

**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS, AND RESTRICTIONS  
FOR TROUT RIVER GARDENS  
(City of Jacksonville, Duval County, Florida)**

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**NOTICE: PURSUANT TO SECTION 6.06, UPON THE SALE OR RESALE OF A DWELLING,  
A CAPITAL OR RESALE ASSESSMENT IS REQUIRED TO BE PAID.**

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

**FOR TROUT RIVER GARDENS**

**Table of Contents**

	<u>Page</u>
ARTICLE I DEFINITIONS .....	8
Section 1.01 Definitions .....	8
Section 1.02 Interpretation .....	14
ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION .....	14
Section 2.01 Property .....	14
Section 2.02 Additional Property .....	15
Section 2.03 Method of Annexation .....	15
Section 2.04 Withdrawal .....	15
ARTICLE III THE ASSOCIATION .....	15
Section 3.01 The Association; Directors; Officers; Meetings; Official Records .....	15
Section 3.02 Membership .....	21
Section 3.03 Voting Rights and Turnover of Association .....	21
Section 3.04 Multiple Owners .....	22
ARTICLE IV PROPERTY RIGHTS IN THE COMMON AREAS .....	22
Section 4.01 Easements .....	22
Section 4.02 Title to Common Area .....	22
Section 4.03 Limited Common Area .....	23
Section 4.04 Association Easements .....	23
Section 4.05 Extent of Easements .....	23
Section 4.06 Additional Easements over Common Area .....	24
Section 4.07 Delegation .....	24
Section 4.08 Reservation for Corrections .....	24
Section 4.09 MSTU/MSBU .....	25
Section 4.10 Conservation Easement Area(s) .....	25
Section 4.11 Stormwater Easements .....	25
Section 4.12 Future Easements .....	26
Section 4.13 Wall, Entrance Feature and Landscape Easements .....	26
Section 4.14 Planting and Screening Easements .....	26
Section 4.15 Easements of Encroachment .....	27
Section 4.16 Sidewalk/Bike Path Easements .....	27
Section 4.17 Platted Easements .....	27
ARTICLE V INSURANCE .....	27
Section 5.01 Basic Insurance .....	27

Section 5.02	Additional Insurance .....	28
Section 5.03	Individual Insurance .....	28
Section 5.04	Insurance Premiums .....	28
ARTICLE VI COVENANT FOR MAINTENANCE ASSESSMENTS .....		28
Section 6.01	Lien and Personal Obligation Nonpayment .....	28
Section 6.02	Purpose; Powers .....	30
Section 6.03	Determination of Annual Assessments .....	32
Section 6.04	Annual Assessments .....	34
Section 6.05	Initial Annual Assessment and Start-Up Assessment.....	34
Section 6.06	Re-Sale Assessment .....	34
Section 6.07	Special Assessments .....	35
Section 6.08	Individual Assessment.....	35
Section 6.09	Certificate .....	35
Section 6.10	Subordination .....	35
Section 6.11	Funding by Declarant .....	35
ARTICLE VII ARCHITECTURAL CONTROL .....		36
Section 7.01	Architectural Control; ARC.....	36
Section 7.02	Membership of ARC.....	37
Section 7.03	Approvals .....	37
Section 7.04	Violations .....	37
Section 7.05	Variances .....	37
Section 7.06	Waiver of Liability .....	38
Section 7.07	Enforcement .....	38
Section 7.08	Exemption .....	38
Section 7.09	No Waiver of Future Approvals .....	38
ARTICLE VIII MAINTENANCE OBLIGATIONS .....		39
Section 8.01	Owner's Responsibility .....	39
Section 8.02	Assessment of Cost .....	40
Section 8.03	Access.....	40
Section 8.04	Common Areas.....	40
Section 8.05	Interpretation .....	40
ARTICLE IX RESTRICTIVE COVENANTS .....		40
Section 9.01	Wells.....	40
Section 9.02	Obnoxious or Offensive Activity .....	40
Section 9.03	Rules and Regulations .....	41
Section 9.04	Animals .....	41
Section 9.05	Garbage and Trash; Recycling.....	41
Section 9.06	Storage Receptacles.....	42
Section 9.07	Vehicles .....	42
Section 9.08	Visibility of Intersections.....	43
Section 9.09	Temporary Structures .....	43
Section 9.10	Signs .....	43
Section 9.11	Air Conditioning Equipment .....	44
Section 9.12	Exterior Electronic or Electric Devices; Solar Panels.....	44
Section 9.13	Subdivision.....	44

Section 9.14	Completion	44
Section 9.15	Excavation	44
Section 9.16	Sidewalks	45
Section 9.17	Fences and Walls	45
Section 9.18	Yard Accessories and Play Structures	45
Section 9.19	Use; Rentals; Timesharing	46
Section 9.20	Dwellings	47
Section 9.21	Tree Removal and Landscaping	47
Section 9.22	Debris	47
Section 9.23	Pumping or Draining; Drilling or Mining	48
Section 9.24	Ramps	48
Section 9.25	Firearms	48
Section 9.26	Declarant Reservation	48
Section 9.27	Conservation Tracts	49
Section 9.28	Mailboxes	49
Section 9.29	Windows	49
Section 9.30	Outdoor Drying	50
Section 9.31	Use of Name "Trout River Gardens"	50
Section 9.32	Garages	50
Section 9.33	Flags	50
Section 9.34	Holiday Decorations	50
Section 9.35	Approved Builders	50
Section 9.36	Solicitation	51
Section 9.37	Yard Sales	51
Section 9.38	Exterior Lighting	51
Section 9.39	Traffic Hazards	51
Section 9.40	Hurricane Shutters	51
Section 9.41	Variances	51
Section 9.42	Pools	51
ARTICLE X STORMWATER MANAGEMENT		52
Section 10.01	Association	52
Section 10.02	Ownership/Control, Maintenance, and General Use of Stormwater Management System.	53
Section 10.03	Easements for Access and Drainage	54
Section 10.04	Amendment to Declaration	54
Section 10.05	Enforcement	54
ARTICLE XI ADDITIONAL COVENANTS AND RESTRICTIONS		54
ARTICLE XII AMENDMENT		54
Section 12.01	Amendment by Members	54
Section 12.02	Restrictions on Amendments	55
Section 12.03	Recording of Amendments	56
ARTICLE XIII HUD/FHA/VA AND DISTRICT APPROVAL RIGHTS		56
ARTICLE XIV ARTICLE XIV DURATION AND TERMINATION		56
ARTICLE XV ENFORCEMENT		56

Section 15.01	Compliance by Owners .....	56
Section 15.02	Enforcement .....	56
Section 15.03	Fines; Suspension .....	57
ARTICLE XVI DAMAGE OR DESTRUCTION TO COMMON AREA .....		58
Section 16.01	Sufficient Insurance Proceeds .....	58
Section 16.02	Insufficient Insurance Proceeds.....	59
Section 16.03	Negligence or Willful Misconduct.....	59
ARTICLE XVII ARTICLE XVII MORTGAGEE PROTECTION .....		59
Section 17.01	Records and Notices.....	59
Section 17.02	Adverse Events.....	59
Section 17.03	Failure of Mortgagee to Respond.....	59
ARTICLE XVIII ARTICLE XVIII GENERAL PROVISIONS.....		60
Section 18.01	Notice .....	60
Section 18.02	Enforcement .....	60
Section 18.03	Interpretation .....	60
Section 18.04	Severability.....	60
Section 18.05	Effective Date.....	60
Section 18.06	Conflict.....	60
Section 18.07	Cooperation .....	60
Section 18.08	Easements .....	60
Section 18.09	No Public Right or Dedication .....	61
Section 18.10	Constructive Notice and Acceptance.....	61
Section 18.11	Execution of Documents Required by the Local Government.....	61
Section 18.12	Construction .....	61
Section 18.13	Assignment of Rights and Duties .....	61
Section 18.14	Breach Shall Not Permit Termination .....	62
Section 18.15	Negation of Partnership.....	62
Section 18.16	Attorney Fees .....	62
Section 18.17	No Vested Rights.....	62
Section 18.18	Community Signage.....	62
ARTICLE XIX ARTICLE XIX ALTERNATIVE DISPUTE RESOLUTION .....		63
Section 19.01	Introduction .....	63
Section 19.02	Right of Action by Association .....	63
Section 19.03	Disputes Between Owner and Declarant.....	63
Section 19.04	Disputes Governed by Section 720 .....	64
Section 19.05	Definitions .....	64
Section 19.06	MANDATORY PROCEDURES .....	65
Section 19.07	Easement to Inspect and Right to Correct .....	65
Section 19.08	Claim Affecting Matters of Common Interest.....	65
Section 19.09	Claim by Owners – Improvements on Lots.....	68
Section 19.10	Notice .....	69
Section 19.11	Negotiation .....	70
Section 19.12	Mediation.....	70
Section 19.13	Construction Defects Governed by Ch.....	70
Section 19.14	Binding Arbitration-Claims.....	70

Section 19.15 Allocation of Costs.....	71
Section 19.16 General Provisions .....	72
Section 19.17 Severability.....	72
Section 19.18 Funding the Resolution of Claims.....	72
<b>ARTICLE XX DISCLAIMERS.....</b>	<b>72</b>
Section 20.01 Disclaimer of Representations or Warranties.....	72
Section 20.02 Retaining Walls .....	72
Section 20.03 Safety.....	72
Section 20.04 Wet and Dry Retention Areas.....	73
Section 20.05 Water Bodies and Wildlife .....	73
Section 20.06 General .....	74

**EXHIBIT "A" – ARTICLES**

**EXHIBIT "B" – BYLAWS**

**EXHIBIT "C" – COMMON AREA TRACT(S)**

**EXHIBIT "D" – MAINTENANCE RESPONSIBILITY CHART**

**DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS, AND RESTRICTIONS FOR TROUT RIVER GARDENS**

**THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS FOR TROUT RIVER GARDENS** is made as of and on the Effective Date, by STARLIGHT HOMES FLORIDA L.L.C., a Delaware limited liability company ("Declarant"), whose post office address is 1064 Greenwood Boulevard, Suite 124, Lake Mary, Florida 32746, and joined by TROUT RIVER GARDENS HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation (the "Association") and CW-TROUT RIVER, LLC, a Delaware limited liability company ("Landbanker").

**RECITALS:**

**A.** Declarant owns the real property described in the plat for Trout River Development, as Recorded in Plat Book 85, Page 191 of the Public Records (the "Initial Plat").

**B.** The Property is a proposed residential community known as "Trout River Gardens" (the "Development").

**C.** Declarant is the developer of the "community" (as that term is defined in the Association Act) pursuant to the Association Act.

**D.** Declarant desires to preserve and enhance the values and quality of life on the Property, as later defined herein, and the health, safety, and welfare of the residents thereof, and to provide for the maintenance of certain areas and improvements for the benefit of the Property.

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

**DECLARATIONS:**

**NOW, THEREFORE**, Declarant declares that the Property is and shall be owned, improved, held, controlled, transferred and occupied subject to this Declaration.

The recitals above are incorporated herein as if fully set forth herein.

This Declaration is not intended to, nor does it create or establish a condominium under Chapter 718 of the Florida Statutes, a cooperative under Chapter 719 of the Florida Statutes, or a timeshare under Chapter 721 of the Florida Statutes. No condominium under Chapter 718 of the Florida Statutes, cooperative under Chapter 719 of the Florida Statutes, or timeshare under Chapter 721 of the Florida Statutes, may be created or established at any time upon the Property.

**ARTICLE I**

**DEFINITIONS**

**Section 1.01** **Definitions.** Some of the definitions set forth in the Governing Documents may contain terms, conditions, and provisions that are necessary for: (i) the proper interpretation of the Governing Documents; and (ii) to fully understand the Members' rights, privileges, responsibilities, duties, liabilities, and

obligations under the Governing Documents and under the Association Act. Capitalized terms used above or herein that are not defined in this Article I shall have the meanings given to such terms elsewhere in this Declaration. When used above or herein in this Declaration, the following terms shall have the following meanings:

(a) "Additional Property" shall mean and refer to those lands, together with any improvements thereon, if any, which are made subject to this Declaration by annexation pursuant to Article II hereof.

(b) "Annual Assessments" shall mean and refer to the assessments levied annually by the Association pursuant to the "Association Act" and the "Budget" (as that term is defined in Section 6.03(a) of this Declaration).

(c) "Architectural Control Provisions" shall collectively mean and refer to the terms, covenants, conditions, provisions, and limitations set forth in Article VII and Article IX of this Declaration.

