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REVISED AND RESTATED

**DECLARATION OF
COVENANTS, CONDITIONS,
RESTRICTIONS & EASEMENTS**

for

NIGHTFALL

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**REVISED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS,
RESTRICTIONS & EASEMENTS
FOR
NIGHTFALL**

THIS REVISED AND RESTATED DECLARATION (the "Declaration") is made this 14th day of Feb., 2017, by vote and joinder of a requisite number of Owners (as defined hereafter) within the Nightfall subdivision, and the Nightfall Homeowners Association, Inc., a Florida not-for profit corporation (the "Association"), which collectively declare that the real property lying and situate in Duval County, Florida, and being legally described as set forth at EXHIBIT A attached hereto and incorporated (the "Property"), shall hereafter be held, transferred, sold, conveyed, occupied, used, managed, maintained, repaired, improved and replaced subject to the covenants, easements, licenses, conditions, restrictions, agreements, charges, liens and all other matters set forth in this Declaration, which shall all be deemed real covenants running with the land and passing with title to the above-described property as well as equitable servitudes, and which shall be binding upon and inure to the benefit of the Owners, the Association, and all parties having or acquiring in whatsoever manner any right, title or interest in the property or any part thereof, all as more specifically provided hereafter:

**ARTICLE 1
RECITATIONS, PURPOSE AND MUTUALITY**

Section 1.1 Recitations of Fact. The following recitations of fact are accepted as true and made a material part hereof:

1.1.1 On or about 25 June 1995, the former owner and developer of the Property, Aaron C. & Alberta Grubbs, husband and wife, recorded a declaration of covenants, easements and restrictions at Book 8377, Pages 249, et. seq., O.R., Duval, acting as the "Declarant" under such declaration and in part creating certain real covenants and equitable servitudes intended to protect the value and desirability of the Property, and in part establishing the governance of the Association which was formed pursuant to Articles of Incorporation filed with the Florida Secretary of State in 1996, and which Association has been registered annually since the initial filing;

1.1.1 On or about 28 June 2000, a first amended declaration was executed by the Declarant in conformity with the provisions for same and recorded at Book 9665, Page 2149, et. seq. O.R. Duval; and, on or about 19 August 2004, a second amended declaration was executed by the Association and joined by the successor to the original declarant, being their son, Daryl C. Grubbs, and was recorded at Book 11996, Page 1968, et. seq.

1.1.3 Prior to the date of adoption hereof, the successor declarant (now herein called the "Developer") and the Association determined that the prior declaration, as twice amended, required significant revision and restatement to conform with various provisions of chapter 720, Florida Statutes, and the case law interpretative of same, and to better conform with current thought, intent and purpose relative to deed restricted communities, and engaged counsel to prepare a revised and restated declaration to update various provisions and to improve and enhance the value, marketability and use of the Property for the mutual and reciprocal benefit of each of the Owners and the Association;

1.1.4 This Declaration represents the culmination of the reformation efforts described hereinabove, and at a special meeting properly noticed and held in full compliance with all law and

the Association's governing documents on the 14th day of Feb 2017, it was approved by the Association, and by a majority of the Owners of the three (3) [i.e. not less than two (2)] existing Parcels (defined hereafter) which at such time together comprised the current whole of the entirety of the Property as indicated by their joinders attached hereto, and all the foregoing in conformity with section 7 of article VII of the former declaration as amended; and,

1.1.5 In approving this Declaration, the Developer, the Association and a requisite number of Owners have found, determined and agreed that each single-family Lot (defined hereafter) and the Property as a whole is more fully utilized and the value enhanced by the provision of a mechanism for divvying relative associative rights and responsibilities of Owners one to the other, especially as to provide an enforceable means for sustaining regular maintenance of the Common Areas and for ensuring a high level of quality relative to the design, style and construction of all dwellings, landscaping and appurtenant features on each Lot and maintenance of same in perpetuity.

Section 1.2 Purpose. This Declaration is made for the purpose of enhancing and protecting the value, enjoyment and marketability of each Lot within the Property.

Section 1.3 Mutuality. This Declaration is made for the mutual and reciprocal benefit of every Lot within the Property, and is intended to create mutual equitable servitudes upon each such Lot in favor of the other Lots and the Property as a whole, to create reciprocal rights among the respective owners, and to create privity of contract and an estate between the Owners of each and every Lot within the Property, their heirs, executors, administrators, legal representatives, successors, and assigns. Every person who takes title as an Owner of a Lot within the Property, by any means whatsoever, shall be found to agree with all the terms and provisions of this Declaration, and shall be entitled to its benefits and subject to its burdens, same being deemed real covenants, and being recorded and properly indexed in the current official records of Duval County, Florida, and binding upon all persons subject to their terms by virtue thereof.

ARTICLE 2
DEFINITIONS & CONSTRUCTION

Section 2.1 Definitions. The following words, when used in this Declaration and denoted by capitalization, shall have the following meanings:

2.1.1 Act. Chapter 720, Florida Statutes (2016), which is intended to govern this Declaration, and all inferior governing documents adopted pursuant hereto, and the operation of the Association, as such Act may be amended or succeeded from time to time; provided that, no legislative amendment or succession to same which reduces, minimizes or degrades any present right or authority of the Association relative to Owners or other persons shall be deemed effective except and unless as may be expressly provided to the contrary by such law or as the Association may adopt a Resolution expressly incorporating the operation of same.

2.1.2 Association. The "Nightfall Homeowners Association, Inc.," a "homeowner's association" as defined in and regulated by the Act, operating as a Florida not-for-profit corporation, pursuant to this Declaration, its Articles and Bylaws, and any lesser rules as may be hereafter adopted by it, and all amendments properly adopted thereto, such being defined collectively as the "Governing Documents" of such Association.

2.1.3 Board. The Board of Directors of the Association, exclusively managing the corporation's business and affairs pursuant to its Governing Documents; and, where due to the limited number of Lots in the Nightfall subdivision, the Board shall act also as the Architectural Review Board (the "ARB") as provided elsewhere hereinafter.

2.1.4 City. The City of Neptune Beach, Florida, or any successor governmental entity.

2.1.5 Common Area. The Common Area shall be all that real property (including

easements, licenses and rights of real property use) and personal property lying within the Property, that is intended for the common use and enjoyment of the Owners, and any areas within the Property serving the Property as a whole, which the Association is obligated to maintain, repair or replace, but not including any portions thereof dedicated for maintenance to the City, Florida, Beaches Energy Services or other regulatory entity by plat hereafter filed or other recorded instrument. More specifically, the Common Area shall mean and include Nightfall Drive, a private 25' wide roadway and easement for ingress and egress as now established and including any future extensions or additions to same and any future appurtenant features constructed not dedicated for maintenance including any entrance signage, entrance gates, gate motors/security equipment/gate phone lines, sidewalks, drainage swales, lighting and landscaping; all stormwater piping and installations now installed; and all systems, facilities and property installed, constructed, placed or built, and thereafter maintained by the Association, and the Property same be located thereon, except as such maintenance may be assigned to the Owners by other provisions of this Declaration.

Notwithstanding anything to the contrary and this including but not limited to any right provided by any prior declaration superseded hereby this Declaration, no portion of any waterfront located upon the Property (nor any dock or other installation affixed thereto) shall be a part of the Common Area except and unless as may be hereafter expressly dedicated or conveyed for common use by an instrument recorded amongst the official records.

2.1.6 Developer. Daryl C. Grubbs, the son of the original declarants, Aaron C. and Alberta Grubbs, and as same may be further succeeded in the future pursuant to a written assignment of Developer and recorded amongst the real property records of Duval County, Florida and indexed to reference this Declaration.

2.1.7 Dwelling. Any single-family residential dwelling unit constructed or to be constructed on a Lot, together with all permitted appurtenant improvements, approved in accordance with the terms of this Declaration.

2.1.8 Lot or Lots. Any or all, as the context shall clearly indicate, of the six (6) separate parcels of land into which the Property may be finally and completely subdivided as according to the Lot Site Plan Sketch attached and incorporated as **EXHIBIT A** (where the Property is currently divided into three (3) separate Lots), and upon which a Dwelling may be constructed.

2.1.9 Nightfall Drive. That certain twenty-five foot (25') easement providing for ingress and egress to all Lots within the Property from its intersection with Kings Road extending through the property to its terminus and same being delineated on the drawing accompanying and made a part of **EXHIBIT A** attached and incorporated, together with any additional portions which may hereafter be delineated and dedicated by the Owners in connection with the filing of any plat for the property or other development requirement imposed by the City or other governmental entity having jurisdiction over the development of the Property.

2.1.10 Owner. Every person(s) who holds record, legal title to a Lot, no matter how title is acquired, each of which Owners shall be a Member of the Association as according to other provisions hereof.

Section 2.2 Undefined terms. Terms used in this Declaration which are not defined herein shall be accorded their plain and ordinary meanings except as the context may clearly indicate to the contrary.

Section 2.3 Headings. The numbered and underlined Article and Section headings are intended only for the convenience of the reader and shall not be considered in construing this Declaration.

Section 2.4 Gender/Plural. Unless expressly set forth otherwise to the contrary, when used in this Declaration, a gender-specific term shall be understood to include the opposite and equivalent gender-specific term, and references to a thing in the singular shall be understood to include the plural, except where such a construction would render meaningless the manifest clear intent.

Section 2.5 Construction. This Declaration shall be governed by and construed under the laws of the State of Florida and shall be construed liberally to effectuate its intent and especially its remedial purposes.

