAWS  
OF  
HARTS RIDGE OWNERS ASSOCIATION, INC.  
A Florida Not For Profit Corporation**

**ARTICLE I  
IDENTIFICATION OF THE ASSOCIATION**

These are the Bylaws of **Harts Ridge Owners Association, Inc.** (“Association”), a corporation not-for-profit incorporated under the laws of the State of Florida and organized for the purpose of operating and maintaining Property located in Duval County, Florida, known as Johnson Commons.

**1.1 Principal Office.** The principal office of the Association shall be located at 1000 Riverside Ave., Suite 600, Jacksonville, FL 32204, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office or in such other location within forty-five (45) miles of the Property (unless preserved electronically).

**1.2 Fiscal Year.** The fiscal year of the Association shall be the calendar year.

**1.3 Seal.** The seal of the Association, if any, shall bear the name of the corporation, the word “Florida,” the words “Corporation Not for Profit,” and the year of incorporation.

**1.4 Definitions.** Unless defined herein, capitalized terms herein shall have the meanings as set forth in the Declaration of Covenants, Conditions, Restrictions, and Easements for Harts Ridge (“Declaration”) as recorded and amended from time to time. To the extent that a term appears herein and has not been defined herein, in the Articles of Incorporation, or in the Declaration, those terms as defined in Chapter 720 of the Florida Statutes shall control.

**ARTICLE II  
MEMBERS & VOTING**

**2.1 Members.** The Members of the Association shall be as set forth in the Declaration and Articles of Incorporation.

**2.2 Annual Meeting.** The annual Members’ meeting shall be held on the date and at the place each year as determined by the Board of Directors from time to time, commencing with the year following the year in which the Articles are filed with the Secretary of State. The purpose of the annual meeting shall be to elect members of the Board of Directors and to transact any other business authorized to be transacted by the Members or as otherwise stated in the notice of the meeting sent to the Members in advance of the annual meeting. Annual meetings shall be held between eleven (11) and thirteen (13) months following the immediately preceding annual meeting on a date determined by the Board.

**2.3 Special Meetings.** Special Members’ Meetings shall be held at a location in Duval County, or at such other place within the State of Florida that is reasonably convenient for the attending Members, whenever called by the President or Vice President of the Association or by a majority of the Board. If twenty percent (20%) of the Voting Interests petition the Board to address an item of business, the Board at its next regular board meeting or at a special meeting of the Board, but not later

than sixty (60) days after the receipt of the petition, shall place the item on the agenda. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

**2.4 Notice.** The Secretary or Association management shall provide written notice of Members' meetings stating the time, place, and agenda for the meeting. A copy of the notice shall be mailed or hand delivered to each Member at least fourteen (14) days prior to the annual meeting and may also be posted in a conspicuous place on Association Property. Delivery or mailing shall be made to the address of the Member as it appears on the roster of Members. Members must provide an address in writing to the Association for the purpose of receiving official notices from the Association, and if they do not do so, any notice sent to the mailing address designated on the Property Appraiser's website for the Lot shall be deemed properly sent. The Association may provide notice for any matter by electronic transmission in lieu of written notice if the Member consents in writing to receiving notice by electronic transmission and designates a facsimile number or e-mail address to the Association to be used for such purposes.

**2.5 Waiver.** Notice of specific meetings may be waived before or after the meeting. The attendance of any Member or by any person authorized to vote on behalf of any Member shall constitute a waiver of such Member's notice of meeting, except when the purpose for his or her attendance is to object to the transaction of business because the meeting was not lawfully called.

**2.6 Member Participation in Meetings.** Members shall have the right to participate in meetings of Members with reference to all designated agenda items. The Association may adopt reasonable rules governing the frequency, duration, and manner of Member participation. Any Member may tape record or video tape a meeting of Members subject to reasonable rules adopted by the Board.

**2.7 Quorum.** A quorum at Members' meetings shall be thirty percent (30%) of the total eligible Voting Interests.

**2.8 Voting.**

**a) Number of Votes.** In any meeting of Members, the Members shall be entitled to cast one Voting Interest for each Lot owned. The vote of a Lot shall not be divisible.