(d) "Area(s) of Common Responsibility" shall mean and refer to any land or improvement located in or near the Property which is not intended to be owned by the Association, but which is intended to be improved, maintained, or operated by the Association in the manner and to the extent determined from time to time by the Board. Areas of Common Responsibility may be designated by this Declaration, any Supplemental Declaration, a contract entered into by the Association, or by a decision of the Board. Notwithstanding anything in this Declaration to the contrary, designation of any Areas of Common Responsibility shall not conflict with the provisions of Article VIII. Prior to Turnover, this Section 1.01(d) may not be amended without Declarant's prior express written consent, which consent may be granted, conditioned or denied in Declarant's absolute and sole discretion. The following are hereby designated as Areas of Common Responsibility:

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

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

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

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

(e) "Articles" shall mean and refer to the Articles of Incorporation of the Association which have been filed in the Office of the Secretary of State of the State of Florida, a copy of the initial Articles is attached as Exhibit "A" to this Declaration and made a part hereof. The Articles may be amended as provided therein, and it shall not be necessary to amend this Declaration in order to amend the Articles.

(f) "Assessments" shall mean and include: (i) Annual Assessments or charges; (ii) "Special Assessments" (as that term is defined in Section 6.08 of this Declaration); (iii) "Individual Assessments" (as that term is defined in Section 6.09 of this Declaration); (iv) if required to be paid pursuant to the terms hereof or hereafter required by the Board from time to time, a one-time only start-up assessment ("Start-Up Assessment"); (v) "Re-Sale Assessment" (as that term is defined in Section 6.07 of this Declaration); (vi) assessments or amenity fees permitted pursuant to the Association Act; and (vii) any interest and late charges that may be imposed by the Board at its discretion, and the cost of collection of any of the foregoing, including, without limitation, court costs and expenses/fees and reasonable attorneys' and paralegals' fees before trial, at trial, and on appeal.

(g) "Association" shall mean and refer to the Trout River Gardens Homeowners Association, Inc., a Florida not for profit corporation, which is incorporated, and its successors and/or assigns.

(h) "Association Act" shall mean and refer to the laws of the State of Florida applicable to the operations of the Association on the Effective Date (as opposed to as amended, restated, or re-codified from time to time), including, but not necessarily limited to, those laws set forth in Chapters 617 and 720 of the Florida Statutes. Chapter 720 of the Florida Statutes, being the Florida legislation specifically enacted to govern the Association and the "Community" (as that term is defined in the Chapter 720 of the Florida Statutes), shall in all instances trump the more general legislation set forth in Chapter 617 of the Florida Statutes. In the event of any ambiguity or conflict between Chapter 617 and 720 of the Florida Statutes, Chapter 720 shall govern as necessary to resolve any such ambiguity or conflict.

(i) "Board", "Board of Directors" or "Directors" shall mean and refer to the Board of Directors of the Association.

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

(k) "Bylaws" shall mean and refer to the Bylaws of the Association. A copy of the initial Bylaws are attached as Exhibit "B" to this Declaration and made a part hereof. The Bylaws may be amended as provided therein, and it shall not be necessary to amend this Declaration in order to amend the Bylaws.

(l) "City" shall mean and refer to the City of Jacksonville, Florida, a Florida municipal corporation, specifically including each and all of its departments, divisions, and agencies.

(m) "Common Area(s)" or "Common Property" shall mean and refer to the real and personal property from time to time owned or intended to be owned by the Association and devoted to the use and enjoyment of all Members of the Association, all at Common Expense. Without limiting the generality of the foregoing, Common Area shall include, but not be limited to: (i) "Common Areas" (as that term is defined in the Association Act), ponds, recreation areas, parks, open spaces, and green spaces that are located within the Property and owned from time to time by the Association; (ii) the Common Area Tracts; (iii) the Surface Water Management

System, to the extent the Association owns same or has the maintenance responsibility with regard to or concerning same; (iv) any Conservation Areas; and (v) all easements, rights and other interests established in favor of the Association by this Declaration, any Recorded instrument executed by Declarant, or any Recorded Plat or any portion thereof.

(n) "Common Area Tract(s)" shall initially mean and refer only to the platted tracts set forth on the Initial Plat and identified on Exhibit "C" attached hereto and made a part hereof as to be owned (in fee simple no later than Turnover) by the Association, which exhibit also depicts, subject to the terms of this Declaration, the party or entity responsible for maintaining said Common Area Tracts.

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

(p) "Community Development District" shall be as defined in Chapter 190 of the Florida Statutes.

(q) "Conservation Easement" shall be as defined in Article IV, Section 4.10 hereof.

(r) "Conservation Easement Area(s)" shall mean and refer to any areas or portions of the Property from time to time included within, or subjected to, a Conservation Easement pursuant to the provisions of Article IV, Section 4.10 hereof.

(s) "County" shall mean and refer to Duval County, Florida, a political subdivision of the State of Florida, specifically including each and all of its departments, divisions, and agencies.

(t) "Declarant" shall mean and refer to Starlight homes Florida L.L.C., a Delaware limited liability company, its successors and/or assigns. No successor or assignee of Declarant shall have any rights, privileges, liabilities or obligations of Declarant under this Declaration or any other Governing Document unless such rights and obligations are specifically set forth in a Recorded instrument of succession and/or assignment, or unless such rights expressly pass by operation of Law from Declarant to such successors and/or assigns. As long as Landbanker (defined below) owns any portion of real property in Trout River Gardens, any assignment of Declarant's rights and/or obligations under this Declaration shall require the prior written consent of Landbanker. Any assignment by Declarant in contravention of the foregoing sentence shall be void and of no force or effect.

(u) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Easements, and Restrictions for Trout River Gardens, as amended, modified, restated or supplemented.

(v) "Deficit Fund" or "Deficit Funding" shall mean and refer to Declarant's subsidizing of the Common Expenses of the Association pursuant to Section 6.11 hereof.

(w) "Division" shall mean and refer to the Division of Florida Condominiums, Timeshares, and Mobile Homes, or any successor governmental agency, division, or department of the State of Florida.

(x) "District" shall mean and refer to the St. Johns River Water Management District, an agency created pursuant to Chapter 373, Florida Statutes.

(y) "Dwelling" or "Residence" shall mean and refer to any single family residence or dwelling unit located on a Lot.

(z) "Effective Date" shall mean and refer to the date that this Declaration is Recorded in the Public Records.

(aa) "Electronic Transmission" shall mean and refer to any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of Electronic Transmission include, but shall not be limited to, telegrams, facsimile transmissions, Short Message Service (SMS), Multimedia Messaging Service (MMS), and email. Notices may be given via Electronic Transmission for and regarding any meetings of the Board, any committee meetings requiring notice under the Association Act, including, but not limited to, ARC meetings, and any annual and special meetings of the Members; provided, however, that a Member must consent in writing to receiving notice by Electronic Transmission. Consent by a Member to receive notice by Electronic Transmission shall be revocable by the Member only by written notice to the Board.

(bb) "Fiscal Year" the first fiscal year shall begin on the date of incorporation and end on December 31 of that year ("Fiscal Year"). Thereafter, the Fiscal Year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year.

(cc) "Governmental Authority(ies)" shall mean and refer to any federal, state or local authority, court, department, division, legislature or instrumentality having authority, control or jurisdiction over or concerning the Development, the Property, the Community, the Areas of Common Responsibility, the Association, the Members and/or the Owners, including, but not limited to, the Local Government.

(dd) "Governing Document(s)" shall collectively mean the "governing documents" (as that term is defined in the Association Act).

(ee) "Homeowners' Association" shall be as defined in the Association Act.

(ff) "Landbanker" shall mean CW – Trout River, LLC, a Delaware limited liability company. Subject to the terms of any Landbanker Agreement (as defined below), in the event of any default by Declarant under such Landbanker Agreement, Landbanker's rights, privileges, exemption and obligations under this Declaration can be assigned to any entity who is duly licensed to construct Townhomes and is in the business of building and constructing residences.

(gg) "Landbanker Agreement" shall mean any agreement between Landbanker and Declarant related to the conveyance, sale, re-conveyance and/or development of certain Lots within Trout River Gardens, including the Option Agreement.

(hh) "Law" or "law" shall mean and refer to all laws, statutes (including, but not limited to, the Association Act), codes, ordinances, rules, requirements, regulations, orders, decrees and judgments of any Governmental Authority having jurisdiction over the Association, the Property, the Community, Declarant or the Owners or Members.

(ii) "Limited Common Area" or "Limited Common Property" means any and all real and personal property, easements, improvements, facilities and other interest, if any, as more particularly described in Article IV, Section 4.03 hereof, which are reserved for the use of Owner(s) of certain Lots to the exclusion of other Owner(s) and/or other Lots.

(jj) "Limited Common Expense(s)" shall mean and refer to Common Expenses with respect to any Limited Common Area.

(kk) "Lot" shall mean and refer to each residential building site created by any Recorded Plat of the Property, including any Dwelling located thereon once constructed.

(ll) "Local Government" shall mean and refer to, as applicable, the County and/or the City.

(mm) "Member" shall mean and refer to each Member of the Association as provided in Article III, Section 3.02 hereof.

(nn) "Monetary Obligation" shall mean and refer to any monetary obligations, including, but not limited to, Assessments, due to the Association by any Member pursuant to the Governing Documents, the Rules and Regulations, or under the Association Act.

(oo) "Mortgage" shall mean and refer to any first-lien or first-position mortgage encumbering a Lot or Dwelling that was granted or made in good faith and for value.

(pp) "Mortgagee" shall mean and refer to the owner and holder of a Mortgage, which owner and holder of said Mortgage may be a bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, an agency of the United States government, private or public pension fund, the United States Department of Veterans Affairs (the "VA"), the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a credit union, real estate or mortgage investment trust or any other lender generally recognized as an institutional lender in the County.

(qq) "Officer(s)" shall have the meaning given to such term in the Articles or the Bylaws.

(rr) "Owner" shall mean and refer to the record holder, whether one or more persons or entities, of fee-simple title to any Lot in the Property, but, notwithstanding any applicable theory of the law of mortgages, the term "Owner" shall not mean or refer to any Mortgagee unless and until such Mortgagee has acquired title to a Lot pursuant to an unappealable, final, lawful foreclosure proceeding or a proper and lawful conveyance by deed in lieu of foreclosure. All owners of a single Lot shall be treated for all purposes as a single Owner, irrespective of whether such ownership is joint, in common, or by tenancy by the entirety.

(ss) "Permit" shall mean and refer to Individual Environmental Resource Permit No. 174621-3 issued by the District.

(tt) "Property" shall initially mean and refer to the real property described in the Initial Plat (the "Initial Property"), together with any Additional Property hereafter annexed to this Declaration pursuant to Article II hereof.

(uu) "Public Records" shall mean and refer to the official or public records of the County, or such other place designated from time to time as the official County location for Recording documents affecting and encumbering title to real property and any improvements located thereon.

(vv) "Record," "Recordation," "Recording," or "Recorded" shall mean to record, the recording of, or appearing of record, of an instrument in the Public Records.

(ww) "Recorded Plat(s)" shall mean and refer to any and all subdivision plats of the Property, including the Initial Plat, Recorded in the Public Records, as the same may be amended from time to time.

(xx) "Rules and Regulations" shall mean and refer to any and all written rules, regulations, procedures, criteria, guidelines and standards of the Association: (1) governing and/or restricting the use of the Property; (2) governing the conduct of the Members/Owners and members of such Member's/Owner's

family, tenants, guests or other invitees; and (3) governing the operation of the Association, which rules and regulations are adopted by the Declarant, the Board, the ARB, or any duly appointed committee or subcommittee of the Board, pursuant to this Declaration, the Articles, the Bylaws or the Association Act, including, but not limited to, the Planning Criteria, as any of such rules and regulations may be changed, modified, altered, amended, rescinded, supplemented and augmented from time to time.

(yy) "Street(s)" shall mean and refer to the rights-of-way of all streets, roads, alleys, drives, courts, ways and cul-de-sacs within the Property as the same are described in and depicted on any Recorded Plat, and all paving, curbs and other improvements, facilities and appurtenances constituting part of the roadway system within the Property, conveyed or dedicated to the Local Government or other appropriate Governmental Authority or quasi-governmental entity.

(zz) "Supplemental Declaration" shall mean and refer to any instrument which extends the effect of this Declaration to any Additional Property pursuant to Article II hereof.