ARTICLE 3 ASSOCIATION RIGHTS & DUTIES

Section 3.1 Mandatory Membership. Every Owner, by virtue of having received a deed or otherwise having succeeded to ownership of a Lot in any manner whatsoever, shall be a member of the Association, and no person who is not an Owner shall be entitled to membership. Where a Lot has multiple Owners, or is owned by a corporation or other entity, one (1) natural person shall be selected by such methods as the Owners may choose to act as the representative and notice of same shall be provided to the Association.

Section 3.2 Classes of Membership, Appointment until "Turnover" & Board Election. The Association shall have one class of members who shall be entitled to cast one (1) vote for each Lot owned, except and unless as the voting rights relative to a particular parcel may be suspended pursuant to law.

However, and notwithstanding the foregoing or anything else to the contrary, the Developer shall be entitled to appoint, reappoint and/or replace certain members to the Board of Directors until the occurrence of "turnover" to be governed as follows:

So long as Developer, or an entity wholly-owned by Developer, owns not less than five (5) of the six (6) total developable Lots, Developer shall be entitled to appoint all Directors. So long as Developer, or an entity wholly-owned by Developer, owns not less than four (4) of the Lots, Developer shall be entitled to appoint two (2) Directors. So long as Developer, or an entity wholly-owned by Developer, owns not less than three (3) of the Lots, Developer shall be entitled to appoint one (1) Director, and the number of Directors shall not be more than three (3) so long as Developer, or an entity wholly-owned by Developer, owns not less than three (3) Lots. Notwithstanding anything to the contrary, the Developer shall be deemed to have "turned over" the Association to the control of the member Owners upon the event or conveyance by which Developer ceases to own at least three (3) Lots, or by 1 July 2026 regardless of the number of Lots then held by Developer, whichever occurs first.

Section 3.3 Association Governance & Voting. The Association shall be governed by its Board with specific duties carried out by its officers all as set forth and according to the procedures and requirements of the Governing Documents. Notwithstanding anything to the contrary contained in the Articles or Bylaws, and except where this Declaration or a governing law specifies some greater percentage or requirement, a majority of the Board members present at a meeting at which a quorum has been obtained, or a majority of the entire composed Board taking an action by written consent, shall be sufficient for the taking of any Association action. Further, unless otherwise required by law or its Governing Documents, administrative actions and decisions may be taken by appropriate officers, subject to ratification as may be required by law or its Governing Documents.

Section 3.4 Powers & Duties of Association. Except as may be limited herein and by the other Governing Documents, the Association shall have all rights, powers and duties of a not-for-profit corporation as specified in chapter 617, Florida Statutes (2016), and those of a Homeowners Association as set forth in chapter 720, Florida Statutes (2016), and shall succeed to any power that may later be added by statutory amendment, but shall not be deemed to cede any power now granted nor be obligated to perform any additional duty by virtue of amendment except as may be required expressly by law or by resolution adopted by the Board. Further, the Board may adopt reasonable rules for use and condition of the Common Areas, additional ARB guidelines and criteria as well as a schedule of fines and other resolutions relating to Association policy or other proper subjects of Association governance, so long as not inconsistent with law and the Governing Documents.

Section 3.5 Enforcement by Association. Generally, the Association shall be responsible, on behalf of its Owner members, to enforce this Declaration and all its easements granted to the Association or in common to the Owners, all covenants, conditions, restrictions, and all other terms whatsoever including the levy and collection of Assessments and fines, by use of whatsoever lawful means as are authorized and determined to be advisable and reasonably necessary in a given case based on its prudent business judgment. Such means

include but are not limited to a suit for monetary damages, a suit for injunctive or other equitable relief, or a combination of the foregoing. Notwithstanding, this section shall not be construed as a limitation on or condition precedent to the enforcement rights of any Owner, the District or any other party having enforcement rights as the specific case may be.

Section 3.6 Power to Establish Fines. In order to enforce and/or deter the violation of any provision of this Declaration or other Governing Document, including but not limited to those relating to architectural control, common easements or property use restrictions, in addition to any other authorized means or remedy, the Association may levy reasonable fines, provided no fine shall exceed \$ 100 per day of a violation and no fine for a particular violation shall exceed \$ 5,000 in the aggregate, and no fine of less than \$ 1,000.00 may become a lien against a Lot provided that in the event this minimum amount is reduced by amendment to applicable law the Declaration shall be deemed amended accordingly.

Section 3.7 Maintenance of Common Area Generally. The Common Area shall be operated, maintained and/or repaired in a clean, sanitary and attractive manner and/or to good and normal working condition in perpetuity by the Association provided this shall not relieve any Owner of the duty in the first instance to maintain certain portions thereof located upon or abutting a Lot as per *section 4.3* hereof.

Section 3.8 Maintenance of Stormwater System & Enforcement. In the event any swales, ponds or other stormwater systems are hereafter required to be installed as a condition of platting or other development approval, the stormwater system shall be operated, maintained, repaired or replaced by the Association in accordance with all terms and conditions of all Environmental Resource Permits and law and best management practices for the operation of same.

Section 3.9 Obligation to Repair or Replace; Condemnation/Dedication. Except as set forth at *Section 4.2* hereof, in the event of damage or destruction to any part or the whole of the Common Area or any structure or property erected or installed thereon which the Association is obligated to maintain, the Association shall repair or replace such damaged portion within a reasonable time with the cost of any deductibles or other expenses incurred over and above the amounts of any insurance proceeds which may be available shall be shared equally by the Owners and offset by an Assessment to the extent reserve or other funds are not currently available. In the event of condemnation of any portion or the whole of the Common Area by the City or any governmental agency acting pursuant to lawful authority, or the dedication thereof to the City or other governmental agency, such portion shall cease to be Common Area upon the final conclusion of any condemnation proceedings or dedication, the Association shall no longer have any duty to maintain such portion, and any and all proceeds shall be promptly distributed equally among the Owners as their interests then appear, or otherwise equally credited against any Assessment against the Owners then due and payable.

Section 3.10 Insurance/Fidelity Bond. In order to carry out its obligations effectively and efficiently, the Association Board shall obtain and keep in full force and effect such types and amounts of insurance as may be required by law and may keep such other insurance as it may determine advisable in its prudent business judgment, which may include but not be limited to hazard, public liability, worker's compensation, flood and officer and director coverage including fidelity provisions.

Section 3.11 Clarification and Amplification. The Association's general powers and duties set forth in this *Article 3* of the Declaration may be supplemented by other provisions contained elsewhere herein, and all powers and duties are intended to be clarified and amplified by the Articles and Bylaws; provided however, in the event of an irreconcilable conflict or inconsistency between any provision of this Declaration and those of the Articles or Bylaws addressing the same subject matter, or of any ARB Guidelines or Common Area rule, the provisions of this Declaration shall control to the extent of the conflict or inconsistency over any other document, and the Articles shall control over the Bylaws.

ARTICLE 4 **OWNER RIGHTS & RESPONSIBILITIES**

Section 4.1 Generally. By acquiring ownership of a Lot in any manner whatsoever, any and all

Owners are deemed to agree to comply with the provisions of this Declaration and of rules and regulations lawfully adopted by the Board in accordance with the Governing Documents, and the Owners of a Lot assume joint and several responsibility to ensure compliance by all other Lot Owners, and for compliance by and accept responsibility for the actions of their tenants, children, extended family, guests, invitees, licensees and all other persons residing on a Lot or utilizing the Common Area pursuant to express, implied, apparent or tacit permission of an Owner, all such persons hereafter collectively referred to as "Invitees."

Section 4.2 Damage to Common Area. Any damage caused to the Common Area by the negligent act or omission or willful misconduct of an Owner or her Invitees shall be the financial responsibility of such Owner and such Owner shall act with reasonable promptness to notify the Association of any and all such damage and to reimburse the Association for any repair costs or the costs of any insurance deductible or increase in the rate of insurance due to such act, omission or misconduct. Owners are deemed to understand and agree that any failure to comply timely with the provisions of this *Section 4.2* may result in the imposition of a fine against such Owner and/or the imposition of a non-uniform Special Assessment against that Owner's Lot.

Section 4.3 Owner Primary Responsibility re: Common Areas. Notwithstanding anything express or implied to the contrary contained herein,

4.3.1 Unpaved ROW Maintenance. An Owner shall be responsible for maintaining all landscaping and grassing planted or installed in any portion of any Common Area (i.e. utility easement or unpaved Nightfall Drive right-of-way area) adjacent to or located upon a Lot to the extent of the Lot's side yard property boundary lines.

4.3.2 No Installations in Common Areas. No Owner shall plant any landscape, or place any accessory structure or other installation such as a fence, hedge or wall and the like in any portion of the Common Area except after receipt of ARB approval or to replace items required to be maintained by an Owner as per section 4.3.1 above as same were installed prior to the effective date of this Declaration and/or as may be previously approved by the ARB.

Section 4.4 Maintenance, Insurance & Repair after Casualty. Owners shall properly maintain their Lots and all Dwellings and other allowed structures erected thereon in good working order and in a neat and attractive condition in compliance with this Declaration especially the architectural restrictions hereof. In the event a Dwelling or other structure on a Lot is damaged by wind, fire or other casualty, an Owner shall act diligently and promptly to pursue its insurance claim or otherwise repair the damage. To the extent insurance is commercially available and financially feasible, Owners shall maintain in full force and effect adequate hazard and other appropriate insurance against a Lot and any Dwelling erected thereon, but shall be expected to self-insure or otherwise adequately address the financial risk of loss from hazard or act of god relative to the Owner's non-delegable duty to maintain and repair Lots and all Dwellings and other allowed structures erected thereon.