**b) Majority Vote.** The acts approved by a majority of the eligible Voting Interests present in person or by proxy at a meeting at which a quorum is attained shall be binding upon all Members for all purposes except where otherwise provided by law or by the Governing Documents. Where approval of the Voting Interests is specifically required, reference in the Governing Documents to approval of a percentage of the Voting Interests shall refer to a percentage of the Voting Interests voting in person or by proxy at which a quorum is attained and not a percentage of the total (or entire) Voting Interests unless the provision specifically references the approval of a percentage of the total Voting Interests.

**c) Voting Member.** The Voting Interest attributable to the Lot shall be established by the roster of Members maintained by the Association. If a Lot is owned by more than one person, the person entitled to cast the Voting Interest for the Lot shall be designated by a certificate signed by all the record owners of the Lot according to the roster of Lot Owners and filed with the Secretary of the Association (the "Voting Certificate"). If a Lot is owned by a business organization or other non-natural person, the person entitled to cast the Voting Interest for the Lot shall be designated by a Voting Certificate signed by an authorized

representative and filed with the Secretary of the Association. Voting Certificates shall be valid until revoked or until superseded by a subsequent Voting Certificate or until a change in the ownership of the Lot has occurred. Any record owner of a Lot may revoke a Voting Certificate designating the person entitled to cast a vote for that Lot.

If a Voting Certificate is required but is not on file or has been revoked, the Voting Interest of the Owner(s) of such Lot shall not be considered for the computation of a quorum, nor for any other purpose, and the total number of eligible Voting Interests in the Association shall be reduced accordingly until a Voting Certificate is filed, unless the Lot is owned jointly by spouses. If a Lot is owned jointly by spouses, they may designate a voting member through a Voting Certificate in the manner described above, but if they do not, the following provisions shall apply:

(i) If one spouse is present at a meeting, that person shall be counted toward the calculation of a quorum and may cast the Voting Interest attributable to the Lot.

(ii) If both spouses are present at a meeting and concur, either spouse may cast the Voting Interest attributable to the Lot.

(iii) If both spouses are present at a meeting and are unable to concur in their decision concerning any subject requiring a vote, they shall forfeit their right to vote on that subject at that meeting. The total number of eligible Voting Interests in the Association shall be reduced only for each subject on which there is not a concurrence.

d) **Electronic Voting.** The Association may conduct elections and other membership votes through an Internet-based online voting system if a Member consents, in writing, to online voting and the requirements of the Homeowners' Association Act are satisfied.

**2.9 Proxies.** General and limited proxies may be used to vote for any matters unless expressly prohibited by law. A proxy may be made by any person entitled to vote, but shall only be effective for the specific meeting for which it was originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing and signed by the person authorized to cast the Voting Interest for the Lot, and must also be filed with the Secretary of the Association before the appointed time of the meeting.

**2.10 Order of Business.** If a quorum has been attained, the order of business at annual Members' Meetings, and to the extent applicable, other Members' meetings, shall be:

- a) Call to order by the President;
- b) Proof of notice of the meeting or waiver of notice;
- c) Determination of Quorum;
- d) Collection of Director Designations;
- e) Reading of unapproved minutes (or waiver thereof);
- f) Reports of Officers;
- g) Reports of Committees;

- h) Announcement of election results;
- i) Unfinished business;
- j) New business;
- k) Adjournment.

The preceding order of business or parts thereof may be waived or modified at the direction of the Chairman.

**2.11 Adjournment.** If any proposed meeting cannot be organized because a quorum cannot be attained, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is attained. Except as otherwise provided above, proxies given for the adjourned meeting shall be valid for the subsequent meeting.

**2.12 Minutes.** The Association shall retain all minutes from Members' Meetings for at least seven (7) years. The minutes shall be kept in a book available for inspection by Owners or their authorized representatives or Board members at any reasonable time, subject to reasonable rules concerning the time, place, and manner of inspection that the Board may adopt from time to time. The Association may preserve meeting minutes electronically.

**2.13 Action Without Meeting.** Except as otherwise required by law, any action that may be taken at any annual or special meeting of Members may be taken without a meeting, prior notice, or a vote if one or more written consents setting forth the action to be taken is signed by enough Members (or persons authorized on their behalf) that would be necessary to authorize or take such action at a meeting of such Members at which a quorum of Members entitled to vote thereon were present and voted. Within ten (10) days after obtaining such authorization by written consent, notice must be given to Members who have not consented in writing. Such notice shall fairly summarize the material aspects of the authorized action. The Association may not be bound by any purported action by the Members if such action is prohibited by law.