(aaa) "Stormwater Management System" or "Surface Water Management System" shall mean and refer to a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapter 62-330, F.A.C. Surface Water Management System facilities shall include, but are not limited to: all inlets, ditches, swales, culverts, water control structures, retaining walls, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas.

(bbb) "Tenant" or "tenant" shall mean and refer to any tenant, lessee, subtenant, or sublessee, beneficiary under any land trust pursuant to Section 689.071 of the Florida Statutes, or any other occupant or possessor that is not the Owner thereof of any Lot or improvement thereon, whether or not such relationship is documented by a lease, a sublease, a trust agreement, or any other document or writing (collectively, "Lease" or "lease").

(ccc) "Turnover" shall mean and refer to the transition of control of the Association by Declarant pursuant to Section 720.307 of the Association Act.

(ddd) "Turnover Meeting" shall mean and refer to the meeting at which Members other than Declarant elect a majority of the Directors pursuant to Section 720.307 of the Association Act.

**Section 1.02** Interpretation. The provisions of the Governing Documents shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of the Association and the Property, the preservation of the value of the Lots, and the protection of Declarant's rights, benefits and privileges herein contemplated and to the fullest extent permitted by the Association Act. Notwithstanding that some or all of the Governing Documents may have been prepared, initially, at the direction of Declarant, and notwithstanding any rule of construction to the contrary, the Governing Documents shall not be more strictly construed or interpreted against Declarant or any of Declarant's affiliates than against any other person or entity.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

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

**Section 2.02**                    **Additional Property.** Declarant shall have the right, but not the obligation, to bring within the scope of this Declaration, as Additional Property, lands lying adjacent to or in the vicinity of the Property, at any time and from time to time within twenty (20) years after the Effective Date (the "**Potential Additional Property**"). Unless and until annexed, this Declaration shall not encumber or bind in any way any of the Potential Additional Property. Except as provided in Article XIII hereof, annexation of any or all of the Potential Additional Property as Additional Property may be accomplished by Declarant without the consent of the Association, the Owners, the Members, any Mortgagee or other lien holder, or anyone else, except for the written consent of Landbanker, which will be required so long as (and only so long as Landbanker owns any portion of the real property within Trout River Gardens.

**Section 2.03**                    **Method of Annexation.** Additions authorized under this Article II shall be made, if at all, by Recording a Supplemental Declaration extending this Declaration to the Additional Property. The Supplemental Declaration shall describe that portion of the Potential Additional Property annexed as Additional Property and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing that portion of the Potential Additional Property to this Declaration and extending the jurisdiction of the Association to such Additional Property. The Supplemental Declaration may contain additional terms not inconsistent with this Declaration to reflect the different character, if any, of the Additional Property then being annexed or of the housing or development approaches being implemented with respect to such Additional Property. Upon the Recordation of any Supplemental Declaration in the Public Records, the Owners shall also have a right and non-exclusive easement of use and enjoyment in and to the Common Area, if any, located on the Additional Property, and the obligation, as a Common Expense, to contribute to the cost of operating, managing, maintaining, repairing, operating, administrating, replacing, insuring and improving: (a) the additional Common Area located within the Additional Property; and (b) any additional Areas of Common Responsibility located within the vicinity of the Additional Property. Any Supplemental Declaration Recorded in the Public Records in accordance with the terms hereof shall be conclusive in favor of all persons who rely on such Supplemental Declaration in good faith. From and after Recordation of any Supplemental Declaration in the Public Records, the Additional Property described therein shall be subject to the provisions of this Declaration and to the jurisdiction of the Association.

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

## ARTICLE III

### THE ASSOCIATION

#### **Section 3.01**                    **The Association; Directors; Officers; Meetings; Official Records.**

(a)                    **Association.** The Association is and shall remain a Florida nonprofit corporation. The Association shall have the power to do all lawful things which may be authorized, assigned, required or permitted to be done by the Association by virtue and authority of the Governing Documents and applicable Law, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the operation, maintenance, administration, repairing, replacing, insuring and improvement of the Property, the Community, the Common Area and all Areas of Common Responsibility. Neither the Articles, the Bylaws, nor any of the other Governing Documents shall be amended or interpreted so as to be or become inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The Board, and such Officers as the Board may appoint from time to time, shall conduct the affairs of the Association.

(b) Directors.

(i) Number. At all times, the Board shall consist of at least three (3) Directors and shall always be an odd number. Prior to Turnover, (y) the Board shall consist of three (3) Directors unless Declarant, by notice to the Association, increases the Board; and (z) the number of Directors may not be increased or decreased without Declarant's prior written consent, which consent may be granted or denied by Declarant in its sole and absolute discretion. The term of office of the initial Directors appointed herein by Declarant shall expire at the time of Turnover, unless otherwise required by Florida law, or unless those Directors are removed or replaced by Declarant in its sole discretion. After Turnover, Directors shall be elected to the Board by a vote of the Members. Notwithstanding anything in the foregoing to the contrary, Declarant shall, without regard to the number of votes allocated to Declarant, be entitled to appoint one (1) Director for as long as Declarant is the Owner of at least five percent (5%) of the total number of Lots within the Property. Nothing contained in the foregoing, however, is intended, nor shall be deemed, to create any obligation upon Declarant to exercise such right to appoint such one (1) Director.

(ii) Appointment; Election. Prior to Turnover, Declarant, as a Class B Member, shall have the sole and absolute right to appoint, remove, and recall all of the Directors; provided, however, that if at any time Declarant is not permitted under Florida law to appoint, remove, or recall such Directors, then the Class B Members shall have the sole and absolute right to elect, remove, and recall all such Directors, which election, removal or recall, to the fullest extent permitted under the Association Act, may be conducted via written consent of the Class B Members, in lieu of a meeting of the Class B Members. Notwithstanding the foregoing, Members other than Declarant are entitled to elect at least one (1) Director if fifty percent (50%) of the Lots in all phases of the Community which will ultimately be operated by the Association have been conveyed to Members other than Declarant. Any Directors appointed by Declarant or elected by the Class B Members prior to Turnover, or appointed or elected by Declarant pursuant to this Section 3.01(b)(ii) need not be Members and need not be residents of the State of Florida. All other Directors shall be Class A Members (or the designated representatives of any entity which is a Class A Member), or designated representatives of the Class B Members, and residents of the State of Florida. After Turnover, no Member or Owner may serve as a Director if: (i) such Member or Owner is more than ninety (90) days delinquent or deficit with regard to payment of any Monetary Obligation owed to the Association, or (ii) such Member or Owner has been convicted of any felony in the State of Florida or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony in the State of Florida, unless such individual's civil rights have been restored for at least five (5) years as of the date such individual seeks election to the Board. Any Director charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property shall immediately be deemed removed from office. The Board shall fill any vacancy that occurs prior to the expiration of the term of any Director by a vote of the majority of the remaining Directors, even if less than a quorum. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Director shall be reinstated for any remainder of his or her term of office. A Member who has such criminal charges pending may not be appointed or elected to a position as a Director.

(iii) Term. Except as provided herein to the contrary, the term of each Director's service shall expire at the annual meeting and such Directors may stand for reelection. If the number of Board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the Board effective upon the adjournment of the annual meeting. Any remaining vacancies shall be filled by the affirmative vote of the majority of the Directors making up the newly constituted Board even if the Directors constitute less than a quorum or there is only one Director. Notwithstanding the foregoing, any Director designated by

Declarant shall serve at the pleasure of Declarant and may be removed and replaced by Declarant at any time.

(iv) Educational Requirements. Within ninety (90) days after being elected or appointed to the Board, each Director shall certify in writing to the Secretary that he or she has read the Governing Documents, the Rules and Regulations, and any other written rules and policies of the Association; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Members. Within ninety (90) days after being elected or appointed to the Board, in lieu of such written certification, the newly elected or appointed Director may submit a certificate of having satisfactorily completed the educational curriculum administered by a Division-approved education provider within one (1) year before or ninety (90) days after the date of election or appointment. The written certification or educational certificate is valid for the uninterrupted tenure of the Director. A Director who does not timely file the written certification or educational certificate shall be suspended from the Board until he or she complies with the requirement. The Board may temporarily fill the vacancy during the period of suspension. The Association shall retain each Director's written certification or educational certificate for inspection by the Members for five (5) years after the Director's appointment or election. However, the Association's failure to have the written certification or educational certificate on file does not affect the validity of any Board action.

(v) Meetings. Members of the Board may use e-mail as a means of communication but may not cast a vote on an Association matter via email. A meeting of the Board occurs whenever a quorum of the Board gathers to conduct Association business. All meetings of the Board shall be open to the Members, except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. A meeting of the Board must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting. The preceding four sentences of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of Association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific Dwelling owned by a Member. Members have the right to attend all meetings of the Board. The right to attend such meetings includes the right to speak at such meetings with reference to all designated items. The Association may adopt written reasonable Rules and Regulations expanding the right of Members to speak and governing the frequency, duration, and other manner of Member statements, which Rules and Regulations may include a sign-up sheet for Members wishing to speak. Notwithstanding any other law, meetings between the Board or a committee and the Association's attorneys to discuss proposed or pending litigation or meetings of the Board held for the purpose of discussing personnel matters are not required to be open to the Members other than Directors. Notices of Board meetings shall be given, and Board meetings shall be conducted, in the manner specified in the Bylaws and the Association Act.

(c) Officers.

(i) General. The officers of the Association (the "Officers") shall be a President, who shall be selected from the Board, a Vice President, a Treasurer, and a Secretary. Prior to Turnover, all Officers shall be appointed/elected by the Declarant and may only be removed and replaced by Declarant at any time with or without cause. After Turnover, all Officers shall be elected annually by the Board of Directors and each Officer may be removed by vote of the Directors at any meeting with or without cause. After Turnover, no Member or Owner may serve as an Officer if such Member or Owner is delinquent or deficit more than ninety (90) days with

regard to payment of Assessments or any other any Monetary Obligation. Any person may hold two or more offices except that the President shall not also be the Vice President or the Secretary. The Board shall from time to time elect such other Officers and designate their powers and duties as the Board shall find necessary or convenient to manage properly the affairs of the Association. Officers shall serve without compensation or fees; provided, however, nothing herein shall be deemed to prevent reimbursement of out-of-pocket expenses approved by the Board and incurred on behalf of the Association.

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

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

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

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

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

(d) Member Meetings.

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

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

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

(iii) Notices. Notices of Members' meetings shall be given, and Members' meetings shall be conducted, in the manner specified in the Bylaws and the Association Act.

(e) Official Records.

(i) Section 720.303(4) of the Association Act defines the "official records" of the Association. The Association shall maintain the official records and make them available to an Owner for inspection within ten (10) business days after receipt by the Board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the Community or, at the option of the Association, by making the records available to an Owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the Association has a photocopy machine available where the records are maintained, it must provide Owners with copies on request during the inspection if the entire request is limited to no more than twenty-five (25) pages. An Association shall allow a Member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the Association's providing the Member or his or her authorized representative with a copy of such records. The Association may not charge a fee to a Member or his or her authorized representative for the use of a portable device. From time to time, the Association may adopt reasonable Rules and Regulations governing the frequency, time, location, notice, official records to be inspected, and manner of inspections by the Owners, but may not require an Owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit an Owner's right to inspect records to less than one (1) eight (8)-hour business day per month. From time to time, the Association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed twenty dollars (\$20) per hour. Personnel costs may not be charged for records requests that result in the copying of twenty-five (25) or fewer pages. The Association may charge up to twenty-five (25) cents per page for copies made on the Association's photocopier. If the Association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed twenty-five (25) pages in length, the Association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The Association shall maintain an adequate number of copies of the recorded Governing Documents, to ensure their availability to Members and prospective Members. Notwithstanding the foregoing, the following official records are not accessible to Members or Owners:

(A) Any record protected by the lawyer-client privilege as described in Section 90.502 of the Florida Statutes and any record protected by the work-product privilege, including, but not limited to, 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 or parcel within the Community.

(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 or management company employee or budgetary or financial records that indicate the compensation paid to an Association or management company employee.

(D) Medical records of Owners or Community residents.

(E) Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for an Owner other than as provided for Association notice requirements, and other personal identifying information of any person, excluding the person's name, Lot or parcel designation, mailing address, and property address of the Lot or parcel. Notwithstanding the restrictions in this subparagraph, the Association may print and distribute to the Owners a directory containing the name, parcel address, and telephone number of each Owner. However, an Owner may exclude his or her telephone number from the directory by so requesting in writing to the Association. An Owner may consent in writing to the disclosure of other contact information described in this subparagraph. The Association is not liable for the 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) Any electronic security measure that is used by the Association to safeguard or protect data, including passwords.