Section 4.5 Enforcement. Notwithstanding any rights or duties of the Association, any Owner may elect to enforce the terms of this Declaration against any other Owner or against the Association by means of legal action including a suit for monetary damages or for injunctive or other equitable relief, and may bring any such claim or action against another Owner independently notwithstanding any similar cause or claim then pending brought by the Association or other party.

ARTICLE 5 ASSESSMENTS

Section 5.1 Creation of the Lien & Obligation of Assessment. Each Owner covenants, and by acceptance of a deed to a Lot whether or not expressed in any such deed or other conveyance including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any and all Assessments created, established, levied and imposed hereby pursuant to this Declaration. All Assessments, together with interest thereon from the due date at the highest lawful rate and cost of collection thereof (including reasonable attorneys' fees) shall be a charge and continuing lien upon each Lot against which each such Assessment is made, and shall also be the personal obligation and contractual agreement of each Owner.

Section 5.2 Purposes of Assessments. The Assessments shall be levied, imposed, collected and enforced only for the purposes of funding its Annual Assessments and Special Assessments as described hereafter.

Section 5.3 Annual Assessments. The Association Board shall prospectively levy an annual assessment (the "Annual Assessment") in a sufficient amount to pay its debts as same become due in the ordinary course and to fund its annual operating budget including but not limited to: (a) insurance, fidelity bonds, management, legal, ad valorem taxes or local government special assessments, state and local registration and/or licensing fees and like recurring expenses; and, (b) obligations associated with the regular repair, maintenance and upkeep of the Common Areas. The Association may include in the Annual Assessment a reserve amount for deferred maintenance or extraordinary expenses. The Annual Assessments will be allocated uniformly on a pro-rata basis among and between all Lots on which a Dwelling is substantially completed prior to Assessment; provided however that, notwithstanding anything to the contrary, any and all costs associated with repair or replacement of the private drain line located on Lot 3 originally installed for the benefit of Lot 1, including but not limited to any damage to the landscaping, trees, shrubbery or fencing located on Lot 3 necessitated by repair or replacement of the private drain line, shall be borne entirely by and assessed in whole against such benefitted Lot 1, with boundaries of such Lot finally determined by reference to survey as may be necessary.

Section 5.4 Annual Meeting & Report. Annually by March 1st, upon not less than fourteen (14) days Notice, the Board shall conduct its annual meeting, which meeting and notice may coincide with the annual meeting of the Members and notice thereof. The Notice shall: (a) attach a copy of a proposed annual budget clearly setting forth the amount of each Owner's proposed Annual Assessment; (b) attach a copy of the financial report of the prior calendar year's cash receipts and expenditures compiled in accordance with law; and, (c) contain a statement that Assessments will be considered and the nature of the Assessments under consideration. Further, in the event the Association elects not to provide for reserve accounts for deferred maintenance or extraordinary expenses (e.g. private road repaving or flooding repair), the financial report must contain the following notice in conspicuous type:

THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

Section 5.5 Special Assessments. Upon not less than fourteen (14) days Notice to Owners of a meeting - which Notice shall include a statement about: (a) the nature of the Assessments; (b) the estimated amounts; and, (c) the estimated payment dates - and upon not less than fourteen (14) days notice posted at the entrance of the subdivision setting forth the date, time, location and purpose of the meeting, the Association Board, in its discretion and having no obligation whatsoever to do so, may levy and impose an extraordinary Special Assessment, as follows:

5.5.1 Individual. In lieu of a fine, a non-uniform Assessment related to any damage to the Common Area or Association expense occasioned by the performance of any work on a particular Lot, may be imposed against an individual Lot or Lots;

5.5.2 Emergency or Delinquency. An Assessment spread uniformly among the other Owners for any delinquent Assessment originally imposed against a delinquent Owner or Lot or to cover any shortfall created by a unanticipated casualty or other true emergency; or,

5.5.3 Improvement. An Assessment may be imposed among all Owners and Lots, related to the Common Area, or outside the Common Area, as permitted herein, for improvement, upgrading, addition or enhancement thereto. Notwithstanding anything to the contrary, an

Improvement Special Assessment may be imposed and apportioned among the Owners on any reasonable basis (e.g. front foot, linear foot, etc.) relative to the particular improvement (e.g. roadway resurfacing) with emphasis on its costs and benefits conferred.

Notwithstanding anything to the contrary, no Special Assessment as described above shall be imposed except upon the vote or written consent of not less than two-thirds (2/3) of the Owners, except that a Special Assessment for Emergency or Delinquency purposes may be imposed upon the vote or written consent of as few as a majority of the Owners.

Section 5.6 Notification of Assessments. Within ten (10) days following the imposition of any Assessment, the Board shall provide Notice of same to all affected Owners explaining the nature of the Assessment and the amounts due and due dates and including as attachments any annual report, budgets or other reports or materials.

Section 5.7 Collection of Assessments. The Annual Assessments shall be payable in advance and shall be collectible and due on such periodic basis as the Association Board may determine from time to time, provided such periodic basis shall provide the Association with adequate capitalization to pay its bills as they become due in the ordinary course during the year. The foregoing shall not prevent any Owner from paying all or any portion of an Annual Assessment prior to when it is periodically due. Any Special Assessment shall be payable and collected as set forth in the resolution. All payments may be made by personal check provided that in the event any personal check is returned unpaid or refused payment the Board may require that all future payments from such payor be made by certified check, cashier's check or money order.

Section 5.8 Effect of Non-Payment & Remedies of Association. If the Assessment is not paid within fifteen (15) days after the due date, a "late fee" may be charged at the highest charge permitted by law and such delinquent Assessment(s) shall bear interest from the due date at 18% or the highest lawful rate in effect, and the Association may at any time thereafter bring an action to enforce the lien authorized hereby by appropriate foreclosure proceedings (following the recording of a valid Claim of Lien) and/or a suit on the personal obligation against the Owner. Additionally, the Board may vote to suspend the voting rights of any Owner that is delinquent by more than ninety (90) days in the payment of any Annual Assessment and/or may require and demand of any tenant of such a delinquent Owner that such tenant pay rents directly to the Association for so long as the delinquency continues and the Association may file an eviction against any tenant who fails to comply with any demand made in accordance with any applicable law.

Section 5.9 Lien for Assessments. The lien of the Association for unpaid Assessments shall be deemed to relate back to and attach as of the date of recording of the original declaration, and shall be a charge and continuing lien upon the land so attached. Except as may be set forth hereafter, no sale, transfer or acquisition of a Lot by any means, including by purchase at a foreclosure sale or deed in lieu thereof, shall relieve such Lot from liability for any unpaid Assessment or from the lien thereof except as payment is received or such lien is judicially foreclosed prior to transfer, and an Owner is jointly and severally liable with the previous Lot Owner for all unpaid Assessments that came due up to the time of transfer of title. Notwithstanding anything to the contrary, the Association's lien may only be foreclosed only from and after the recording of a Claim of Lien in the public records of Duval County, Florida, in compliance with law.

Section 5.10 Subordination of the Lien to First Mortgages. Notwithstanding anything to the contrary, in the event that a mortgagee (or its successor or assignee as a subsequent holder of the institutional first mortgage who acquires title to a parcel by foreclosure or by deed in lieu of foreclosure) of an institutional first mortgage recorded prior to the recording of an Association Claim of Lien, acquires title following its institution of foreclosure proceedings in which the Association was named as a defendant, such mortgagee's liability for unpaid Assessments shall be limited to the lesser of: (a) the foreclosed Lot's unpaid common expenses and Assessments that accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (b) one percent (1%) of the original institutional first mortgage debt, whichever is less. Further, where the inclusion of this *section 5.10* is meant in greatest part to incorporate the provisions of section 720.3085, Florida Statutes (2016) for the benefit of the Association, it is intended that the Association shall be entitled to the benefit of any greater priority, superior dignity, more beneficial conditions or increased amounts of unpaid Assessments (vis-à-vis acquisition of title to a

Lot by an institutional first mortgagee) as may be provided pursuant to any amendment or successor to such statute this Declaration being deemed amended accordingly; provided, however, it is not intended that any amendment or successor to such statute having a converse effect shall apply in any way to impair the Association's rights and benefits contained herein this contract and Declaration except and unless as such be judicially determined to be required by law.

Section 5.11 Prospective Application. The provisions of *Section 5.10* above shall not apply to any first mortgage recorded prior to the effective date hereof where such provisions are reasonably demonstrated to have a material, adverse effect on the mortgagee (or its successor or assign) holding such mortgage, and in which case the provisions of the relevant prior declarations shall be deemed to survive and to remain applicable to such mortgage and Lot until same be satisfied of record, and thereafter the provisions of *Section 5.10* to apply.

Section 5.12 No Abandonment. No Owner shall escape liability for the Assessments provided for herein by abandonment of a Lot.

Section 5.13 Estoppel Certificates. Within fifteen (15) days of its receipt of a written request of an Owner or Owner's agent relative to the facilitation of the transfer of a Lot, the Association shall provide written certification and statement of account concerning the payment of Assessments by such Owner, and may charge a reasonable fee therefor, which fee shall be established by resolution of the Board and/or any contract with a licensed Manager, and the amount of which fee shall be clearly stated on the estoppel certificate.