### ARTICLE III DIRECTORS

**3.1 Number.** The Association shall be governed by a Board of Directors which shall initially be comprised of three (3) persons until Transition. At and after Transition, the Board of Directors may be increased to be comprised of five (5) persons.

**3.2 Qualifications.** Except for Declarant-appointed Directors, every Director must be a Member, an Officer of a corporate Lot Owner, a general partner of a Lot owned by a partnership, a managing member or manager of a Lot owned by a limited liability company, or trustee or a beneficiary of a Lot held in trust. A person who is delinquent in payment of any fee, fine, or other monetary obligation due to the Association is not eligible to become a Director, and an Officer or Director who is delinquent in the payment of any monetary obligation due to the Association for over ninety (90) days shall be deemed to have abandoned his or her position. A convicted felon whose civil rights have not been restored for at least five (5) years as of the date of the election is not eligible to serve as a Director. Any person who has been suspended or removed from serving as a Director by the Division of Florida Condominiums, Timeshares and Mobile Homes is not eligible to serve as a Director.

**3.3 Declarant Appointment of Directors.** Except as provided in this Section, until Transition, Declarant shall have the unilateral right to appoint all Directors. However, Members other

than the Declarant shall have the right to elect one Director once fifty percent (50%) of all Lots in all phases of the community which will ultimately be operated by the Association have been conveyed to Members other than the Declarant. After Transition, and for so long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots in the Association, Declarant shall be entitled to appoint one (1) Director.

**3.4 Election of Pre-Transition Director by Member and Election of Directors After Transition.** Election of the pre-Transition Director by Members other than the Declarant and the election of post-Transition Directors (with the exception of the one (1) Director Declarant is entitled to elect as set forth in Article III, Section 3.3), shall be in accordance with this Section.

a) **Nomination.** Any Member or other eligible person who desires to be a candidate for the Board of Directors must give written notice to the Association not fewer than forty (40) days before a scheduled election. Nominations from the floor at the annual meeting are prohibited.

b) **Election.** The Board of Directors shall be elected by written ballot. Not fewer than sixty (60) days before a scheduled election, the Association shall mail or deliver a first notice of the date of election to each Member entitled to vote. Any Member or other eligible person who desires to be a candidate for the Board of Directors must give written notice to the Association not fewer than forty (40) days before a scheduled election. Nominations from the floor at the annual meeting are prohibited. The Association shall thereafter mail or deliver a second notice of the election to all Members entitled to vote, together with a written notice, agenda, and a ballot which shall list all eligible candidates in alphabetical order, at least fourteen (14) days before the scheduled election. Elections shall be decided by a plurality of ballots cast. There shall be no quorum requirement for an election to be valid; however, at least twenty percent (20%) of the eligible voters must cast a ballot in order to have a valid election for the Board of Directors. Ballots may be submitted by mail in advance of the meeting at which the election is scheduled to occur and may also be personally cast at the election until last call for ballots. Ballots may be cast in a manner to preserve anonymity using a two-envelope system in which the ballot is placed in an inner, blank envelope and the blank envelope containing the ballot is placed in an outer envelope bearing the Lot address and signature of the Member or person identified in a Voting Certificate who has the authority to cast the Voting Interest attributable to the Lot.

Ballots cast in advance by Members who are not in attendance at the meeting must be placed in an inner envelope with no identifying markings and mailed or delivered to the Association in an outer envelope bearing identifying information reflecting the name of the Member, the Lot or parcel for which the vote is being cast, and the signature of the Lot or parcel Owner casting that ballot. If the eligibility of the Member to vote is confirmed and no other ballot has been submitted for that Lot or parcel, the inner envelope shall be removed from the outer envelope bearing the identification information, placed with the ballots which were personally cast, and opened when the ballots are counted. If more than one ballot is submitted for a Lot or parcel, the ballots for that Lot or parcel shall be disqualified. Any vote by ballot received after the closing of the balloting may not be considered.