(G) The software and operating system used by the Association which allows 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.

(ii) The Association or its authorized agent is not required to provide any prospective purchaser, lienholder, Member, or Owner with information about the residential subdivision, Community, or the Association other than information or documents required by Chapter 720 of the Florida Statutes to be made available or disclosed. The Association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, Member, or

Owner, or the current Owner or Member for providing good faith responses to requests for information by or on behalf of a prospective purchaser, lienholder, Member, or Owner, other than that required by law, if the fee does not exceed one hundred fifty dollars (\$150) plus the reasonable cost of photocopying and any attorney fees incurred by the Association in connection with the response.

**Section 3.02**                    **Membership.** Each Owner (including Declarant and Landbanker) shall be a Member of the Association. The Association membership of each Owner (other than Declarant or Landbanker) shall be appurtenant to and inseparable from the Lot giving rise to such membership, and any transfer of title to a Lot shall automatically transfer to the new Owner the membership in the Association appurtenant to that Lot, without any further action required whatsoever of the Board, the Association, the old Owner or the new Owner.

**Section 3.03**                    **Voting Rights and Turnover of Association.**

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

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

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

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

(i)            When Declarant, in its sole and absolute discretion, elects to convert the last of its Class "B" membership interests, to Class "A" membership interests, provided, however, as long as Landbanker owns any real property within Trout River Gardens, Declarant shall not, without the prior written consent of Landbanker, elect to convert its Class "B" membership interests to Class "A" membership interests pursuant to this Section 3.03(b)(i); or

(ii)           At the Turnover Meeting.

(c)            **Turnover of Association.** Any other provision of this Article III to the contrary notwithstanding, Members Other Than Declarant (as that term is defined below), shall be entitled to elect at least a majority of the members of the Board of Directors not later than Turnover, which shall be: (i) three (3) months after ninety percent (90%) of the Lots in all phases of the Development that will or may ultimately be operated by the Association have been conveyed to Members Other Than Declarant which Turnover shall occur at the Turnover Meeting; (ii) upon Declarant abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the Governing Documents, with there being a rebuttable presumption that Declarant has abandoned and deserted the Property if Declarant has unpaid Assessments or guaranteed amounts under FL. STAT. §720.308 for a period of more than two (2) years; (iii) upon Declarant filing a petition seeking protection under Chapter 7 of the U.S. Federal Bankruptcy Code; (iv) upon Declarant losing title to the Property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of Declarant's rights and responsibilities hereunder first arising after the date of such assignment; or (v) upon a receiver for the Declarant being appointed by a circuit court and not being discharged within thirty (30) days

after such appointment, unless the court determines within thirty (30) days after such appointment that transfer of control would be detrimental to the Association or the Members. For purposes of this Declaration, the term "Members Other Than Declarant" shall not include Builders, contractors or other parties who purchase or hold the title to a Lot for the purpose of constructing a Dwelling thereon for resale.

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

**Section 3.04** Multiple Owners. When any Lot entitling an Owner to membership in the Association is owned of record in the name of more than one person, party, or entity, whether such persons or entities own said Lot as fiduciaries, joint tenants, tenants in common, tenants in partnership, partners, or in any other manner of joint or common ownership, or if two or more persons or entities aforesaid or otherwise shall have the same fiduciary relationship or rights respecting the same Lot, then unless the instrument, document, or order appointing them or creating the subject tenancy or relationship otherwise directs and it or a copy thereof is filed with the Secretary of the Association or has been recorded in the Public Records, such Owner shall: (i) select one official representative to represent such Lot ("Representative"), which Representative shall be the only person, or party, or entity with the right to exercise any rights of membership in the Association with respect to such Lot, including, but not limited to, voting with respect to such Lot; and (ii) shall notify the Secretary of the Association in writing of the Representative's name and of any change in same as it occurs. The vote of each Representative shall be considered to represent the will of all the Owners of the subject Lot. In the circumstance of such common or joint ownership or rights, if the Owners fail to properly designate a Representative, then the Association may accept the person, party, or entity asserting the right to vote on behalf of the subject Lot as the voting Owner, until notified to the contrary by the other person(s), party(ies), or entity(ies) that also make up the Owner. Upon such notification, no Owner of said Lot may vote until the Owner appoints its Representative pursuant to this paragraph.

## ARTICLE IV

### PROPERTY RIGHTS IN THE COMMON AREAS

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

(a) Right-of-way for ingress and egress by vehicles and on foot through and across any Streets or walks in the Common Area for all lawful purposes; and

(b) Rights to connect to, maintain and make use of utility lines, wires, pipes, conduits, cable television lines, telephone lines and equipment, sewers and drainage lines, which may from time to time be in or within the vicinity of the Common Area, but only in accordance with all Laws and the requirements of the applicable Governmental Authorities or entities which regulate said utilities; and

(c) Rights and easements to use and enjoy the Common Area for any purpose not inconsistent with this Declaration, the Articles, the Bylaws, any Recorded Plats, the Rules and Regulations, and applicable Laws.

**Section 4.02** Title to Common Area. In accordance with the requirements set forth in Section 3.03(d) hereof, Declarant shall convey to the Association or, if required by the Local Government incidental to the establishment of an MSTU/MSBU as described in Article IV, Section 4.09 hereof, dedicate to the Local Government for the uses and purposes set forth in this Declaration or in any Recorded Plats, fee-simple title in and to the Common Area, free and clear of all encumbrances except current real estate taxes and assessments not yet due and payable, any Recorded Plats, this Declaration and any easements or matters Recorded in the Public Records

prior to such conveyances to the Association. Once conveyed to the Association, the Common Area may not be mortgaged, liened or further conveyed without the consent of at least two-thirds (2/3) of the Members (excluding Declarant).

**Section 4.03**                    **Limited Common Area.** Certain portions of the Community may be designated by Declarant in its sole and absolute discretion as Limited Common Area and reserved for the exclusive use or primary benefit of the Owners, occupants and invitees of certain Lots. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, and lakes. Except as otherwise provided herein, all costs associated with the maintenance, repair, replacement, and insurance of Limited Common Areas shall be Limited Common Expenses to be assessed against and paid by the Owners of those Lots to which the Limited Common Area is assigned.

As of the Effective Date, there are no designated initial Limited Common Areas.

Declarant reserves the right in its sole discretion to designate any initial or additional Limited Common Areas and assign the exclusive use thereof in Supplemental Declaration(s), the deed conveying the Common Area to the Association, or on any Recorded Plat relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Limited Common Area to additional Lots, so long as the Turnover Meeting has not occurred. Any matter arising under this Declaration and pertaining to the Limited Common Area and requiring a vote of Members, shall be decided by a vote of only those Members that have been identified by Declarant as being authorized and entitled to utilize and realize the benefits of the Limited Common Area. The Association may adopt Rules and Regulations which govern, among other things, the use of the Limited Common Area. Prior to the Turnover Meeting, the Declarant shall have the right, in its sole discretion, to convey additional real estate, improved or unimproved, and/or personal property as additional Limited Common Area, which conveyance or dedication to the Association shall be accepted by the Association and thereafter shall (except as may otherwise be set forth herein) be maintained by the Association as Limited Common Expenses.

**Section 4.04**                    **Association Easements.** There is hereby created, declared and granted to the Association, such perpetual, non-exclusive easements over and upon all or any portion of the Property, as may be reasonably necessary to permit the Association to carry out and discharge its duties, obligations and responsibilities under and pursuant to the Governing Documents and Rules and Regulations, including, but not limited to, for purposes of performing its maintenance responsibilities as provided in this Declaration ("Association Easements").

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

(a)            Subject to any rights of Declarant and the Owners set forth in this Declaration, except as to any part of the Common Area that is required to be conveyed to Local Government, the Association shall be responsible for the exclusive operation, management, administration, control, maintenance, repairing, replacing and insuring of the Common Area;

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

(c)            Declarant's rights reserved in this Declaration;

- (d) Matters shown in the Public Records or on any Recorded Plats; and
- (e) Applicable Laws.

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

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

(b) Declarant also reserves a perpetual right and easement, at its sole election and from time to time, to irrigate the Common Area with treated effluent from a wastewater treatment facility, if any. The benefit of this reservation shall inure to Declarant and its specifically designated successors and/or assigns, but not in favor of any other Owner, and shall remain in effect whether or not Declarant owns any Lots in or lands adjacent to the Property.

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

**Section 4.08**                    **Reservation for Corrections.** The conveyance of the Common Area to the Association or other entity(ies) shall be subject to the right of Declarant from time to time to correct errors in the legal description or other errors contained in the instrument of conveyance to any Owner, which right is reserved to Declarant. In the event that any such error is discovered after the conveyance of the subject Common Area, then the Association shall, upon request of Declarant or any Owner so affected, execute a quitclaim deed to the Lot held by said Owner, which quitclaim deed shall contain a correct legal description. If required to vest marketable title (without regard to the fact that the Common Area is held by a Homeowners Association) in the Association, said Owner will execute a quitclaim deed to any portion of the Common Area which may have been erroneously included within the legal description in the instrument of conveyance of such Owner's Lot. In addition to any other remedy

available to the parties or any Owner, the provisions of this Section 4.08 shall be enforceable by specific performance or other equitable remedy.

**Section 4.09**                    **MSTU/MSBU.** Declarant or the Local Government may establish a municipal service taxing unit, municipal service benefit unit, or similar mechanism (referred to in this Declaration as "**MSTU/MSBU**"), which MSTUs/MSBUs will have responsibilities established in their enabling resolutions. By way of example, and not limitation, an MSTU/MSBU may be established to provide for any one or more of the following: (a) operation, management, administration, maintenance, repair, and replacement by the Local Government of any of the Common Area, and any recreational, drainage or other improvements whatsoever at any time located thereon, for the uses and purposes set forth in this Declaration or in any applicable Recorded Plat, which may or may not include a requirement that ownership of the affected lands and improvements be transferred to the Local Government; (b) construction, maintenance, repair, replacement, or improvement of recreation, drainage, sidewalk, wall, landscaping, open space, conservation, or other areas, improvements or facilities, in, on, under or within the Common Area or any easement areas for the use and benefit of the Property and the occupants thereof; and (c) construction, operation, maintenance, repair and replacement of Street lighting or any other service or benefit to or for the Property authorized under the terms of this Declaration, the MSTU/MSBU, or by the applicable Governmental Authority. Notwithstanding the foregoing, the Association may elect, from time to time, to aesthetically maintain any property otherwise maintained or to be maintained by the MSTU/MSBU and if the Association does so, no Owner or Member, as a result thereof, shall thereby receive or be entitled to a discount for any ad valorem taxes or Assessments assessed by or in connection with the MSTU/MSBU. If established, each Owner and Member acknowledges and agrees that the costs incurred by the MSTU/MSBU may be billed directly to the Owners or to the Association for subsequent Assessment to the Owners and Lots.

**Section 4.10**                    **Conservation Easement Area(s).** Pursuant to and as and to the extent required by the Permit, the District, the County, or any Governmental Authority, from time to time, Declarant will record in the Public Records, one or more conservation easements (collectively, "**Conservation Easement**"), in favor of the District or any applicable Governmental Authority over, across, and upon certain portions of the Property. The precise metes and bounds legal description of the portions of the Property encumbered by a Conservation Easement shall be as specifically set forth in the subject Conservation Easement (all such portions of the Property that are or become encumbered by a Conservation Easement shall hereinafter be referred to as "**Conservation Areas**"). Upon establishment of any Conservation Easement, the Conservation Areas shall be subjected to the restrictions set forth in the subject Conservation Easement. The Conservation Areas, or the Association's interest therein, shall be Common Area and the Conservation Areas shall be the perpetual responsibility of the Association, and may in no way be altered from their natural state, except as specifically provided in the subject Conservation Easement. Furthermore, the use and development of the Conservation Areas shall be restricted as set forth in the subject Conservation Easement.