ARTICLE 6 **ARCHITECTURAL GUIDELINES**

Section 6.1 Generally. The Association Board shall sit and act also as an Architectural Review Board (the "ARB") and shall, prior to commencement thereof, approve all construction, repair, replacement or enhancement of any "Improvement, with the term "Improvement" herein defined as including but not limited to a Dwelling erected on a Lot or any accessory structure or other improvement located on a Lot including but not limited to seawalls, docks, boat lifts, piers, elevated walkways, fencing, hedges, walls, satellite/t.v. antennae, pool/hot tub, trash/garbage receptacle screen, water softeners, tankless water heaters, HVAC equipment, mail receptacle, irrigation pumps/gauges, outdoor kitchens, lanais, pergolas, statue, fountain, landscaping, or any other similar structure, property or installation constructed or otherwise erected, placed, installed or maintained on a Lot. Notwithstanding, any Owner repairing or restoring any Dwelling (i.e. excluding detached accessory structures) to its original design, footprint, plans and architectural style using the identical materials and scheme including colors which has been previously approved by the ARB shall not be required to seek ARB approval prior to commencement of such restorative work and this notwithstanding any future amendment to the Declaration or change to ARB Guideline; provided however, that the burden shall be upon such Owner to prove such work is entitled to the exemption provided hereby in the event any action is brought by the ARB or the Board asserting no such entitlement is due.

Section 6.2 Standards for ARB Review. It is the intent of this Declaration, except as may be otherwise expressed hereafter, to allow for a variety of designs, styles, architecture, materials, colors and the like so long as each Dwelling and structure is visually appealing and aesthetically pleasing considered independently and when considered in connection with all other existing or planned Dwellings and structures, and serves to create a cohesive and appealing neighborhood as determined in the reasonable discretion of the ARB. The ARB has authority and reasonable discretion to consider applications and render decisions based upon criteria including but not limited to the design, scale, massing, style, size, architecture, roof type, roof slope, guttering size, height, materials, colors and like considerations. Moreover, the ARB shall have authority to consider the raw land value of an individual Lot relative to its location within the Property and of other nearby properties nearby relative to the quality of workmanship and construction and finish materials selected relative to a desire to maintain the overall excellence and high quality of the Nightfall subdivision.

Section 6.3 Review Process. At least twenty (20) days prior to planned commencement, an Owner desiring to undertake any of the actions set forth at *Section 6.1* above shall submit to the Association a set of plans and specifications of such detail and setting forth such criteria as are reasonable for an activity and as

will permit prudent review according to the ARB's criteria requirements set forth at *Section 6.4* below and any further ARB Guidelines as may be adopted consistent with this Declaration pursuant to *Section 6.5* below. Notwithstanding anything to the contrary, unless otherwise accepted by the ARB, the plans and specifications required to be submitted shall be identical or equivalent to those which must be submitted to the City in the event a building permit is required relative to the construction, installation or placement of any structure or item for which ARB approval is sought. The ARB shall, within twenty (20) days of submission, either approve or deny the application, and any application not approved or denied within such time-frame shall be deemed to have been approved as to all matters except those which are in conflict with or otherwise inconsistent with some express provision of an architectural guideline or use provision set forth in this Declaration. Applications shall be considered by the ARB at a regular or special Board meeting noticed and conducted in compliance with law. Notwithstanding, the ARB may have prior announcement and discussion and via other means such as email so long as no "official" decision is made except at a noticed meeting. The ARB shall have reasonable discretion to deny, approve or approve with conditions/changes any application so long as such decision is consistent with this Declaration, any ARB Guidelines adopted pursuant hereto and so long as not arbitrary or capricious when considered relative to the circumstances especially those pertaining to previous applications approved or denied. An Owner denied permission by the ARB may appeal the decision to the judiciary in whatever way(s) may be permitted under Florida law.

Section 6.4 Review Criteria. The intent of this Declaration is that the Nightfall subdivision scheme, having such uniformity or variety as may be so established from Dwelling to Dwelling and Lot to Lot and of the subdivision overall, continue to be maintained in perpetuity, to provide for an aesthetically pleasing subdivision and to protect the value and marketability of all the Lots as a whole. Notwithstanding anything to the contrary, all Dwellings, accessory structures and other improvements required to be approved by the ARB shall comply with the following specific architectural criteria:

6.4.1 Dwelling Style and Architecture. The style and architecture of a Dwelling is permitted to be selected or drawn from a variety of designs and styles, with same being encouraged to avoid a "cookie cutter" appearance, to embody the high value nature of the Nightfall Property and to enable individualism among Lots, and understanding that the popularity or desirability of any certain style or of one style to another changes over time, but provided that architectural extremes as well as those in dramatic contrast to and which will clash with Dwellings already in existence, while perfectly acceptable if built on some individual lot outside of the subdivision, are discouraged therein and are to be avoided and may be disapproved by the ARB. For this reason, an Owner or prospective Owner who intends to significantly deviate from the established architectural palette of the Property or of the greater community is encouraged to submit "conceptual" plans, renderings, elevations and the like to the ARB for its consideration and approval before making significant investment in any particular deviation.

6.4.2 Dwelling Type, Size & Materials. Only one (1) single-family Dwelling unit per Lot together with appurtenant features shall be permitted and no other type of primary structure provided this shall not prohibit, where the same Owner may own two (2) adjoining lots, from the merger of the Lots or from developing the second Lot solely with appurtenant features (i.e. pool, gazebo, etc.) serving a Dwelling located on the first provided such appurtenant features shall be of a size, type and scale to be deemed an "accessory" to the primary Dwelling. Dwellings shall contain a minimum of 3,000 square feet of heated/cooled (HVAC) gross floor area not including any attached garage, porches and covered patios. Dwellings constructed of brick, concrete block (provided same is not exposed without stuccoing or other surfacing feature), stone, poured concrete over steel frame, stucco over wood framing, wood shingle siding and insulated concrete forms are expressly permitted with the ARB to have discretion to approve other construction materials and methods of like quality and resulting in a similar appearance. Dwellings constructed entirely of exposed lightweight steel, vinyl and/or wood, or encased with aluminum or vinyl siding, are not permitted due to certain hazards and hardships occasioned by the location of the Property abutting the water and/or relative to the low-quality appearance.

6.4.3 Dwelling Floors & Height Limit. No Dwelling shall have more than 3 floors of heated/cooled (HVAC) living space or be more than thirty-five feet (35') in height as measured by

the City.

6.4.4 Required Yards/Setbacks Generally. All Dwellings and other Improvements shall provide yards or setbacks in compliance with City code, and same shall be deemed to satisfy the requirements of this Declaration except as may be set forth more specifically hereafter. In the event of an inconsistency or conflict between any setback/required yard of the City and of this Declaration, the more restrictive shall govern. Notwithstanding compliance with City code, the ARB may determine that a greater yard/setback is required in a particular case to preserve trees, maintain the overall aesthetics or permit a better utilization of or provide greater overall privacy related to a Lot or Dwelling constructed thereon vis-a-vis similar considerations as to a preexisting Dwelling located on a neighboring Lot, and the ARB may permit a reduction for same reasons provided any such reduction is approved also by the City pursuant to its code requirements.

6.4.5 Accessory Structure Yards/Setbacks. "Accessory Structures" are those Improvements erected, installed or placed typically at a height above thirty inches (30") on grade which are normally and customarily associated with and subordinate to a Dwelling and of residential use of a Lot, including but not limited to seawalls, docks, elevated walkways, boat lifts, piers, gazebos, decks (30" elevation or less only), garbage/trash receptacle screens, HVAC equipment, pools, pool pump and equipment, irrigation pump/gauges and/or irrigation wells, water softeners, tankless water heaters, hot tubs/jacuzzis, fountains, firepits, outdoor kitchen, approved pergolas/lanais (unconnected to primary Dwelling), statues, birdbaths, flagpoles, clotheslines and other improvements, structures, installations and the like having similar qualities. Except for uncovered decks and/or raised but uncovered patios whose floor height does not exceed thirty inches (30") above grade, any of the foregoing and like improvements connected, attached or unattached but located within one foot (1') of the Dwelling, shall be considered part of such Dwelling and required to comply with the provisions governing required yards for the Dwelling. Otherwise, all accessory structures shall comply with Section 4.3.2 above and additionally:

6.4.5.1 Wetlands. Other than docks, piers, boat lifts and elevated walkways or other walkways providing access to same, no Accessory Structure shall be placed, installed or maintained any closer than twenty feet (20') from any jurisdictional wetlands delineated by the State of Florida.

6.4.5.2 Placement with respect to Yards. Generally, Accessory Structures are to be located exclusively in the rear yard areas but may be placed in the side yard as may be appropriate for a particular structure (e.g. HVAC compressor, tankless water heater, garbage receptacle, etc.) but shall not be placed in a front yard (i.e. the area past a Dwelling's outermost wall plane fronting upon Nightfall Drive) except as may be expressly permitted by the ARB for those of an appropriate type (e.g. mail receptacle, statue, flagpole, birdbath that is part of landscaping). Further, all garbage/trash receptacles shall be screened from the view of neighboring Lots with appropriate landscaping or other artificial screening permitted by the ARB which in such case shall not be deemed prohibited fencing.

6.4.5.3 Prohibited Accessory Structures. Notwithstanding anything to the contrary, above-ground pools, outbuildings, above-ground LP/Fuel/Gas tanks (provided portable, LP gas tanks of 40lbs or less variety used in connection with outdoor gas grills shall not violate this provision) which are not screened from view from the front yard (i.e. yard area facing Nightfall Drive), utility sheds, storage sheds, greenhouses, detached garages, boathouses, cabanas, platforms/decks greater than 30" above grade, doghouses, children's playhouses or play equipment shall not be constructed, placed, installed or allowed to remain erected overnight on any Lot.