There shall be no cumulative voting, and no Member shall permit any other person to vote his or her ballot (i.e., proxies are not permitted for voting for the election of Directors). Any improperly cast ballots will be deemed invalid.

c) **Candidate Information Sheet.** Upon request of a candidate, the Association shall include an information sheet, no larger than 8 ½ inches by 11 inches, which must be furnished by the candidate not fewer than forty (40) days before the election to be included with the mailing of the ballot. The costs associated with the copying, mailing, and delivery shall be borne by the Association.

d) **Assistance for Disability.** Any Member who needs assistance in casting a ballot for reasons related to a blindness, an inability to read or write, or other disability may obtain assistance in casting his or her ballot.

e) **Election Not Required.** An election and balloting are not required unless more candidates file notices of intent to run than vacancies exist on the Board. If an election is not required per this Section, the candidates shall take office upon the adjournment of the meeting at which the election was scheduled to be conducted regardless of whether a quorum was attained.

f) **Tie Breaker.** If two or more candidates for the same position receive the same number of votes, which would result in one or more candidates not serving or serving a lesser period of time and neither candidate agrees to set aside, the tie shall be broken by a coin toss at the meeting at which the election was held.

### 3.5 Terms of Office.

a) **Declarant Appointed Directors.** Directors appointed by Declarant shall serve at the pleasure of the Declarant and may be removed and replaced by the Declarant at any time, or until an event occurs, such as Transition, which requires Declarant to cause one or more of its appointed Directors to resign.

b) **Member Elected Directors.** Each Director elected at the Transition meeting shall serve until the first annual meeting following the Transition meeting; provided however that if such period shall be less than six (6) months, such directors shall serve until the second annual meeting following the Transition meeting. The terms thereafter shall be staggered. For the purpose of implementing this provision, at the first annual meeting after the Transition meeting at which an election shall be conducted, the term of one (1) director shall expire at the following annual meeting, the term of one (1) director shall expire at the annual meeting of the second year following, and the term of one (1) director shall expire at the annual meeting of the third year following. For the purpose of implementing the staggered terms, the persons receiving the largest number of votes shall be elected for a term of three (3) years; the person receiving the second largest number of votes shall be elected for a term of two (2) years; and the person receiving the third largest number of votes shall be elected for a term of one (1) year.

3.6 **Vacancies & Recall.** Vacancies on the Board of Directors and recall (removal) of Directors shall be governed by the following provisions.

a) **Declarant-Appointed Directors.** Directors appointed by Declarant may only be removed and replaced by Declarant, in its sole discretion. Declarant may remove and replace any Directors appointed by Declarant at any time.

b) **Recall of Directors Elected by Members.** Directors elected by Members other than the Declarant may be recalled and removed without cause by the vote or agreement, in writing, of a majority of the Voting Interests of the Members other than the Declarant. A Director may not be recalled at a Members meeting. If at least a majority of the Directors other than the Declarant are sought to be recalled, the replacement Directors shall be designated in the same vote or agreement in writing in which the Directors were determined to be recalled. Such replacement Directors shall take office upon adjournment of the Board meeting at which the decision to certify the recall occurred (if the recall was certified), or if the Board does not hold such a meeting, after five (5) business days have expired from the date on which the vote or agreement in writing to recall the Director was served on the Association.

c) **Vacancies.** Vacancies on the Board other than those resulting from recall, and other than those created with respect to Director positions subject to appointment by Declarant, shall be filled in accordance with this provision. After Transition, the conveyance of a fee interest in a Lot by the Owner(s) thereof to a new Owner(s) shall constitute the resignation of the Director elected by such former Owner(s). Such vacancy, and any vacancy resulting from the death, incapacity, resignation, or an event which renders a person ineligible to serve as a Director, may be filled at any time before the next annual meeting by a majority of the remaining Directors, or by a sole remaining Director, and any such appointed Director shall serve for the remaining term of his predecessor.

d) **Inability to Attain a Quorum.** If at any time there are an insufficient number of Directors to constitute a quorum, any Owner may apply to the Circuit Court with jurisdiction for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the Owner shall mail to the Association and post in a conspicuous place on the Association Property (if there is any such property) a notice describing the intended action and giving the Association an opportunity to fill a sufficient number of vacancies to constitute a quorum in accordance with the Governing Documents. If the Association fails to fill a sufficient number of vacancies to constitute a quorum, the Owner may proceed with the petition to appoint a receiver. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, along with court costs and attorney's fees. The receiver shall have all powers and duties of the Board of Directors and shall serve until the Association fills a sufficient number of vacancies on the Board to constitute a quorum.