**Section 4.11**                    **Stormwater Easements.**

(a)                    There is hereby created, declared and reserved for the benefit of Declarant, the District, the Association, and all Owners, a non-exclusive easement for stormwater management, collection, retention, detention and drainage under, over, upon and within all portions of the Property included within the Surface Water Management System, including, but not limited to, all drainage easements, ponds and tracts shown on any Recorded Plat, together with an easement and license in favor of Declarant; the County; the District; and the Association; only to enter upon such areas, and as necessary other portions of the Property adjacent thereto, for the purposes of constructing, installing, inspecting, maintaining, repairing and replacing any and all stormwater drainage systems, improvements and facilities including, but not necessarily limited to, pipes, culverts, structures, berms, swales and retaining walls, from time to time located therein or thereon consistent with the plans for the Surface Water Management System, or any requirements and approvals of the District and City, as applicable. Additionally, Declarant, for the benefit of itself, the City, the District, the Association, and all Owners, hereby reserves perpetual easements over any and all other portions of the Property as may be reasonably required from time to time in order to provide stormwater drainage to all or any portions of the Property; provided, however, that

any such additional drainage easements shall not unreasonably interfere with the use and enjoyment by any Owners of any particular Lot. No person shall alter the drainage flow of the Stormwater Management System, including buffer areas or swales, without the prior written approval of the Association and the District. The foregoing easements are sometimes hereinafter referred to collectively as the "Stormwater Easements".

(b) The Declarant or the Association may construct berms and drainage swales within portions of the Stormwater Easements for the purpose of managing and containing the flow of surface water, if any. Each Owner shall be responsible for the maintenance, operation and repair of the berms and drainage swales on their respective Lot. The Association shall be responsible for the maintenance, operation and repair of the berms and drainage swales that are located within the Common Area. Notwithstanding the foregoing, in the event a Retaining Wall is constructed on a Lot, the Association, at Common Expense, shall maintain the Retaining Wall(s), and any landscaping, trees and shrubs (excluding landscaping installed by Owner) located on the backside of the wall(s) facing away from the Dwelling within and adjacent to an Owner's Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the berms and drainage swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the berms and drainage swales is prohibited. No alteration of the berms, drainage swales, and Retaining Walls shall be authorized and any damage to any berms, drainage swales, and Retaining Walls, whether caused by natural or human induced phenomena, shall be repaired and the berms, drainage swales, and Retaining Walls returned to their former condition as soon as possible by the responsible party (i.e., Owner, or the Association).

**Section 4.12** **Future Easements.** There is hereby reserved to Declarant and its successors and assigns, together with the right to grant and transfer the same, along with the right, power and privilege to, at any time hereafter, grant to itself, the Association, the County or any other parties, such other further and additional easements as may be reasonably necessary, desirable, or convenient, in the sole opinion and within the sole discretion of Declarant, subject to the reasonable approval of the County, if expressly required, for the future orderly development of the Property in accordance with the objects and purposes set forth in the Governing Documents. Any such easement(s) shall be recorded in the Public Records. It is expressly provided, however, that no such further or additional easements shall be granted or created over and upon any Lot if any such easement shall unreasonably interfere with an Owner's plans to use or develop the Lot. The easements contemplated by this subsection may include, without limitation, such easements as may be required for utility, drainage, roads, sidewalks or other purposes reasonably related to the orderly development of the Property in accordance with the objects and purposes specified in the Governing Documents. Such further or additional easements may be hereafter created, granted, or reserved by Declarant without the necessity for the consent or joinder of any other persons including, but not necessarily limited to, the Owner of, or the person holding the mortgage on, the particular portion of the Property over which any such further or additional easement is granted or required.

**Section 4.13** **Wall, Entrance Feature and Landscape Easements.** There is hereby created, declared, granted and reserved for the benefit of Declarant and the Association an easement over and upon all wall, entrance feature and landscape easement areas shown on any Recorded Plat ("Wall and Landscape Easements") that constitute walls, entrance features or landscape areas benefiting the Property, or more than one Lot, together with an easement and license to enter upon such Wall and Landscape Easement areas for the purposes of erecting, constructing, installing, inspecting, maintaining, repairing and replacing any and all entrance features (including, but not limited to signs), walls (screening or otherwise) or fences, and the installation and irrigation of any landscaping therein, which may be required by the City, County and/or deemed to be necessary or desirable by Declarant or the Association. The Association shall, at Common Expense, maintain the wall(s), and any landscaping, trees and shrubs (excluding any landscaping installed by Owner) located on the backside of the wall(s) facing away from the Dwelling.

**Section 4.14** **Planting and Screening Easements.** There is hereby created, declared, granted and reserved for the benefit of Declarant and the Association an easement for planting and screening purposes ("Planting and Screening Easements") over and upon all planting and screening easement areas, entryways, medians

and landscape buffers shown on any plat of the Property, if any, or hereafter declared by Declarant, together with an easement and license to enter upon such areas for the purposes of installing, maintaining, inspecting, repairing and replacing any and all landscaping, including trees, grasses, shrubs, bushes, ground covers and other plant materials and irrigation systems of any kind, whether the same shall be required by the County and/or deemed necessary or desirable by Declarant or the Association.

**Section 4.15**                    **Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, as between all Lots and such portion or portions of the Common Property adjacent thereto due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet (3'), as measured from any point on the common boundary along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner or the Association.

**Section 4.16**                    **Sidewalk/Bike Path Easements.** There is hereby created, declared and reserved for the benefit of the Declarant and the Association, an easement over, within and upon any Bike/Pedestrian Systems shown on any Recorded Plat of, or construction plans approved by the City regarding, or otherwise created/established within, the Property ("Sidewalk/Bike Path Easements"), for the purposes of constructing, installing, maintaining, repairing and replacing from time to time any Bike/Pedestrian Systems for the Property. The Declarant, the Association, the City, and all Owners shall have a non-exclusive easement for pedestrian ingress, egress and passage over and upon any such Bike/Pedestrian Systems or from time to time located, constructed, installed and maintained within the Property. The use of any such Bike/Pedestrian Systems shall be expressly limited to the boundaries of such system and no use shall be permitted other than for passage of pedestrians as set forth herein.

**Section 4.17**                    **Platted Easements.** The area of the Lots or Common Area encumbered by the utility easements depicted and set forth on the Initial Plat shall be perpetually maintained by the subject Lot Owners and the Association, respectively. The private access and drainage easements encumbering Lots or Common Areas, all as depicted in and set forth on the Initial Plat, shall be perpetually maintained by the Association as Common Area at Common Expense. The area of the Lots or Common Area encumbered by the environmental swale easements, all as depicted in and set forth on the Initial Plat, shall be perpetually maintained by the subject Lot Owners and the Association, respectively.

## **ARTICLE V**

### **INSURANCE**

**Section 5.01**                    **Basic Insurance.** The Board may obtain fidelity bond coverage insuring the Association in its discretion. In addition, the Board may obtain insurance for insurable improvements on (a) the Common Area, (b) any Area of Common Responsibility, or (c) any easement area benefiting the Owners or the Association; public liability policies covering the Common Area, the Association, and Members for damage or injury caused by the negligence of the Association or any of its Members, guests or agents, which public liability shall have at least One Million Dollar (\$1,000,000.00) combined single limits for bodily injury, personal injury, and property damage from a single occurrence, and, if reasonably available, a Five Million Dollar (\$5,000,000.00) umbrella liability policy; directors' and officers' liability insurance; and, any other types of insurance coverage as the Board may deem appropriate, necessary or desirable from time to time, with such insureds, deductibles, provisions, and coverage types and amounts as shall be determined by the Board. Such insurance shall include "special form" casualty insurance for all improvements on the Common Area, if such insurance is reasonably available. If "special form" coverage is not reasonably available, then, at a minimum, an insurance policy providing fire and extended coverage shall be obtained. Said insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

**Section 5.02**                    **Additional Insurance.** In addition to any other insurance required by this Article V, the Board may obtain, as a Common Expense: (a) worker's compensation insurance, if and to the extent required by law; (b) directors' and officers' liability coverage, if reasonably available; (c) flood insurance, if required; and (d) insurance or a fidelity bond for all persons who control or disburse funds of the Association. As used in this paragraph, the term "persons who control or disburse funds of the Association" includes, but is not limited to, persons authorized to sign checks on behalf of the Association, and the President, Secretary, and Treasurer 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, as determined by the Board's best business judgment, with such amounts, regardless, never being less than three (3) months' Assessments, plus all reserves on hand, if established. If available, any such insurance policy or fidelity bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal. If annually approved by a majority of the voting interests present at a properly called meeting of the Association, the Association may waive the requirement of obtaining an insurance policy or fidelity bond for all persons who control or disburse funds of the Association.

**Section 5.03**                    **Individual Insurance.** By virtue of taking title to a Lot, each Owner (other than Declarant) covenants and agrees with all other Owners, and with the Association, that each Owner shall carry, at a minimum full replacement cost dwelling protection with building structure replacement cost method extended limits. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising its Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. Said Owner shall pay any costs of repair or reconstruction which is not covered by insurance proceeds. In the event that the structure is totally destroyed, said Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the terms hereof, any Rules and Regulations, and all applicable Law. Assessments shall still apply to and be levied against any Lot cleared and thereafter maintained pursuant to the provisions of this section. Any such cleared Lot shall still, at all times, continue to be responsible for payment of full Assessments, regardless of the fact that the Lot and Owner may not benefit from maintenance and other services otherwise provided by the Association to occupied or improved Lots.

**Section 5.04**                    **Insurance Premiums.** Premiums for all insurance obtained by the Association pursuant to this Article V shall be a Common Expense.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 6.01**                    **Lien and Personal Obligation Nonpayment.**

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

(b) If any Assessment or installment thereon is not paid when due, then such Assessment shall be delinquent and the delinquent Assessment shall be secured by a continuing lien on the Lot as

to which the Assessment accrued, and upon any Dwelling located thereon. The Association may Record a lien against any Lot to secure payment of Assessments that remain unpaid for a period of thirty (30) days or longer after becoming due (the "Assessment Lien"). Any Assessment Lien shall be prior to all other liens created except (i) ad valorem real estate taxes and assessments levied by any Governmental Authority, (ii) the lien of any Mortgage (expressly subject to the Mortgagee's compliance with FL. STAT. §720.3085(2)(c) and said Mortgagee's payment of all unpaid Assessments resulting from said Mortgagee's compliance with, or failure to comply with, said statute), and (iii) other liens which by Law would be superior. To the fullest extent permitted by Law, any Assessment Lien shall be prior to and superior in dignity to the Owner's homestead status. Any Assessment Lien shall bind the Lot and any Dwelling located thereon in the hands of the then Owner and of each subsequent Owner. The personal obligation of the Owner to pay such delinquent Assessment shall remain that Owner's personal obligation for the statutory limitations period. Personal liability shall not also jointly and severally pass to successors in title of the Lot unless such successors in title have received prior notice thereof.

(c) If the delinquent Assessment or installment thereon is not paid within thirty (30) days after the due date, the same shall bear interest from the date due at the highest lawful rate in Florida, or at such lesser rate as may be determined by the Board and uniformly applied, and the Association may bring an action for collection against the Owner personally obligated to pay the same and to foreclose the lien against the Lot and any Dwelling located thereon by judicial foreclosure in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such delinquent Assessment the aforesaid interest, late charges, collection costs, expenses and attorneys' and paralegals' fees, and all of the foregoing shall be recoverable whether or not suit be brought. The Owner shall also be required to pay to the Association any Assessments against the Lot which become due during any period of foreclosure by the Association. The Association, acting on behalf of the Owners, shall have the right and power to bid for any Lot at any foreclosure sale and to acquire the same via foreclosure or a deed in lieu thereof and thereafter hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure or a deed in lieu thereof: (x) no right to vote shall be exercised on said Lot; (y) no Assessment shall be assessed or levied on said Lot; and (z) each other Lot shall be charged, in addition to its Assessments, its pro rata share of the Assessment that would have been charged the subject Lot had it not been acquired by the Association as a result of foreclosure or a deed in lieu thereof. Suit to recover a money judgment against an Owner or Lot for unpaid Common Expenses, Assessments, and all costs, expenses, and fees incurred by the Association in connection with such action, including, but not limited to, interest as provided herein, along with reasonable attorneys' and other legal fees to be fixed by the court, together with all other costs, expenses, and fees of the action, shall be maintainable by the Association without foreclosing or waiving the lien securing the same.

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

(e) The following property shall be exempt from the Assessments, charges and liens created herein: (1) Common Area; (2) lands owned by Declarant which have not been annexed to the Property by this Declaration or any Supplemental Declaration; (3) lands conveyed or dedicated to the Local Government or other Governmental Authority, any public or quasi-public utility company, or the public; and (4) to the fullest extent permitted by the Association Act, Lots owned by Declarant during the period of time that Declarant subsidizes the Common Expenses of the Association pursuant to Section 6.11 hereof. No other land or improvements in the Property shall be exempt from the Assessments, charges or liens stated above. No Owner may avoid Assessment obligations by virtue of non-use or abandonment of the Common Area or any Area of Common Responsibility, as applicable.