6.4.6 Driveways. All driveways shall be constructed of poured concrete (provided that stamping is permitted and encouraged and provided that poured concrete portions shall not exceed fifty percent (50%) of the total driveway area), paver bricks/stones or like quality materials (i.e. loose

gravel, crushed oyster shell and the like is not permitted), and the colors of any bricks/stones or sealants shall be shaded to blend and compliment the colors of the principal Dwelling.

6.4.7 Garages. Every Dwelling shall incorporate a three (3) car, attached garage at a minimum, and all garage doors shall be stained, painted or colored to match other exterior painted, stained or colored trim work. No garage shall at any time ever be converted into heated/cooled space or used for living purposes, and no "carports", vehicular "lanai", covered spaces or the like are permitted. Garages must have either a side or rear entrance (i.e. not built to face Nightfall Drive) and garage entrances shall generally not face east except as otherwise may be permitted by the ARB.

6.4.8 Roof Elements. Dwelling roofs shall be constructed utilizing high-quality materials including but not limited to those incorporating fiberglass architectural shingling, clay barrel tile or metal roofing, and colors of roof materials shall generally be of earth tone or other muted color complimentary to the Dwelling. No flat roofs are allowed, except as an architectural component of a roof design which is primarily not a flat roof.

6.4.9 Fences. Notwithstanding anything to the contrary, no fence shall be permitted in a front or side yard defined with reference to the area past an imaginary line running parallel to the outermost wall plane of any Dwelling wall located furthest from Nightfall Drive, and all fences shall be inset at least six inches (6") from any Lot boundary line except as any two (2) adjoining Lot Owners may otherwise agree in writing a copy of which must be provided to the ARB as a part of the application prior to installation. High-quality poly-resin/polymer or vinyl fencing of a white or off-white color is preferred, but wrought iron, aluminum fencing, or other fencing constructed of equivalent quality materials and styles may be permitted by the ARB. Fence heights shall be six feet (6') or less, provided that the ARB may require a portion of fencing located along any waterfront Lot's side yard boundary line be limited to four feet (4') beginning from a point on such line approximately half-way from the most northern wall plane of the Dwelling, and continuing northerly waterward where it reasonably determines the waterfront vista from neighboring Lots would be unreasonably degraded by a greater fence height.

6.4.10 Colors. While a variety of colors may be permitted by this Declaration (but subject to further ARB Guideline which may be hereafter adopted) neutral and muted tones are preferred and no bright, vivid or peculiar colors shall be permitted regardless of the material. Further, Dwellings colored in the "craftsman" style shall not be permitted and all portions of Dwelling walls, windows, trim, sills, eaves and shutters shall be limited to a maximum of three (3) primary color shades provided slight variations in the tone of the three (3) primary shades utilized to accent certain features (e.g. windows and trim) shall be permitted so long as approved by the ARB.

6.4.11 Pools/Hot Tubs. Notwithstanding anything to the contrary, no pool or hot tub located outside the outermost wall confines of a Dwelling shall be placed any closer than twenty foot (20') from any Lot property boundary line and must be located in the rear yard with reference to the outermost wall plane of the Dwelling's rear area. Further, any such facility located on any roof, or on a patio located within the confines of a Dwelling's outermost wall planes, shall incorporate design elements providing for buffering of noise.

6.4.12 Clotheslines. A clothesline is an accessory structure requiring ARB approval, shall be retractable and shall not be connected to more than one "pole" (i.e. shall retract from a tree or other independent object or structure and shall be kept retracted when not in use, and otherwise shall be located only as set forth above and subject to ARB approval.

6.4.13 Landscaping. A landscape plan shall be submitted to the ARB in association with the reconstruction, new construction and/or significant renovation of a Dwelling and such Plan shall provide for an irrigation system with an automatic timer, and shall provide for not less than thirty thousand dollars (\$ 30,000.00) of sod and plant materials only (i.e. exclusive of delivery, labor and irrigation system component and installation costs) and this amount may be adjusted for inflation by

Resolution of the Board provided same shall not increase more than five percent (5%) annually. All landscape plans shall provide for coverage of virtually 100% of all non-hardscape portions of a Lot with sod and planting materials.

A landscape plan is also required where an Owner is seeking to install and/or incorporate drought-tolerant and/or "Florida-Friendly" (f.k.a. "xeri-scape") landscaping in front and/or side yards, in order to maintain the subdivision's neat and attractive condition, maintain subdivision uniformity and integrity, protect sight-line visibility for vehicular traffic, provide for containment of all other materials and protect and preserve underground utilities. Where possible, it is intended that the landscape plan preserve and incorporate natural vegetation to the greatest extent. In all cases, not less than 75% of the plant materials used shall be of the "perennial" variety, all landscaping shall provide for proper containment within the Lot's confines of all mulching/filler/non-vegetative ground cover materials, and shall be required to maintain all sodded/grassed portions of Common Areas that may be located abutting or within a Lot and any Beaches Energy Services or City easement areas due to considerations relative to root growth and utility interference. In implementing "Florida-Friendly" landscaping, an Owner shall be required to obtain certification from the Duval County Agricultural Extension Offices, and the plan certified shall include a site plan demonstrating among other things that the expected plant "coverage" (i.e. the spread/diameter of the canopy of all plantings not including rocks, mulch, non-vegetative plant coverings, etc.) is not less than 50% at time of planting, and shall incorporate not less than ten (10) different varieties of approved, Florida-Friendly planting materials at least half (1/2) of which shall consist of true woody "shrub" varieties provided not less than twenty (20) true, woody "shrubs" are required at a minimum notwithstanding the total number of planting materials. Notwithstanding anything to the contrary, allowing a Lot to return to its "natural state" or failing to remove weeds and seedling oaks or other non-planted materials shall not be considered a valid Florida-friendly landscape plan and shall also be considered a violation of other Use Provisions of this Declaration.

6.4.14 Service Areas. All utilities not located within a Dwelling or on the roof thereof, including but not limited to air conditioner compressors, water softeners, irrigation well pumps or tankless water heater, may be placed in a side yard provided none shall be located closer than five feet (5') from any Lot property boundary line, and provided same shall be screened using landscape materials or fencing in a manner aesthetically pleasing relative to other adjacent Lots.

Section 6.5 ARB Guidelines. In addition to the criteria set forth herein this Declaration, the Board may adopt additional criteria and guidelines consistent herewith relative to the requirements for submission of plans and specifications, the decisional procedures and/or of the decisional criteria, and such ARB Guidelines may especially provide that certain types of designs, materials, styles, structures and/or colors are pre-approved and not required to be submitted to the ARB so long as all construction, installation or placement is undertaken in accordance herewith and therewith (e.g. fencing styles, approved/encouraged plant species, mailbox types, approved color palette, etc.). Such ARB Guidelines need not be recorded and Owners are hereby put on notice that there may be additional criteria and processes for ARB applications contained therein. Notwithstanding anything to the contrary, no ARB Guideline adopted by the Board shall be effective except upon the vote or written consent of not less than a majority of the Owners.

Section 6.6 Additional Regulations; Construction of Conflicts. Additionally, notwithstanding compliance with this Declaration, all Owners and/or any professional, employee, contractor or subcontractor working on their behalf shall be required to take notice of, educate themselves concerning and comply with all provisions of federal, state, district and local governing requirements applicable to development of the Property and of an affected Lot, most especially including but not limited to City zoning requirements, which provisions may be more or less restrictive than, or ancillary and independent of, any restrictions hereby imposed upon development, construction and use of a Lot. In the event of a conflict or inconsistency between any condition or requirement imposed by any governmental entity having regulatory jurisdiction over the development activity and the criteria set forth in this Declaration and/or the ARB Guidelines, the more restrictive shall govern.

Section 6.7 Right to Release Restrictions; Grandfathering. Notwithstanding anything to the contrary in this Declaration section six (6) or any ARB guideline:

6.7.1 Release of Violations & Variances. The ARB shall have authority to waive, vary or release Lots from minor violations of the above-stated restrictions where the release is limited to not more than 10% of the standard (e.g. up to .6 inches relative to the 6 inch fence inset setback requirement) and may grant a variance from any provision where it is demonstrated the violation occurred as a result of survey error or field error. Further, the ARB may grant a variance from any provision where the Owner has been granted a waiver or variance from a similar provision of City code provided the ARB shall have no obligation to do so notwithstanding the City's grant of waiver or variance.

6.7.2 Grandfathering. Where any Dwelling, Accessory Structure or other improvement (including but not limited to a fence, utility/storage shed, garage door or dock) constructed, erected, installed or otherwise existing on a Lot in full compliance with the Declaration and all applicable ARB guidelines, or pursuant to ARB waiver or initial declarants' permission, is thereafter made non-conforming by later amendment to the Declaration or ARB guideline, such improvement shall be deemed vested and grandfathered as to such non-conformity to the extent of the improvement's useful, remaining economic life, allowing for repair and rehabilitation, and may be repaired or reconstructed as initially constructed or installed to the extent of damage or destruction by any hazard event including wind, fire and/or flood, and provided further that any existing dock pilings may continue to be utilized as to location of a dock notwithstanding the full depreciation of the dock's other components.

Section 6.8. No Liability. Owners are deemed to understand and agree that ARB approval shall be as to the aesthetic elements only and is not and should not be construed to be an approval of the structural design, construction methodology, or any other applicable requirements (such as but not limited to the Florida Building Code) of any regulatory body having jurisdiction over the construction, repair, maintenance or improvement, and from which bodies permits or other permissions may be required to be obtained prior to commencement, and that by its approval the ARB assumes no responsibility or liability for anything other than the approval of the design and architectural stylings.