### 3.7 Board Meetings.

a) **Organizational Meeting.** Within ten (10) days of their election or appointment, the Board of Directors shall hold an organizational meeting at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed. The purpose of the organizational meeting is to appoint Officers.

b) **Right to Attend, Speak, and Record.** Meetings of the Board at which a quorum of the Directors is present are open to all Members, except as otherwise provided herein. A Member may tape record or videotape the meetings, subject to reasonable rules

adopted by the Association. The right to attend includes the right to speak at such meetings for up to three minutes regarding designated agenda items.

**c) Notice.** Notice of all Board meetings must specifically identify agenda items for the meeting and must be posted in a conspicuous place in the community at least forty-eight (48) continuous hours before the meeting except in an emergency. Written notice of any meeting at which nonemergency Special Assessments, or at which amendment to rules regarding Lot use, will be considered must be mailed, delivered, or electronically transmitted to the Members and posted conspicuously on the Association Property at least fourteen (14) days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the Official Records of the Association. The Board shall adopt a rule designating a specific location in the community where all notices of Board meetings are to be posted. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each Board meeting must be mailed or delivered to each Member at least seven (7) days before the meeting, except in an emergency. Notwithstanding, the Association may provide notice for any matter by electronic transmission in lieu of written notice if the Member consents in writing to receiving notice by electronic transmission and designates a facsimile number or e-mail address to the Association to be used for such purposes.

**d) Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the receipt of notice by that Director. Attendance by any Director at a meeting shall constitute a waiver of notice of that meeting, except when his or her attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because that meeting was not lawfully called.

**e) Member Petition.** If twenty percent (20%) of the Voting Interests petition the Board to address an item of business, the Board at its next regular meeting or at a special meeting of the Board, but not later than sixty (60) days after the receipt of the petition, shall place the item on the agenda for the next Board meeting.

**f) Committee Meetings.** Notice in the manner required for meetings of the Board shall be required for meetings of a committee that has the authority to make a final decision regarding the expenditure of Association funds or has the authority to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a Member. Meetings of committees with such authority shall also be open to Members. Notice of meetings of a committee that does not have such specific authority is not required and such meetings are not required to be open to Members unless such committee otherwise constitutes a quorum of the Board, in which case the usual requirements for notice and Member participation apply.

**g) Closed Meetings.** Notwithstanding the foregoing, the requirement that Board meetings and certain committee meetings be open to Members does not apply to:

**(i)** meetings between the Board or a committee and the Association's attorney concerning proposed or pending litigation, if the contents of the discussion would otherwise be governed by the attorney-client privilege; or

(ii) Board meetings held for the purpose of discussing personnel matters.

**h) Quorum.** A quorum shall consist of a majority of the members of the Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Governing Documents of the Association.

**i) Adjourned Meetings.** If any proposed meeting of the Board of Directors is attended by less than a quorum of Directors, the majority of those present may adjourn the meeting from time to time until a quorum is attained; provided, however, that the notice requirements contained in these Bylaws are fulfilled. At a following meeting, any business that may have been transacted at the previously-adjourned meeting as initially called may be transacted.

**j) Presiding Officer.** The presiding Officer at meetings of the Board of Directors shall be the President, unless he or she designates another person to preside over the meeting, who need not be a Director or Officer.

**k) Order of Business.** If a quorum has been attained, the order of business at Directors' meetings, unless waived in whole or part by the presiding Officer or modified by the Board by motion, shall be:

- (i) Proof of notice of meeting;
- (ii) Determination of Quorum;
- (iii) Reading and disposal of any unapproved minutes;
- (iv) Reports of Officers and committees;
- (v) Unfinished business;
- (vi) New Business;
- (vii) Adjournment.

**l) Minutes of Meetings.** The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Members or their authorized representatives and Directors. The Association shall retain meeting minutes for at least seven (7) years. Minutes may be preserved electronically provided they are capable of being produced in written form within a reasonable time. The Association shall make the meeting minutes available for inspection within ten business days of receipt of a written request submitted by an Owner by certified mail, return receipt requested.