(f) If any Lot is occupied by a Tenant and the Owner of the Lot is delinquent in paying any Monetary Obligations, the Association may demand in writing that the Tenant pay to the Association the subsequent rental payments related to the Lot ("Tenant Demand"). Any Tenant Demand is continuing in nature, and upon such Tenant Demand, the Tenant of the subject Lot (the "Notified Tenant") must continue to pay the subsequent rental payments until all the Monetary Obligations of the Lot Owner related to the Lot have been paid in full to the Association and the Association releases the Tenant or until the Tenant discontinues tenancy in the Lot. A Notified Tenant is immune from any claim by the Lot Owner related to the rent timely paid to the Association after the Association has made a Tenant Demand.

If the Notified Tenant paid rent to the Owner of the Lot for a given rental period before receiving the Tenant Demand and provides written evidence to the Association of having paid the rent within fourteen (14) days after receiving the Tenant Demand, such Notified Tenant shall begin making rental payments to the Association for the following rental period and shall continue making rental payments to the Association to be credited against the Monetary Obligations of the Lot Owner until the Association releases the Tenant or the Tenant discontinues tenancy in the Lot. The Association shall, upon request, provide the Tenant with written receipts for payments made. The Association shall mail written notice to the Lot Owner of the Association's demand that the Tenant pay Monetary Obligations to the Association.

The liability of the Notified Tenant may not exceed the amount due from the Notified Tenant to the Lot Owner. The Notified Tenant shall be given a credit against rents due to the Lot Owner in the amount of Assessments paid to the Association.

After serving a Tenant Demand, if the Notified Tenant fails to pay any Monetary Obligation, the Association may issue notices under Section 83.56 of the Florida Statutes, and may sue for eviction under Sections 83.59-83.625 of the Florida Statutes, as if the Association were a landlord under Part II of Chapter 83 of the Florida Statutes. However, the Association is not otherwise considered a landlord under Chapter 83 of the Florida Statutes and specifically has no duties under Section 83.51 of the Florida Statutes.

A Tenant does not, by virtue of payment of Monetary Obligations, have any of the rights of the Owner of the Lot to vote in any election or to examine the books and records of the Association.

**Section 6.02**      **Purpose; Powers.** The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners, to perform the Association's duties and obligations hereunder and under the Association Act, to exercise the powers conferred on the Association hereunder and under the Association Act, to manage, improve, operate, administrate, insure, maintain, repair and replace the Common Area and the Areas of Common Responsibility (as may be determined by the Board), and to pursue any other purpose deemed desirable, necessary, convenient or appropriate by the Board, including, without limitation, any one or more of the following, or as otherwise stated herein or as permitted by the Association Act: (a) payment of Common Expenses; (b) lighting, irrigation, maintenance, improvement and beautification of the Streets and all easement areas benefiting the Association or the Property as shown on any Recorded Plat, or otherwise properly established; (c) acquisition, maintenance, repair and replacement of community identification signs and traffic control devices, and control and regulation of traffic in the Property; (d) payment, contest or compromise of real and personal property taxes and assessments separately levied upon or assessed against the Association or the Common Area; (e) operation, management, insurance, replacement, maintenance, repair, beautification and improvement of the Common Area, Areas of Common Responsibility (as may be determined by the Board), and all easement areas benefiting the Association or the Property as shown on any Recorded Plat, or otherwise properly established; (f) repayment of any deficits previously incurred by the Association; (g) funding of reserves for future Common Expenses; (h) procurement and maintenance of all insurance; (i) employment of accountants, attorneys and other professionals, administration, and experts to represent or advise the Association; (j) operation, maintenance and replacement of the Stormwater Management System for the Property in accordance with the terms

of this Declaration and the requirements of the District including, but not limited to, work within retention areas, drainage structures and drainage easements; (k) monitoring and maintenance of protected wetlands and associated reporting as may be required by the District or County; and (l) doing anything necessary, desirable, or convenient in the judgment of the Board to keep the Property neat and attractive, to preserve or enhance the value thereof, to eliminate fire, health or safety hazards, or otherwise to benefit the Owners. At all times, the Association, acting by and through the Board, shall, in addition to those general and specific powers elsewhere referenced in the Governing Documents or imposed upon it by law, have the following specific powers:

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

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

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

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

(e) To sue and be sued and to defend any suits brought against it.

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

(g) To employ such persons or to contract with such independent contractors or managing agents as shall be reasonably required in order for the Association to carry out, perform and discharge all or any part of its duties, obligations and responsibilities pursuant to the Governing Documents and the Association Act; provided, however, that any such employment contract or contract with any independent contractor or managing agent for a term of more than one (1) year shall, by its express terms, be terminable: (i) for cause at any time upon not more than thirty (30) days written notice by the Association; and (ii) without cause at any time after one (1) year upon not more than sixty (60) days written notice by either party; and, provided further, that any such contract shall otherwise be subject to the provisions of this Section 6.02.

(h) To provide equipment, facilities and personnel, or to contract with an independent contractor or independent contractors, for such public or quasi-public services as may be deemed by the Association to be reasonably necessary or desirable for the common health, safety and general welfare of the residents, including,

without limitation, internal security and protection services, garbage and trash pickup and disposal services, cable television/Internet services and street lighting services.

(i) To adopt, publish and enforce such Rules and Regulations as the Board deems necessary in connection with the fulfillment of the duties and powers of the Association arising pursuant to this Declaration, the Articles, the Bylaws or by any other applicable laws.

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

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

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

### **Section 6.03**

### **Determination of Annual Assessments.**

(a) The Board shall annually prepare a budget that sets out the Association's annual operating expenses ("Budget"), which Budget must: (i) reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year; (ii) set out separately all fees or charges paid for by the Association for recreational amenities, whether owned by the Association, the Declarant, or another person or entity; (iii) if established, include reserve accounts for capital expenditures and deferred maintenance for which the Association is responsible, including, but not limited to, the Common Area; and (iv) comply with Fl. Stat. §720.303(6)(a) and (b). The Members of the Association may elect to collect reserves upon the affirmative approval of a majority of the total voting interests of the Association obtained by a vote of the Members at a duly called meeting of the membership or by the written consent of a majority of the total voting interests of the Association. The approval action of the membership must state that reserve accounts shall be provided for in the Budget and must designate the components for which the reserve accounts are to be established. Upon approval by the Members, the Board shall include the required reserve accounts in the Budget for the next Fiscal Year following the approval and each year thereafter. Once reserves are established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided by the Association Act. Notwithstanding anything in the foregoing to the contrary, prior to Turnover, the Declarant may, but is not required to, include reserves in the Budget. If the Declarant includes reserves in the Budget, the Declarant may, in its sole determination, determine the amount of reserves to be included. The 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 parcels for any period of time which the Declarant elects to Deficit Fund. The reserve funds required, if any, shall be fixed by the Board and included within and distributed with the Budget and any applicable notice of Annual Assessment. The first Budget promulgated or adopted by the Declarant on behalf of the Association that establishes reserve accounts must designate therein the components for which reserve accounts and funds may be used.

(a) In the event that the Board shall determine during any Fiscal Year that the Annual

Assessment established for such Fiscal Year is or will become inadequate or insufficient to meet all Common Expenses for such calendar year, for whatever reason, the Association shall be entitled to immediately determine the approximate amount of such deficiency or inadequacy, issue a supplemental estimate of Common Expenses to all Owners and, within thirty (30) days thereafter, establish, make, levy, impose, enforce and collect a supplemental or revised Annual Assessment for such Fiscal Year.

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

(c) Allocation of Annual Assessments Among Lots. It is the intent of this Declaration that Common Expenses be allocated among all Owners and Lots within the Property in a manner that reflects the benefit that each such Lot receives from any related Common Area, as reasonably determined by Declarant, it being recognized, however, that: (i) benefits of Common Area to any particular Lot may not always be direct; and (ii) it may not be practicable or possible to perform such benefit/assessment allocations with absolute precision. As of the Effective Date, Common Expenses shall be allocated, and related Assessments assessed, against the Property as set forth herein. However, and notwithstanding anything herein to the contrary, the method of allocating Common Expenses and Assessments may change from time to time as reasonably determined by Declarant, provided that at all times Declarant shall use reasonable efforts to ensure such allocations will be pursuant to a method, as reasonably determined by the Declarant, to most fairly allocate such Common Expenses and Assessments between the various Lots, such as, but not limited to, a pro rata basis based upon the number of Lots.

Except as may be subsequently modified consistent with the foregoing, the Annual Assessments to be levied hereunder for the coming Fiscal Year against each Lot subject to Assessment shall include a computation of: (a) the budgeted Common Expenses (not including Limited Common Expenses), divided by the number of Lots within the Property; and (b) the budgeted Limited Common Expenses allocable to such Lot divided by the number of Lots that are also responsible for the payment of such Limited Common Expenses. The resulting figure of (a) and (b) shall be the "Annual Assessment per Lot" for any particular Lot.

Notwithstanding anything to the contrary in the provisions of this Article VI, Annual Assessments and Special Assessments made with respect to Limited Common Property shall be levied only against the Lots and Owners designated by Declarant as having the right to utilize and realize the benefits of the Limited Common Property. Any budget prepared by the Association for capital expenditures and/or other Common Expenses shall include a separate itemization of such expenditures that pertain to Limited Common Property within the Property, and the Association may establish reserves for expenses specifically associated with such Limited Common Property.

At the discretion of the Board, the Annual Assessments for any year may be paid by Owners in monthly installments, due and payable on the first (1st) day of each month; in bi-annual installments, due and payable by the first (1st) day of January and July of each year; or in quarterly installments, due and payable by the first (1st) day of January, the first (1st) day of April, the first (1st) day of July, and the first (1st) day of October of each year. In the event of such deferred payments, the Board may, but shall not be required to, charge a uniform, lawful rate of interest on the unpaid balance. The Board may accelerate the balance of any Annual Assessment

upon default in the payment of any installment thereon or any other Assessment due hereunder. Absent any such determination by the Board permitting payment in monthly, bi-annual, or quarterly installments, the Annual Assessment for any year shall be due and payable by January 1 of such year. Any Annual Assessment not paid by January 15, if payable in one lump sum, not paid by the fifteenth (15th) day of January and July, if allowed to be paid bi-annually, or paid by the fifteenth (15th) day of January, April, July, and October, if allowed to be paid quarterly, or on the fifth (5th) day of any month, if allowed to be paid monthly, shall be considered delinquent.

**Section 6.04**                    **Annual Assessments.**

(a) Annual Assessments on each Lot in the Property shall commence upon the closing of each Lot in the Property to a bona fide third party purchaser, with such term excluding Builders (a "Third Party Purchaser"), or upon the occupancy of each Lot by a Third Party Purchaser, whichever is earlier. Thereafter, Annual Assessments shall be due, in advance, on or before the commencement of the Association Fiscal Year for which they are imposed; but the Board, as provided herein, may elect to collect Annual Assessments in monthly, quarterly or semi-annual installments. Annual Assessments which commence to accrue as to any Lot other than on the first day of the year shall be prorated for the balance of that year.

(b) The Annual Assessment for each Lot on any Additional Property shall commence upon the closing of the first sale by Declarant of any Lot in the Additional Property to a Third Party Purchaser, or upon the occupancy of the first Lot in the Additional Property by a Third Party Purchaser, whichever is earlier. The initial Annual Assessment for the Lots on any Additional Property shall be the same as the then current Annual Assessment for the remainder of the Property, or as otherwise set forth in the relevant Supplemental Declaration.

**Section 6.05**                    **Initial Annual Assessment and Start-Up Assessment.** At the closing of the sale of each Lot in the Property to a Third Party Purchaser, said purchaser shall pay to the Association: (i) a one-time Start-Up Assessment in the amount of Three Hundred Fifty and No/100 Dollars (\$350.00); and (ii) a pro-rata portion of the monthly, quarterly or semi-annual installment of the Annual Assessment per Lot 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 established monthly, quarterly, or semi-annual installment period. Notwithstanding the foregoing, the Start-Up Assessment shall be due from the first Third Party Purchaser that is not a Builder. After the one-time Start-Up Assessment has been paid as to a Lot in the Property, subsequent purchasers of the same Lot shall not be required to pay said Start-Up Assessment. The funds derived from the Start-Up Assessments are income to the Association and shall be used at the discretion of the Board for purposes which provide a direct benefit (as defined in 77 Fed. Reg. 15574 (Mar.16, 2012)) to the Property, including, without limitation, the reduction of the Declarant's Deficit Funding, future and existing capital improvements, operating expenses, Common Expenses, support costs and start-up costs.