ARTICLE 7 USE RESTRICTIONS

The following benefits and burdens regarding the use and occupancy of the Lots and regarding the construction, maintenance, use and occupancy of the Dwellings, accessory structures and all other improvements shall apply and inure to every Owner for the benefit of every other Owner, and shall be interpreted to apply to any user or occupant of a Dwelling, the underlying Lot or of any part of the Property, whether the user or occupant is an Owner or its family members, invitees, guests, licensees, tenants, employees and/or agents, and without regard to whether occupied or used in exchange for valuable consideration or not:

Section 7.1 Residential Uses Only. The Lots shall be residential lots used only for single-family dwelling purposes, and no Dwelling may be occupied by three (3) or more persons unrelated by blood or marriage at any time. Further, no business or commercial activity shall be conducted on any part of a Lot, excluding lawful home occupations permitted by City code and approved by the Association in accordance with *Section 7.6* hereof, and no commercial, industrial or other structure not appurtenant to residential use shall be erected.

Section 7.2 No Nuisances, Illegal Uses or Hazardous Uses. No obnoxious or offensive activity shall be allowed, nor any use or practice which is the source of annoyance or nuisance to Owners or occupants, or which interferes with the peaceful possession and proper use of the Property. All portions of a Lot and the Property shall only be used for lawful and not illegal purposes. Further no part of any Dwelling or Lot shall regularly be used for the storage of or occupied by any hazardous substance or explosives.

Section 7.3 No Further Subdivision; Merger. No Lot subject to this Declaration as sketched out at **EXHIBIT A** shall be further subdivided into any smaller lot or Lot, nor shall any Owner be permitted to deed any portion of a Lot as sketched out at **EXHIBIT A** to any other Owner. Notwithstanding, a Lot may be merged

with another Lot and one (1) single-family Dwelling constructed to occupy parts of both Lots or the additional Lot used primarily for accessory uses as set forth elsewhere herein, provided the Annual Assessment provided for also elsewhere herein shall be levied against the original number of Lots shown on EXHIBIT A and shall be voted accordingly also.

Section 7.4 Driveways, Walks & Landscape. Each Lot Owner shall be responsible for maintenance of the driveway, walks, drives and the like serving the Lot and the landscaping thereon which shall be maintained in a neat, functioning and attractive condition, with all yards and landscaping regularly mowed, weeded, trimmed, watered, mulched and the like as may be required in order to ensure same is kept in a green and attractive condition at all times in keeping with the overall community standard based on the condition of other Lots' landscaping at such times.

Section 7.5 Restrictions on Rights to Lease. No Owner shall lease or tender occupancy to another any Dwelling, portion thereof, accessory structure thereto or part of a Lot, whether for valuable consideration or not, except in accordance with the following provisions:

7.5.1 No Short Term Rentals. No rental agreement or lease of less than six (6) months shall be permitted, nor shall any Dwelling be rented more than three (3) times per year and this proviso being relative to any alleged early lease termination or eviction.

7.5.2 Only Single-Family Occupants. No Dwelling shall be leased to, or occupied pursuant to a Lease or any other arrangement in the nature thereof including a lease-purchase, lease-option or contract for deed by, more than two (2) persons unrelated by blood or marriage at any time, nor shall any property be leased where same results in or would result in the day-to-day parking of more than two (2) vehicles outside of the garage upon a Lot. Further, only the whole of a Dwelling may be leased and no partial lease of a portion or of a bedroom is permitted.

7.5.3 No Time Share Allowed. No Dwelling, Lot or any portion thereof shall be owned, leased, subleased, occupied or used for or in connection with any time-sharing agreement, plan, program including without limitation, a "vacation license," travel club," "extended vacation" or other time-interval ownership or use arrangement however organized and however styled and regardless of whether valuable consideration or like-kind privileges are given in exchange.

7.5.4 No Offenders. No Dwelling or part of Lot shall be leased to or occupied as a residence by any person required to be registered with the State of Florida, or any other state, or notify a state concerning the address and/or work address of such person, as a "sex offender" or "sexual predator" as such terms are defined and governed by statute.

7.5.5 Dock Lease Prohibited. No waterfront Lot Owner shall be permitted to separately lease dock or mooring space to any person whether for valuable consideration or not, and shall not be permitted to regularly allows others to dock or moor a boat or other watercraft not owned by and/or registered to the Owner or lessee occupying the Dwelling lawfully.

Section 7.6 Home Occupations. Home offices or home occupations licensed and permitted in accordance with City ordinance may be allowed by the Association Board so long as there is no visible evidence of the occupation or business (e.g. sign), resulting impact above typical residential levels (e.g. more than one (1) courier delivery per day) nor other material detriment to any other Owner as a result thereof.

Section 7.7 Service Vehicles. No commercial vehicles shall be parked on any Lot or street overnight except as may be parked within a completely enclosed garage. The term "commercial vehicle" shall be interpreted according to its plain and ordinary meaning to effectuate the intent hereof but shall specifically include but not be limited to any vehicle: (a) actually used in connection with a trade or business where the operation of such vehicle requires a commercial drivers license designation; (b) inherently designed to be used in connection with a trade or business such as a panel van, shuttle bus, airport van, box panel truck, limousine, passenger van or taxi; (c) with any commercial advertising or writing located thereon or therein which advertising is not completely removable or coverable using a magnetic cover of sufficient size, shape and color as to blend in with

the vehicles color; and/or (d) any vehicle with a gross vehicle weight of over 10,000 lbs excepting only pickup trucks used primarily for non-commercial and personal purposes.

Section 7.8 Vehicular Parking. No vehicle shall be parked on Nightfall Drive at any time excepting only commercial vehicles servicing a Lot or Dwelling the parking for which cannot be reasonably accommodated on such Lot due to vehicle size, number of vehicles servicing at any one time or other factors, and then only during normal business hours and not overnight under any circumstances. Notwithstanding, this provision shall not prohibit the accommodation of an ordinary number of vehicles to park on the unpaved portion of the right-of-way of Nightfall Drive for the term of any infrequent special occasion such as a wedding or holiday party where the Owner is the occupant of the Dwelling and Lot at time of the event, and not to exceed six (6) hours total and so long as prior notice of not less than thirty (30) days is provided to the Association with such license given on a first-come first-served basis and not be abused by any Lot Owner.

Section 7.9 Boats, Trailers, R.V. Parking. No recreational vehicles, boats, sailboats, campers, jetskis, seadoos, waverunners, motorcycles or trailers of any kind shall be permitted to be parked or stored overnight anywhere on a Lot or the Property, except as may be stored completely enclosed inside of a garage.

Section 7.10 Automotive Repair. No automotive repair or maintenance or the like shall be performed on a Lot except that a tire may be changed or battery replaced in a driveway as necessary, and where minor service having no unreasonable auditory impact such as changing light bulbs, the oil, the air filter and the like may be performed fully enclosed within a garage on a limited basis.

Section 7.11 Animals. No animals, reptiles, insects or birds of any kind shall be raised, bred, or kept in any Dwelling or on any part of a Lot, except that a reasonable number of ordinary household, domesticated and non-exotic pets for companionship purposes may be kept provided they are not kept, bred or maintained for any commercial purpose. Further, no chickens or other poultry shall be permitted to be raised, bred, husbanded or kept for any purpose notwithstanding any City zoning ordinance or other regulation which may permit same. No animal shall be allowed to roam unattended unless fully fenced in within the Owner's Lot and no animal shall be tethered outside on a Lot at any time. Notwithstanding, no pet(s) may be kept on a Lot that are obnoxious or annoying to other Lot Owners.

Section 7.12 Signs. No signs, placards, billboards or the like shall be erected on a Lot or on the Property or upon or within any Dwelling to be visible to Nightfall Drive or any other Lot, except for one (1) sign may be erected of such size, type and style as allowed by all regulatory authority zoning during such time as a Lot is marketed for sale or lease. No sign advertising any contractor or service provider (except for security contractor signs of a reasonable size at a reasonable location) to a Dwelling or Lot shall be allowed except with the written permission of or pursuant to rule of the Association. All political signage shall be removed within seventy-two (72) hours following an election. The ARB may by rule establish a uniform "for sale" signage style, type, etc., and may establish the reasonable size and location of security contractor signage and if so established shall be followed.

Section 7.13 Trash Containers & Refuse. Trash containers shall be stored in the rear or side yard areas and shall be fully screened to full height on all but one side open if facing the rear yard area by a hedge, landscaping or fence. Trash shall be regularly taken to the street for disposal and all containers returned promptly to the screening area. No unsanitary conditions shall be permitted nor shall any owner be permitted to store any tree limbs, clippings, etc. anywhere on a Lot more than five (5) days without being removed completely by public or private disposal sources.

Section 7.14 Antenna. Subject to federal guidelines, all antennae, satellite dishes and other receptor devices to be installed shall be no larger than thirty-nine inches (39") and shall be installed not higher than ten feet (10") and only in a required side or rear yard area and so long as properly screened to the greatest degree possible, all subject to the review and approval of the ARB.

Section 7.15 Sports Equipment. No basketball pole/backboard/goal shall be permanently affixed to or installed upon a Dwelling nor shall any removable equipment be stored overnight in any portion of a drive or required front yard area. Skateboard or skating ramps/pipes/jumps shall not be permitted to be erected, stored or used on any part of a Lot at any time.

Section 7.16 Mailboxes. Mailboxes, paper receptacles and the like shall be maintained by Lot Owners in a neat and attractive condition. The ARB may by rule establish uniform or pre-approved types, styles and sizes of mail receptacles.