**m) Preservation of Covenants & Restrictions.** At the first Board meeting, excluding the organizational meeting, which follows the annual meeting of the Members, the Board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with s. 720.3032.

**3.8 Compensation.** Directors shall not be compensated for their services to the Association in their capacities as Directors.

**3.9 Emergency Powers.** In the event of any “emergency” as defined herein or by Sections 617.0303 and 720.316, Florida Statutes (as such statutes may be amended from time to time), the Board of Directors may exercise the emergency powers described in Sections 617.0303 and 720.316, Florida Statutes, as amended from time to time.

#### **ARTICLE IV OFFICERS**

**4.1 Executive Officers.** The executive Officers of the Association shall be a President, Vice President, a Treasurer, and a Secretary, all of whom shall be elected by the Board of Directors. A person may hold more than one office, except that the President may not also be the Vice President or Secretary. The Board of Directors may from time to time elect such other Officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association.

**4.2 President.** The President shall be the Chief Executive Officer of the Association and shall have all the powers and duties customarily vested in the office of President of a corporation not-for-profit.

**4.3 Vice President.** The Vice President shall exercise the powers and perform the duties of the President in the absence or disability of the President. The Vice President shall also perform such other duties customarily vested in the office of Vice President of a corporation not-for-profit, along with such other duties as prescribed by the Board of Directors.

**4.4 Secretary.** The Secretary shall keep the minutes of all proceedings of the Directors and the Members. The Secretary shall also perform such other duties as customarily vested in the office of Secretary, including but not limited to providing notices to the Members and the Directors and affixing the seal of the Association on instruments that require it. The Secretary shall also keep the records of the Association, except those maintained by the Treasurer, and shall perform all such duties as prescribed by the Board of Directors.

**4.5 Treasurer.** The Treasurer shall have custody of all property of the Association, including funds, securities (if applicable), and evidences of indebtedness. The Treasurer shall maintain all accounting records of the Association in accordance with good accounting practices, which shall be made available to the Board of Directors periodically and upon request. The Treasurer shall also perform such duties as prescribed by the Board of Directors.

**4.6 Compensation.** Officers shall not receive compensation for their services in their capacities as Officers.

**4.7 Resignation and Removal.** Any Officer or Director may resign at any time by delivering a written resignation to the President or Secretary, which shall take effect upon receipt, unless a later date is specified in the resignation. Acceptance of a resignation is not required for it to be effective. Officers may be removed at any meeting by a vote of the majority of all Directors present at which a quorum is attained.

**ARTICLE V**  
**ANNUAL BUDGET & ASSESSMENTS**

**5.1 Notice of Budget Meeting.** The Board shall adopt a budget of the Association's anticipated expenses annually. Any meeting at which a proposed annual budget of the Association will be considered by the Board or Members shall be open to all Members. At least fourteen (14) days prior to such a meeting, the Board shall hand deliver to each Member, mail to each Member at the address last furnished to the Association by the Member, or electronically transmit to the location furnished by the Member for that purpose a notice of such meeting. An Officer or manager of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement, and such affidavit shall be filed among the Official Records of the Association.

**5.2 Proposed Budget – Contents.** The proposed annual budget of estimated revenues and expenses must be detailed and must 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. The Association shall provide each Member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge.

**5.3 Reserves.** In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance. Funding formulas for reserves must be based on a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets; provided, however, that this provision shall not preclude the Association from establishing a general deferred maintenance reserve account for miscellaneous maintenance and repair. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority of a quorum of the Voting Interests.

**5.4 Assessments.** Assessments shall be levied and collected in a manner as provided in the Declaration, and as supplemented in this Article. Assessments against Owners for their share of budget items shall be made for the applicable fiscal year annually. Such Assessments shall be payable on the dates and in the manner established by the Board. If an annual Assessment is not made as required, the amount of the Assessment shall be presumed to have been made in the amount of the last prior Assessment, and each installment on such Assessment shall be due upon each installment payment date until changed by an amended Assessment. In the event that the annual Assessment is deemed to be insufficient by the Board of Directors, the budget and Assessments may be amended at any time by the Board subject to the notice and meeting requirements of this Article. If the Board of Directors amends the budget and Assessments in a given year, payment of Assessments subsequent to the amendment shall be made according to the amendment.