**Section 6.06**                    **Re-Sale Assessment.** On each subsequent conveyance of a Dwelling following the initial sale of such Dwelling to the first Third Party Purchaser thereof or to any party other than Declarant, the Association shall levy and impose on such Dwelling a capital assessment of Three Hundred Fifty and No/100 Dollars (\$350.00) (the "Re-Sale Assessment"), which Re-Sale Assessment shall be shown on any estoppel certificate issued by or on behalf of the Association in connection with the conveyance of the Lot to said purchaser or grantee; shall be nonrefundable; shall be in addition to, and not in lieu of, the Assessments levied on the Lot; shall not be considered an advance payment of any portion of Assessments; and shall be used by the Association exclusively for purposes which provide a direct benefit (as defined in 77 Fed. Reg. 15574 (Mar. 16, 2012)) to the Property. The Association may use the Re-Sale Assessment for any of the purposes and services set forth in this Declaration, including the reduction of the Declarant's Deficit Funding, and shall not be designated as a "capital contribution" or budgeted for any designated or specific capital improvement, but instead shall be deemed a regular periodic Assessment available to fund the payment of any Common Expense of the Association. The Re-Sale Assessment shall not apply in instances of transfer of title of a Dwelling to (a) a co-Owner of the Dwelling; (b) the Owner's estate, surviving spouse or child upon the death of the Owner; (c) an entity owned by the grantor of title

and/or the grantor's spouse; (d) to a Mortgagee or Association pursuant to a Final Judgment of Foreclosure or deed in lieu of foreclosure. Prior to Turnover, Declarant may increase the Re-Sale Assessment in subsequent Fiscal Years, provided that such increase shall not be greater than ten percent (10%) over the prior Fiscal Year. Subsequent to Turnover, the Association may increase the Re-Sale Assessment in subsequent Fiscal Years, provided that such increase shall not be greater than ten percent (10%) over the prior Fiscal Year. Neither Declarant nor the Association makes any representation or warranty that, at Turnover, any portion of the Re-Sale Assessment shall be in the accounts of the Association, as these monies may be used to offset Declarant's Deficit Funding. Notwithstanding any other provision of this Declaration to the contrary, a Builder purchasing a Lot from Declarant shall be exempt from payment of a Re-Sale Assessment as to such Builder Lot.

**Section 6.07**                    **Special Assessments**. In addition to Annual Assessments, the Board may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, maintenance, repair, replacement or insurance of any improvement on the Common Area, any Areas of Common Responsibility, or on any easement benefiting the Association or the Property as shown on any Recorded Plat, or otherwise properly established, for the purpose of covering any budget deficits of the Association, or for any other purpose deemed necessary, desirable or appropriate by the Board (collectively, "Special Assessment(s)"). Prior to Turnover, the Board may levy a Special Assessment subject to the approval requirements set forth in FL. STAT. §720.315.

**Section 6.08**                    **Individual Assessment**. The Board may levy an individual assessment against any Owner and that Owner's Lot and, if applicable, any Dwelling located thereon, in order to cover any costs, expenses and fees whatsoever incurred by the Association due to (i) that Owner's failure to maintain its Lot or Dwelling pursuant to the standards set forth in this Declaration or as otherwise established by the Board or the ARC, or (ii) to reimburse the Association for loss or damage to the Association or to any Common Area, Area of Common Responsibility or easement area benefiting the Association or the Property caused by that Owner or that Owner's lessee, sublessee, licensee, agent, contractor, subcontractor, invitee, domestic help or guest, and not covered by insurance maintained by the Association, or (iii) for any other purpose expressly permitted by this Declaration or permitted under applicable Law (each assessment levied pursuant to (i), (ii), or (iii), above, an "Individual Assessment").

**Section 6.09**                    **Certificate**. Upon request, the Association, pursuant to FL. STAT. §720.30851, shall furnish to any Owner a certificate setting forth whether all required Assessments have been paid. Such certificate, subject to the limitations and terms of FL. STAT. §720.30851, shall be conclusive evidence in favor of bona-fide third parties relying thereon of the payment of any Assessment therein stated to have been paid. The Association may charge a fee for the preparation of such certificate, and the amount of such fee must be stated on the certificate. Unless sold or conveyed by or to Declarant, no Lot or parcel may be sold or conveyed unless an estoppel certificate pursuant to FL. STAT. §720.30851 is obtained and all amounts set forth therein are paid prior to the sale or conveyance.

**Section 6.10**                    **Subordination**. Expressly subject to the Mortgagee's compliance with FL. STAT. §720.3085(2)(c) and said Mortgagee's payment of all unpaid Assessments resulting from said Mortgagee's compliance with, or failure to comply with, said statute, all Assessment Liens shall be subordinate to the lien of any Mortgage. Any Mortgagee which obtains title to a Lot by lawful foreclosure of a Mortgage or by lawful and proper voluntary conveyance by deed in lieu of such foreclosure, shall not be liable for the uncollected Assessments or interest, late charges or collection costs pertaining to such Lot or chargeable to the former Owner thereof which became due prior to the acquisition of title of the Lot by said Mortgagee. Such unpaid Assessment amounts shall be deemed a Common Expense collectible from all Owners, including the acquiring Mortgagee, on a pro-rata basis. Any such transfer to a Mortgagee under this Section 6.10 or otherwise shall not relieve the transferor of personal responsibility for any prior Assessments nor the Lot from the lien for Assessments thereafter falling due.

**Section 6.11**                    **Funding by Declarant**. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THE GOVERNING DOCUMENTS OR OTHERWISE: (A) DECLARANT DOES

NOT AND IS NOT PROVIDING THE OWNERS OR MEMBERS A GUARANTEE OF THE LEVEL OF ASSESSMENTS AS CONTEMPLATED BY SECTION 720.308 OF THE ASSOCIATION ACT; (B) THERE IS NO MAXIMUM GUARANTEED LEVEL OF ASSESSMENTS DUE FROM OWNERS OR MEMBERS AS CONTEMPLATED BY SECTION 720.308 OF THE ASSOCIATION ACT; AND (C) DECLARANT'S ELECTION FROM TIME TO TIME TO DEFICIT FUND IS NOT A GUARANTEE OF THE ASSESSMENTS AS CONTEMPLATED BY SECTION 720.308 OF THE ASSOCIATION ACT. IN THE EVENT DECLARANT ELECTS FROM TIME TO TIME, IN ITS SOLE DISCRETION, TO DEFICIT FUND IN LIEU OF PAYING ASSESSMENTS ON THE SAME BASIS AS OTHER OWNERS ("DEFICIT FUND"), DECLARANT SHALL SPECIFICALLY ELECT TO DEFICIT FUND AS PROVIDED IN SECTION 720.308(1)(B), FLORIDA STATUTES (2024). AS SUCH, THE PROVISIONS OF SECTIONS 720.308(2) THROUGH 720.308(6), FLORIDA STATUTES (2024), ARE NOT APPLICABLE TO DECLARANT OR THE CALCULATION OF THE DEFICIT FUNDING OBLIGATION OR OTHER AMOUNTS DUE FROM DECLARANT. AS OF THE EFFECTIVE DATE, UNTIL TURNOVER OCCURS, OR DECLARANT NOTIFIES THE ASSOCIATION OTHERWISE, DECLARANT ELECTS TO DEFICIT FUND, THEREBY OBLIGATING ITSELF, PURSUANT TO SECTION 720.308(1)(B) OF THE ASSOCIATION ACT, TO PAY ANY OPERATING EXPENSES INCURRED THAT EXCEED THE ASSESSMENTS RECEIVABLE FROM OTHER MEMBERS AND OTHER INCOME OF THE ASSOCIATION. PURSUANT TO SECTION 720.303(6)(D) OF THE ASSOCIATION ACT, UNTIL TURNOVER, OR DECLARANT NOTIFIES THE ASSOCIATION OTHERWISE, SO LONG AS DECLARANT IS DEFICIT FUNDING, THE DECLARANT IS NOT OBLIGATED TO PAY FOR: (A) 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; (B) OPERATING EXPENSES; OR (C) ANY OTHER ASSESSMENTS RELATED TO DECLARANT'S PARCELS.

## ARTICLE VII

### ARCHITECTURAL CONTROL

#### **Section 7.01                      Architectural Control; ARC.**

(a) Subject to the terms of Section 7.08 hereof, all Lots and Dwellings in the Property are subject to architectural review in accordance with this Article VII and any planning, construction, development, or other architectural criteria, guidelines, procedures, rules or regulations (collectively, "Planning Criteria") as may be adopted and revised from time to time by the Architectural Review Committee (the "ARC"), which may also be referred to at times as the Architectural Review Board (the "ARB"). The Planning Criteria shall be written and made available to all Builders and to all Owners or prospective Owners. The Planning Criteria may include any matters considered appropriate by the ARC not inconsistent with this Declaration, the other Governing Documents or the Association Act. The Planning Criteria shall be, at the discretion of the Board, subject to the prior approval of the Board.

(b) No site work/development, landscaping, utility extension, drainage improvement, paving, driveway, swimming pool, pool enclosure, building, fence, wall, sidewalk, or any other physical or structural improvement, or change or alteration to the exterior of any existing structure or improvement, or to any existing landscaping (collectively, "Improvement(s)"), shall be commenced, constructed, erected, modified, changed, altered or maintained until the plans showing such details as the size, design, shape, finished grade elevation, height, materials and color of the same, together with a landscape plan and a plot plan showing the location relative to boundaries and adjacent improvements of such proposed improvements or changes (collectively, the "Plans"), have been approved in writing by the ARC. The Plans shall certify that same are in compliance with any applicable regulations and ordinances of the Local Government. All such improvements must further conform to the Planning Criteria and no Plans shall be approved by the ARC if they are not in conformity with same. All improvements, construction, changes, modifications and alterations shall also comply with all Laws. Approval by

ARC does not in any way guarantee approval by any governmental agency. Until such time as any improvements, construction, changes, modifications and/or alterations have been submitted to and approved by the ARC, no Owner (and/or designee thereof) shall make application for a building permit from the applicable Governmental Authority. Nothing herein shall limit the right of an Owner to finish or alter the interior of that Owner's Dwelling as that Owner desires.

**Section 7.02**            **Membership of ARC.** Prior to Turnover, Declarant shall be entitled to appoint all members of the ARC. Thereafter, the membership of the ARC shall be determined by the Board. The ARC shall consist of no less than three (3) members, none of whom shall be required, prior to Turnover, to be Owners or occupants of the Property. The ARC shall always consist of an odd number of members. No member of the ARC shall be entitled to compensation for services performed, but the ARC may employ professional advisors and pay reasonable compensation to such advisors at Common Expense. Members of the ARC (other than those appointed or designated by Declarant) may be removed by the Board of Directors at any time without cause. Members of the ARC appointed or designated by Declarant may only be removed by Declarant, which removal may be at any time without cause.

**Section 7.03**            **Approvals.** Decisions of the ARC shall be by majority action. Unless waived by the ARC, all Plans shall be prepared by an architect or engineer, said person to be employed by and at the expense of the Owner. If for any reason, including purely aesthetic reasons, the ARC should determine that a proposed improvement, construction, modification or alteration is not consistent with the Planning Criteria or Declarant's development plan, or in the best interest of the Association and its Members, such improvement, construction, modification or alteration shall not be approved or made. Approval of Plans may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by virtue of the dissatisfaction of the ARC with the location of the structure on the Lot, the elevation, color scheme, finish, design, proportions, architecture, drainage plan, shape, height, style and appropriateness of the proposed structures or altered structures, the materials used therein, the planting, landscaping, size, height or location of vegetation on the Lot, or because of its reasonable dissatisfaction with any other matter or thing which, in the judgment of the ARC, will render the proposed improvement or alteration inharmonious with Declarant's general development plan or the Planning Criteria. Two (2) sets of Plans and specifications shall be submitted to the ARC by the Owner prior to applying for a building permit from the applicable Governmental Authority. Submittals and re-submittals of Plans shall be approved or disapproved within thirty (30) days after receipt by the ARC. The ARC approval or disapproval shall be written and shall be accompanied by one (1) copy of the Plans to be returned to the Owner. Whenever the ARC disapproves Plans, the ARC shall specify the reason or reasons for such disapproval, and shall include reference to the rule or covenant on which the ARC relied for the denial as well as the aspect or part of the proposed improvement that does not conform to such rule or covenant. The Planning Criteria are not the exclusive basis for decisions of the ARC and compliance with the Planning Criteria does not guarantee approval of any application.