Section 7.17 Flags. A portable, removable United States flag or official flag of the State of Florida may be displayed year-round in an attractive and respectful manner consistent with chapter 10 of Title 36 of the United States Code, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, a removable official flag not larger than 4/12 feet by 6 feet representing the United States Army, Navy, Air Force, Marine Corps or Coast Guard may be displayed. Unless otherwise allowed by other provisions hereof, all other exterior flags, pendants, lights, banners, yard ornaments, displays or signs and the like shall be prohibited to be displayed in the front yard area unless prior approved by the ARB, and except as to such customary types and amounts and for such time periods as are associated with traditional and legal holidays.

Section 7.18 Restrictions for Nightfall Drive. The Association shall have the authority to set and enforce speed limits and parking restrictions for Nightfall Drive provided the speed limit shall not be set less than ten (10) miles per hour.

ARTICLE 8

DECLARATIONS OF EASEMENTS & RIGHTS

Subject to limitations provided for elsewhere herein, the following declarations of easements deemed covenants running with the land are hereby granted or being previously granted by expression or implication in the prior declaration are hereby ratified and confirmed, and pass appurtenant to title to a Lot:

Section 8.1 Common Area Easements. Every Owner shall have, together with every other Owner and the Association, a perpetual, non-exclusive right and easement including but not limited that for ingress to and egress from, across and through Nightfall Drive, provided same shall be limited to the prolongation of same necessary to access the Owner's Lot and Dwelling, subject to the Association's duty to maintain, repair and replace same and its right to enforce speed limits and parking restrictions as set forth hereinabove.

Section 8.2 Stormwater System & Private Drainage Easements. The Association shall have a perpetual, non-exclusive right and easement over, across, under and through any and all parts of all those areas of the Property which may be hereafter designated as a part of a stormwater system pursuant to any Environmental Resource Permit issued by the St. Johns River Water Management District, City or other entity having regulatory authority pursuant to any plat or other development order, and shall have an easement over the whole of the Property including any Lot to extent reasonably required to gain access, ingress to or egress from any part of any such stormwater system hereafter dedicated. Further, the Association shall have an easement to operate, maintain, repair and replace the private stormwater drain pipe now located approximately as shown on the attached **Site Plan EXHIBIT A**, provided that the repair and replacement of same, and assessments for such purposes, shall be governed by other specific provisions hereof.

Section 8.4 Utility Easements. Notwithstanding anything to the contrary, the Association shall have a non-exclusive, perpetual easement over and across all those areas which may hereafter be delineated on any plat hereafter filed with the City and/or Duval County, Florida, as private, unobstructed drainage easements also for all utility purposes, for ingress, egress, installation, replacement, repair, use and maintenance of all utility and service lines, systems, equipment and installations, both public and private, including but not limited to water, sewer, drainage, irrigation, telephone, electricity, cable and communication and other police powers and services supplied by any local, state or federal government having jurisdiction. This easement shall in no way affect any other recorded easement or matter set forth on a plat, and shall not be effective to create any further or additional easement for any utility service granted a measured and described easement by separate, recorded document or any such plat.

Section 8.5 Minor Encroachments. In the event any portion of a Dwelling shall encroach upon any of the Common Area due to settling or other non-intentional and non-negligent act of any Owner or the Developer, a

valid easement shall exist to the extent of such encroachment.

Section 8.6 Easements & Rights of Association. The Association shall have a perpetual and non-exclusive easement for ingress and egress, at all times, through, over and across the whole of the Property including the Common Area, and including the Lots to the degree necessary, in order to fulfill all of its duties and obligations imposed by this Declaration and the Governing Documents and applicable law. All of the easements and rights of Owners shall be subject to those of the Association and of its right to adopt reasonable Rules governing use of the Common Areas.

ARTICLE 9 **RIGHTS OF MORTGAGEES**

Section 9.1 Rights of Mortgagees. A "Mortgagee" is defined as any institutional holder of a first or purchase money mortgage encumbering a portion of the Property as security for the performance of any obligation, including a bank, saving and loan association, insurance company, any real estate or mortgage investment trust, and insurers or guarantors of mortgages, including without limitation, the Federal National Mortgage Association, the Government National Mortgage Association, the Veterans Administration and its successors and assigns, the Federal Housing Administration and its successors and assigns, or any lender generally recognized as an institutional type lender, upon written request to the Association identifying the name and address of such Mortgagee, shall be entitled to timely written notice from, and cooperation of, the Association, in compliance with all federal or state laws requiring same in effect at the time of this Declaration's effective date.

ARTICLE 10 **GENERAL PROVISIONS**

Section 10.1 Conflict. In the event of an irreconcilable conflict or inconsistency between the terms of this Declaration and those of the Articles, Bylaws and/or Rules regarding the same subject matter, this Declaration's terms shall govern.

Section 10.2 Severability. Every provision of this Declaration is intended to be severable. If any term of provision is finally adjudged illegal or invalid by a court for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder which shall continue in full force and effect to the extent legally possible. This Severability provision shall be construed and considered in accordance with the Survival provision incorporated relative to the prior declaration as set forth hereinafter.

Section 10.3 Time is Of the Essence. Time is of the essence and material to each and every covenant to which a period of time is subscribed for the doing of an act or for a violation or failure to perform an action.

Section 10.4 Joint and Several Liability. Liability for all Assessments, liens and fines shall be joint and several among multiple Owners of a Lot.

Section 10.5 No Waiver Intended. No failure of the Association or of any Owner to enforce any provision of this Declaration shall be construed to constitute a continuing waiver as to future enforcement of the same provision, or to constitute a waiver of any other provision then or in the future.

Section 10.6 Notices. Where this Declaration requires written notices be given, unless otherwise specified in the applicable section hereof, and unless otherwise required by law (e.g. notice of intent to lien must be given certified mail, return receipt requested), such notice shall be given by personal delivery, first class U.S. regular mail or express courier with receipt of delivery, as may be necessary, appropriate or convenient. Notice shall be deemed given as of the date delivered, mailed or sent, and shall be given to Owners and the Association as follows:

10.6.1 Owner Address. An Owner may be notified at the current mailing address as determined from the records of the Association or from the current mailing address associated

with such Lot's ownership according to the records of the Duval County Property Appraiser's office or its successor; and,

10.6.2 Association Address. The Association may be notified at its current registered address listed with the Florida Secretary of State's Division of Corporations or a successor agency.

Section 10.7 Mandatory Mediation & Arbitration. Notwithstanding anything to the contrary, an Owner shall be required to follow all mandatory provisions of Florida law related to mediation and binding arbitration of homeowner's disputes as presently set forth at section 720.303(10) and section 720.311, Florida Statutes (2016), or any additional, alternative or successor state laws, prior to the commencement of any litigation or other proceeding against another Owner or the Association Board.

Section 10.8 Attorney Fees; Remedies. In any suit or other legal proceeding, including the bringing of an action to foreclose upon a lien against an individual Lot, the prevailing party as finally determined by a court of competent jurisdiction or other body having jurisdiction, shall be entitled to an award of reasonable attorneys fees and court costs related to any issue disputed in such suit or proceeding, including appellate proceedings, and including any post-judgment attorney's fees relative to collection of any debt or enforcement of any judgment. Additionally, the Association shall be entitled to a lien relative to any judgment or other award of attorney's fees and costs which lien may be later foreclosed in the same manner as an Assessment. Moreover, should any violation of the governing documents or failure to pay an Assessment or fine result in the expenditure of Association funds for legal fees and related costs, but ultimately without resort to litigation, the Association shall be entitled to recover the actual fees and costs expended and may add same to the account of the Owner to be due and payable within thirty (30) days from the date of the expenditure. The Association shall have all remedies at law or in equity as permitted to a non-profit corporation and/or Association at law.

Section 10.9 Reference in Future Deeds. Each Owner covenants that it will strive to incorporate this Declaration, by express and specific reference to the Duval County official records book and page where same is recorded, or by way of attachment in its entirety including its attendant attachments, into any future deeds conveying a Lot; however, any failure of any Owner to do so shall not affect the validity of any provision hereof.

Section 10.10 Duration & Automatic Extension. This Declaration shall run with the land and be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date this instrument is recorded, after which time such Declaration shall be deemed automatically extended for successive periods of ten (10) years unless an instrument unanimously executed by all Lot Owners has been recorded and properly indexed in the official records of Duval County, agreeing to repeal same.

Section 10.11 Amendment. This Declaration may be amended only by the vote or written consent of not less than two-thirds (2/3) of all the Owners upon not less than fourteen (14) days notice to the Owners, and if adopted to be effected in same manner as set forth at *Section 10.10* above.

Section 10.12 Survival of Prior Declaration Upon Condition. In the event that a court of competent jurisdiction finally determines that this Declaration and/or the adoption hereof is unlawful or invalid as a whole, the prior declaration shall be deemed to survive and is hereby incorporated by reference upon such determination and applicable in whole thereafter. Likewise, in the event that a court of competent jurisdiction finally determines that this Declaration and/or the adoption hereof is unlawful in any pertinent part, or is otherwise inapplicable or unenforceable against any particular Owner or Mortgagee (or all such persons), either as a violation of applicable law or an unlawful attempt to impair an existing contract, a comparable, existing part of the prior declaration shall be deemed to survive and is hereby incorporated by reference upon such determination and applicable in such part thereafter provided and assuming same can be applied consistent with the remainder hereof.

Section 10.13 Effective Date. This Declaration shall be effective immediately upon recording in the official records of Duval County, Florida.