**5.5 Other Assessments.** The Association may levy Special Assessments and Individual Assessments as provided in the Declaration. The Board shall provide fourteen (14) days' written notice to the Member or Members against whom such Assessment is made prior to the Board meeting at which the Assessment will be considered which shall state the estimated amount and nature of the Assessment.

**5.6 Acceleration and Default.** If an Owner defaults in his or her Assessment installment payment obligation, the Association may accelerate the balance of the current budget years'

Assessments upon thirty (30) days' prior written notice to the Owner. The unpaid balance of the current budget years' Assessments shall thereafter be due on the date stated in the notice, but not less than five (5) days after the delivery of the notice to the Owner, nor less than ten (10) days after the mailing of such notice to him or her, whichever first occurs.

**5.7 Depository.** The depository of the Association shall be such banks or institutions in the State as may be required by the Homeowners' Association Act and as shall otherwise be designated by the Board of Directors from time to time in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Board of Directors. All Association funds shall be maintained separately in accounts in the Association's name. Reserve and operating funds of the Association shall not be commingled, nor shall any manager, agent, employee, Officer, or Director of the Association commingle any Association funds with his or her funds or with the funds of any other person.

## ARTICLE VI RECORDS

**6.1 Official Records.** The Association shall keep all Official Records as required by the Homeowners' Association Act. Such Official Records shall be made available to an Owner within ten (10) business days after receipt of a written request by the Board or its designee, unless otherwise agreed. Requests to inspect Official Records must be in writing and must be sent by certified mail, return receipt requested, to the address designated by the Association for receiving notices. Such records must either be made available within forty-five (45) miles of the Property or made available electronically if the requesting party has the means to access the records electronically.

**6.2 Accounting Records.** Accounting records for the Association shall be maintained according to generally accepted accounting practices for Associations and must be maintained for at least seven (7) years. The accounting records must include, but are not limited to:

- a) Accurate, itemized, and detailed records of all receipts and expenditures;
- b) A current account and a monthly, bimonthly, or quarterly statement of the account for each Lot designating the name of the Lot Owner, the due date and amount of each assessment, the amount paid on the account, and the balance due;
- c) All audits, reviews, accounting statements, and financial reports of the Association;
- d) All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the Association for the time prescribed by law.

**6.3 Closed Records.** While most of the Official Records of the Association are open for inspection to all Members of the Association, the following records are not accessible:

- a) Any record protected by the lawyer-client privilege as described in Section 90.502, Fla. Stat., and any record protected by the work-product privilege, including a record prepared by an Association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or

the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b) Information obtained by an Association in connection with the approval of the lease, sale, or other transfer of a Lot.

c) Personnel records of Association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an Association employee or management company, or budgetary or financial records that indicate the compensation paid to an Association employee.

d) Medical records of Members.

e) Social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a Member other than as provided to fulfill the Association's notice requirements, and other personal identifying information of any person, excluding the person's name, Lot designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the Association to fulfill the Association's notice requirements. Notwithstanding the restrictions in this subparagraph, an Association may print and distribute to Members a Directory containing the name, parcel address, and telephone number of each Member. However, a Member may exclude his or her telephone number from the Directory by so requesting in writing to the Association. The Association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the Association and is voluntarily provided by an owner and not requested by the Association.

f) Electronic security measures that are used by the Association to safeguard data, including passwords.

g) The software and operating system used by the Association which allow the manipulation of data, even if the owner owns a copy of the same software used by the Association. The data is part of the official records of the Association.

**6.4 Financial Reporting.** Within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year. Within twenty-one (21) days after the final financial report is completed by the Association or received from the third party, but not later than one hundred twenty (120) days after the end of the fiscal year, the Association shall provide each Member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the Member. The level of financial reporting required shall be based on the Association's total annual revenues as provided by the Homeowners' Association Act.

**ARTICLE VII  
ENFORCEMENT OF GOVERNING DOCUMENTS**

**7.1 Obligation to Comply with Governing Documents.** Each Member and the Member's tenants, guests, and Invitees, and the Association, are governed by, and must comply with, the Association's Governing Documents. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with the Governing Documents may be brought by the Association or by any Member against:

- a) The Association;
- b) A Member;
- c) Any Director or Officer of the Association who willfully and knowingly fails to comply with the Governing Documents; and
- d) Any tenants, guests, or Invitees occupying a Lot or using Association Property.

The prevailing party in any such action is entitled to recover reasonable attorneys' fees and costs, including all appeals. Certain "disputes" as defined in the Homeowners' Association Act shall be subject to a pre-suit offer to participate in mediation prior to instituting a lawsuit. In addition, certain "Disputes" involving "Listed Parties" as defined by the Declaration are subject to alternative dispute resolution procedures.

**7.2 Fines.** The Association may levy reasonable fines. A fine may exceed \$100 per violation against any Member or any Member's tenant, guest, or Member's Invitee for the failure of the Member or its occupant, licensee, or Invitee to comply with any provision of the Governing Documents. The Board may adopt reasonable rules and regulations establishing the maximum fines for violations, which may exceed \$100.00 per violation, regardless of whether the violation is a continuing violation. A fine may be levied by the Board for each day of a continuing violation, with a single notice and opportunity for hearing. Fines may be imposed of an amount up to \$10,000.00 in the aggregate for a continuing violation. A fine of \$1,000 or more shall constitute a lien against a Member's Lot. In any action to recover a fine, the prevailing party is entitled to reasonable attorneys' fees and costs.

**7.3 Suspensions.** The Association may suspend, for a reasonable period of time, the right of a Member, or a member's tenant, guest, or Invitee, to use Association Property, Common Areas, and facilities for the failure of the Member or its occupant, licensee, or Invitee to comply with any provision of the Governing Documents. The Association may also suspend a Member's voting rights and rights to use Association Property, Common Areas, and facilities if a Member is more than 90 days' delinquent in the payment of any fee, fine, or other monetary obligation due to the Association. The Association is not required to provide notice or an opportunity for a committee hearing for suspensions imposed for nonpayment of a fee, fine, or other monetary obligation. This Section does not apply to that portion of Common Areas or Association Property used to provide access or Utilities to the Member's Lot. A suspension may not prohibit an Owner or tenant of a Lot from having vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park.

**7.4 Notice and Committee Hearing.** All suspensions imposed must be approved at a Board meeting. Except for suspensions imposed for nonpayment of a monetary obligation due to the Association, a fine or suspension imposed by the Board may not be confirmed without at least 14 days' notice to the person sought to be fined or suspended and an opportunity for a hearing before a

committee of at least three 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. If the committee, by majority vote, does not confirm a proposed fine or suspension, it may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the Board. If the Board imposes a fine or suspension, the Association must provide written notice of such fine or suspension by mail or hand delivery to the Member and, if applicable, to any tenant, licensee, or Invitee of the Member. Fines and suspensions may be levied jointly and severally against Members and their tenants, guests, and Invitees.

**ARTICLE VIII  
AMENDMENTS & OTHER PROVISIONS**

**8.1 Amendments.** These Bylaws may be amended upon the written consent or affirmative vote of two-thirds (2/3) of the total Voting Interests of the Members. Within 30 days after recording an amendment, the Association shall either provide copies of the amendment to Members or provide notice of the Official Records Book and Page number where the amendment was recorded. Declarant may amend these Bylaws unilaterally until Transition.


**8.2 Proviso.** No amendment that would eliminate, modify, prejudice, abridge, or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Declarant shall be effective unless approved in writing by the Declarant. No amendment shall be made that is in conflict with the Articles or Declaration.

**8.3 Parliamentary Rules.** The most recently published version of Roberts' Rules of Order shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles, or these Bylaws.

**8.4 Severability.** If any portion of these Bylaws is found by a court of competent jurisdiction to be unenforceable, then only the portion shall be deemed ineffective and the remainder shall be given its nearest permissible meaning and effect.

THESE BYLAWS of Harts Ridge Owners Association, Inc. were adopted this 24 day of April, 2024.

Harts Ridge Owners Association, Inc.

  
\_\_\_\_\_  
Christian A. Allen, as President

Attest:

  
\_\_\_\_\_  
Michael O'Neal, as Secretary