[Remainder of this Page Intentionally Left Blank]

ADOPTED AND DECLARED BY ASSOCIATION this 14th day of Feb, 2017.

Association:

[Signature]
Daryl Grubbs, President,
Nightfall Homeowners Association, Inc.

[Signature]
Witness 1 Signature
Kathy Jewell
Witness 1 Printed Name
[Signature]
Witness 2 Signature
Beth Ann Dowling
Witness 2 Printed Name

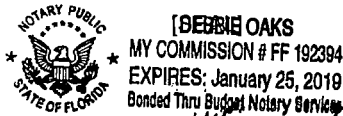
STATE OF FLORIDA
COUNTY OF DUVAL

SWORN TO AND SUBSCRIBED before me this 14th day of Feb, 2017, by Daryl Grubbs, witnessed as set forth above and being identified as follows:

Personally Known: N
Produced I.D. _____
Type of I.D. _____

[Signature]
Notary Signature
DEBBIE OAKS
Notary Printed Name

My Commission Expires:



JOINED BY DEVELOPER this 14th day of Feb, 2017

[Signature]
Witness 1 Signature
Kathy Jewell
Witness 1 Printed Name
[Signature]
Witness 2 Signature
Beth Ann Dowling
Witness 2 Printed Name

[Signature]
Daryl Grubbs, DEVELOPER, Owner, Lots 1, 2, 4, 5 & 6

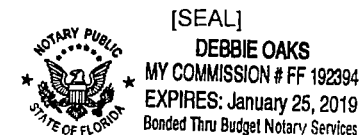
STATE OF FLORIDA
COUNTY OF DUVAL

SWORN TO AND SUBSCRIBED before me this 14th day of Feb, 2017, by Daryl Grubbs witnessed as set forth above and being identified as follows:

Personally Known: N
Produced I.D. _____
Type of I.D. _____

[Signature]
Notary Signature
Debbie Oaks
Notary Printed Name

My Commission Expires:



FROM FORD, JETER & DOWDUS
119600009222

TO 119049224000

1996.07-08 03109PM #301 P.06/11

EXHIBIT "A"

A part of the Castro Y Ferrer Grant, Section 38, Township 2 South, Range 29 East, Duval County, Florida, being more particularly described as follows:

For a Point of Reference commence at the intersection of the northerly right-of-way line of Seagate Avenue as recorded in Deed Book 777, Pages 255 through 260 of the current public records of Duval County, Florida with the westerly right-of-way line of Kings Road (County Road No. 710) as shown on plat of Seagate Forest as recorded in Plat Book 27, Pages 82 and 82A of said public records and run North $40^{\circ}06'15''$ West along said westerly right-of-way line of Kings Road, a distance of 348.77 feet to a point for the Point of Beginning.

From the Point of Beginning thus described continue North $40^{\circ}06'15''$ West along said westerly right-of-way, a distance of 82.14 feet to the point of curve of a curve concave to the East and having a radius of 440.28 feet; run thence northerly along the arc of said curve, the same being the westerly right-of-way line of Kings Road, a chord bearing and distance of North $22^{\circ}46'40''$ West, 262.24 feet to the point of tangent of said curve; run thence North $05^{\circ}27'05''$ West continuing along said westerly right-of-way line of Kings Road, a distance of four feet, more or less, to the southerly edge of the Pablo Creek Marsh; run thence in a westerly direction along said southerly edge of the Pablo Creek Marsh, a distance of 450 feet, more or less, to the easterly line of the lands as described in the Official Records of said County in Volume 2610, Page 733; run thence South $19^{\circ}42'05''$ East along said easterly deed line and the southerly projection thereof, a distance of 400 feet, more or less, to a point that bears North $19^{\circ}42'05''$ West, 143.20 feet from the aforesaid northerly right-of-way line of Seagate Avenue; run thence North $83^{\circ}56'51''$ East, a distance of 109.88 feet to a point, run thence North $88^{\circ}53'45''$ East, parallel to last mentioned northerly right-of-way line, a distance of 164.61 feet to a point, run thence North $23^{\circ}44'45''$ West, a distance of 47.15 feet; thence run North $57^{\circ}21'30''$ East, a distance of 157.40 feet to the Point of Beginning.

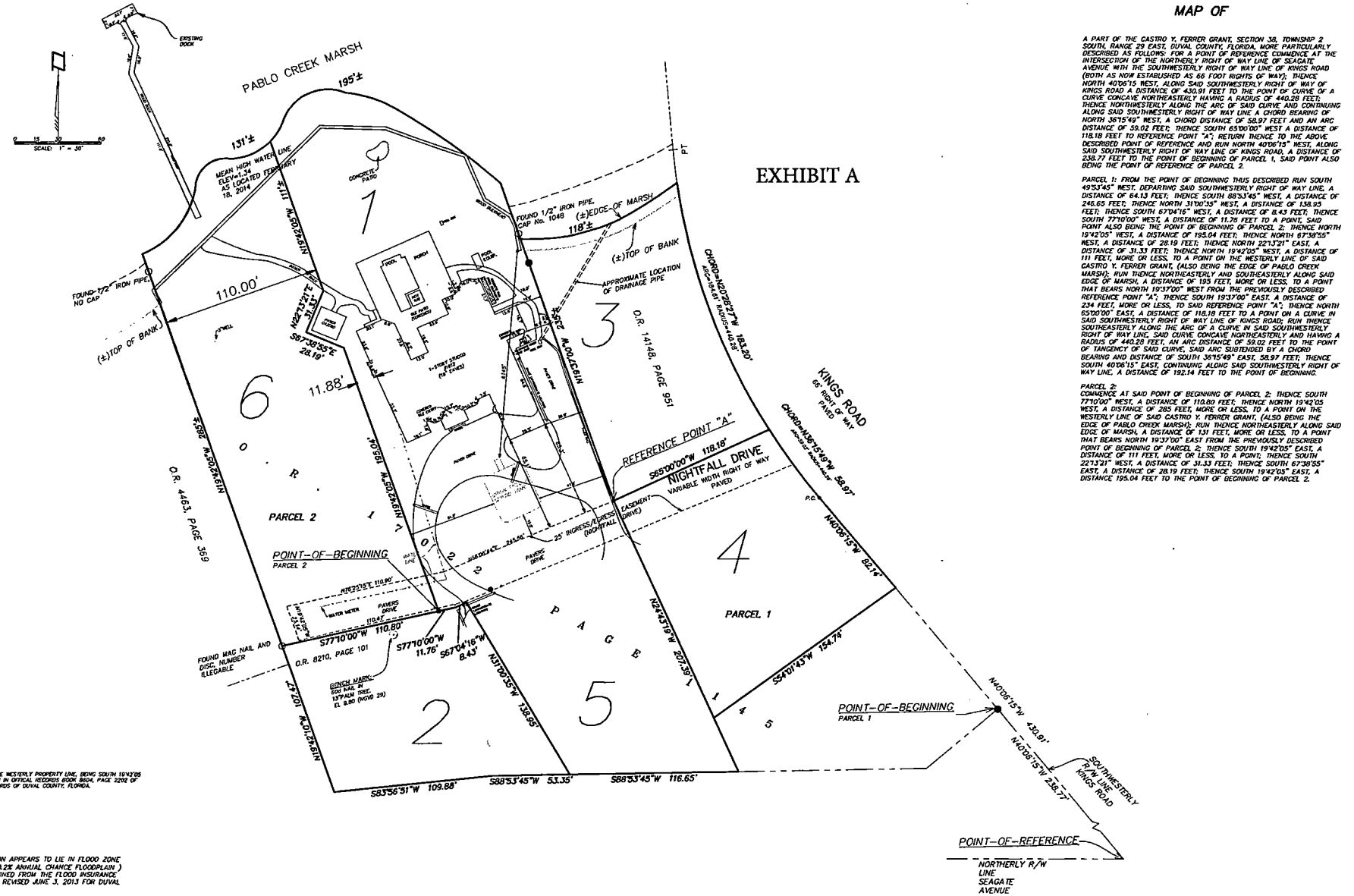
The above described lands are a portion of lands described in deed recorded in the Official Records of said County in Volume 2869, Page 865.

gnubbs.txt

119600009222

MAP OF

EXHIBIT A



A PART OF THE CASTRO V. FERRER GRANT, SECTION 36, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF SEAGATE AVENUE WITH THE SOUTHWESTERLY RIGHT OF WAY LINE OF KINGS ROAD (BOTH AS NOW ESTABLISHED AS 66 FOOT RIGHTS OF WAY); THENCE NORTH 40°16'15\"/>

PARCEL 1: FROM THE POINT OF BEGINNING THIS DESCRIBED RUN SOUTH 49°51'45\"/>

PARCEL 2: COMMENCE AT SAID POINT OF BEGINNING OF PARCEL 2; THENCE SOUTH 77°00'00\"/>

NOTES:
 1. THIS IS A MAP ONLY.
 2. BEARINGS BASED ON THE WESTERLY PROPERTY LINE, BEING SOUTH 10°42'05\"/>

THE PROPERTY SHOWN HEREON APPEARS TO LIE IN FLOOD ZONE "C" (AREA OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN) AS WELL AS CAN BE DETERMINED FROM THE FLOOD INSURANCE RATE MAP No. 12031C0416H, REVISED JUNE 3, 2013 FOR DUVAL COUNTY, FLORIDA.

NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

DONN W. BOATWRIGHT, P.S.M.
 FLA. LIC. SURVEYOR AND MAPPER No. LS 3285
 FLORIDA LICENSED SURVEYING AND MAPPING BUSINESS No. LB 3672