**Section 7.04**            **Violations.** The work approved by the ARC must be performed strictly in accordance with the Plans as approved by the ARC. If, after Plans have been approved, the improvements are altered, constructed, modified, erected, or maintained upon the Lot other than as approved, the same shall be deemed to have been undertaken without ARC approval. After one (1) year from completion of any improvement, addition, modification or alteration, said improvement shall, in favor of purchasers in good faith and for value and Mortgagees, be deemed to comply with the provisions hereof unless a notice of such noncompliance executed by any member of the ARC shall appear in the Public Records or legal proceedings shall have been instituted to enjoin the noncompliance or to enforce compliance with this Article VII.

**Section 7.05**            **Variances.** The ARC may grant variances from compliance with the architectural provisions of this Declaration or the Planning Criteria, including, without limitation, restrictions upon height, size or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may reasonably require. The granting of any variance shall not operate to waive any of the terms and provisions of this Declaration or the Planning Criteria for

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

**Section 7.06**                    **Waiver of Liability**. None of Declarant, the ARC, the Directors or the Association, or any agent, employee or officer thereof, shall be liable to anyone submitting Plans for approval or to any Owner, occupant, tenant, subtenant, invitee, licensee or guest of the Property by reason of or in connection with approval or disapproval of any Plans, or for any defect in any Plans submitted, reviewed, revised or approved in accordance with the requirements of the ARC, or for any structural or other defect in any work done according to or contrary to such Plans. Approval of Plans, or any other approvals, variances or consents by the ARC, are given solely to protect the aesthetics of the Property in the judgment of the ARC and shall not be deemed a warranty, representation or covenant that any action taken in reliance thereon complies with all applicable Laws, nor shall ARC approval be deemed approval of any Plan or design from the standpoint of structural safety or conformity with building or other codes. Every person who submits Plans for approval agrees, by submission of such Plans, and every Owner or occupant, tenant and subtenant of any Lot agrees, by acquiring title thereto or an interest therein, that it will not bring any action, proceeding or suit to recover any such damages and shall be deemed to have automatically agreed to hold harmless and indemnify the Board, the ARC, the Declarant and the Association, and all of the foregoing's directors, officers, members, agents and employees from and for any loss, claim, liability, expenses, causes of action or damages connected with the aforesaid aspects of the Plans, improvements or alterations.

**Section 7.07**                    **Enforcement**. Declarant and the Association shall have standing and authority on behalf of the Association to enforce in courts of competent jurisdiction the Planning Criteria and the decisions of the ARC. Should Declarant or the Association be required to enforce the provisions hereof by legal action, the reasonable attorneys' and paralegals' fees and costs and expenses incurred, whether or not judicial proceedings are involved, including the attorneys' and paralegals' fees and costs, and expenses incurred on appeal from judicial proceedings, shall be collectible from the violating Owner. Should any Owner fail to comply with the requirements hereof after thirty (30) days' written notice, Declarant and the Association shall have the right, but not the obligation, to enter upon the Owner's Lot, make such corrections, alterations or modifications as are necessary, or remove anything in violation of the provisions hereof, the Rules and Regulations, or the Planning Criteria, and charge the costs and expenses thereof to the Owner as an Individual Assessment. Declarant, the Association, the Board and the ARC and all of the foregoing's directors, officers, members, agents and employees, shall not be liable to the Owner or to any occupant or invitee of any Lot for any trespass or damages or injury to property or person for any action taken hereunder unless caused by gross negligence, intentional misconduct or intentional wrongdoing.

**Section 7.08**                    **Exemption**. Declarant, before and after Turnover, shall be exempt from any Planning Criteria and the architectural control provisions of this Article VII. Declarant, before and after Turnover, shall be entitled to construct or install any new improvement, and to alter or change or modify any existing improvement, without submitting Plans to or obtaining the approval of the ARC.

**Section 7.09**                    **No Waiver of Future Approvals**. The approval of the ARC of any proposals or Plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans, specifications, drawings or matters subsequently or additionally submitted for approval or consent.

## ARTICLE VIII

### MAINTENANCE OBLIGATIONS

#### **Section 8.01**            **Owner's Responsibility.**

(a) Each Owner shall keep and maintain that Owner's Lot, Dwelling and all buildings and other improvements and structures and landscaping located on that Owner's Lot in good repair and in a neat, orderly and attractive condition, as described herein and in accordance with the Maintenance Responsibility Chart attached hereto as **Exhibit "D"** and made a part hereof. The minimum (but not exclusive) standard for maintenance of improvements and structures shall be consistent with the approved Plans thereof and with the general appearance of the other Dwellings and 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).

(b) A Xeriscape or Florida-friendly landscape landscaping plan designed and constructed in accordance with the definition of such terms in Section 373.185 of the Florida Statutes, shall be permitted. Any Xeriscape or Florida-friendly landscape landscaping plan shall be subject to review and approval by the ARC, consistent with the terms of this Declaration and any Rules and Regulations of the ARC, including, but not necessarily limited to, any Rules and Regulations of the ARC governing the implementation of Xeriscape or Florida-friendly landscape landscaping plans within the Property.

(c) Reclaimed water may, as required by the City or County, or at the option of the Declarant, or the Association after Turnover, be provided and used for irrigation to the Community. If an irrigation system capable of using reclaimed water for irrigation purposes is installed adjacent to or on a Lot, and reclaimed water shall be or become available, then in such events, the Association shall: (i) require the Owner of each such Lot to use the reclaimed water for irrigation purposes; and (ii) if applicable, charge the Owner of each Lot served by the reclaimed water system a fee for the use of such reclaimed water based on either, as determined by the Association, (A) a uniform rate applicable to all Owners evenly, or (B) the volume of reclaimed water used at each Lot.

(d) The Association shall have the right but not the obligation to provide exterior repair and maintenance on any Lot or any Dwelling, building or structure or improvement located thereon in the event of default by any Owner in the duties hereby imposed under this Article VIII. Prior to performing such repair or maintenance, the Board must determine that there is need of repair or maintenance and whether such need detracts from the overall appearance of the Property. Except in emergency situations, prior to commencement of any such repairs or maintenance, the Board must furnish written notice to the Owner to the effect that, unless specified repairs or maintenance are commenced within fifteen (15) days after the mailing of the notice, and thereafter diligently pursued to completion, the Association may procure said repairs or maintenance. Upon the Owner's failure to commence timely and to diligently pursue the requested repairs or maintenance, the Association and its designated agents, employees, contractors and subcontractors shall have the right to enter in or upon the Lot and the exterior of any Dwelling, building or structure or improvement thereon to perform the repairs or maintenance specified in the notice. In this regard, the Association shall have the right to do such things as, but not limited to, paint; power wash; repair, replace and care for pools, pool enclosures, roofs, gutters, down spouts and exterior building surfaces; clean or resurface paved access ways and parking areas; trim and care for trees, shrubs, grass, walks, swales, berms and other landscaping and drainage improvements; and to provide general cleanup, shoreline maintenance, and removal of debris which in the opinion of the Board detracts from the overall beauty and setting of the Property. Declarant, the Board, the Association, and the foregoing's respective directors, officers, members, agents, employees, contractors and subcontractors shall have no liability to the Owner or any occupant, tenant, subtenant or guest or invitee for trespass, or damage, or injury to property or person as the result of actions taken pursuant this paragraph, unless caused by gross negligence, intentional misconduct, or intentional wrongdoing. The Association's election to provide exterior repair or maintenance on any Lot or any Dwelling, building or structure or improvement located thereon in the event of default by any Owner in the duties hereby imposed under this

Article VIII, shall not, in any way, constitute or impose an obligation or responsibility upon the Association to perform all or any part of such work. As such, each Owner and Member acknowledges and agrees that the performance by the Association of such work does not thereby grant or provide the Association authority or standing to institute, maintain, settle, or appeal actions or hearings in its name on behalf of Members related to improvements for which the Owner is responsible for maintenance pursuant to this Article VIII.

**Section 8.02**                    **Assessment of Cost.** The cost of any work performed by or at the request of the Association pursuant to Section 8.01 hereof shall be assessed as an Individual Assessment against the Owner of the Lot upon which such work is done. The Association may recover any and all unpaid Individual Assessments pursuant to Section 6.01.

**Section 8.03**                    **Access.** In order to perform the repairs or maintenance authorized by this Article VIII, the designated agents, employees, contractors and subcontractors of the Association may enter upon any Lot and the exterior of any improvement located thereon during reasonable hours on any day except Sundays and legal holidays, except that in an emergency situation, as determined by the Board, entry may be made at any time and on any day. In the event the Association enters upon any Lot pursuant to this Article VIII, the Association shall not be responsible for any resulting damages.

**Section 8.04**                    **Common Areas.** The Association shall maintain and keep in good repair the Common Area, and as the Board deems appropriate, the Areas of Common Responsibility, and the wall, landscaping, lighting, irrigation, signage, drainage and other improvements from time to time located on either of the foregoing.

**Section 8.05**                    **Interpretation.** Notwithstanding anything in this Declaration to the contrary, prior to Turnover, this Article VIII may not be amended without Declarant's prior express written consent, which consent may be granted, conditioned or denied in Declarant's absolute and sole discretion.

## ARTICLE IX

### RESTRICTIVE COVENANTS

Unless otherwise inconsistent with or in direct conflict with the approvals, requirements, or laws of any applicable Governmental Authority, in which case said approvals, requirements, and laws shall govern and control only to the extent necessary to resolve any such inconsistencies or conflicts, the Property shall at all times and forever be subject to and encumbered by the following covenants and restrictions, which covenants and restrictions shall bind each and every Member, Owner and Lot, and shall bind and run with the land:

**Section 9.01**                    **Wells.** No individual well water supply system shall be permitted on any Lot without the prior written approval of the ARC.

**Section 9.02**                    **Obnoxious or Offensive Activity.** No activity or use shall be allowed upon any Lot or the Property which is a source of annoyance, embarrassment, harassment or discomfort to Owners or their tenants, subtenants, guests or invitees, or which interferes with the peaceful possession and proper use and enjoyment of the Property, nor shall any improper, unsightly, offensive or unlawful use be made of any Lot, Dwelling, the Common Area or the Areas of Common Responsibility. The use of any Lot and the Property shall comply with all applicable Laws. Each Lot and the Property shall be used, enjoyed, held and occupied in such manner as not to cause or produce any of the following effects discernible outside any Dwelling: noise or sound that is objectionable because of its volume, duration, beat, frequency or shrillness; smoke; noxious, toxic or corrosive fumes or gases; obnoxious odors; dust, dirt or fly ash; unusual fire or explosive hazards; vibration; or interference with normal television, radio or other telecommunication reception by other Owners.

**Section 9.03**                    **Rules and Regulations.** Reasonable rules, regulations, policies, procedures and standards may be promulgated by the Board, as to the use and enjoyment of the Property (the "Rules") and such Rules shall be observed by the Owners, Members, tenants, subtenants, licenses, invitees, guests and occupants of all Lots. Such Rules may involve such matters as air conditioning units, signs, mailboxes, temporary structures, noisy mufflers, loud music, loud vehicles or other nuisances; garbage and trash disposal; parking; traffic; state of repair of vehicles; tree removal; animals; game and play structures and devices; swimming pools; television and telecommunications devices and antennae; driveways; walkways; sight distances at intersections; garages; and fences. These matters are set out by way of illustration only and shall not be construed to limit the authority of the Board to promulgate and enforce Rules. Such Rules may augment or clarify the terms of this Declaration or any term, covenant or restriction herein contained.

**Section 9.04**                    **Animals.** No animals of any kind, character, nature, or description shall be kept, raised, bred, or maintained on or upon any Lot; provided, however, that household, domesticated "Pets" (as that term is defined below), as allowed by the Local Government, may be kept on each Lot so long as they are not kept, raised, bred, or maintained thereon for any business or commercial purposes whatsoever. As used herein, the term "Pet(s)" shall mean and refer to birds, fish, dogs, cats, reptiles, insects, and all other non-human, non-plant living organisms, that: (i) have not been prohibited by the Board from time to time; and (ii) that are generally and commonly recognized as household and domestic pets in the County or City, as applicable, and shall expressly exclude livestock of domesticated or undomesticated animals, fowl, and poultry, e.g., horses, cows, pigs, donkeys, squirrels, etc. Exotic animals such as, but in no way limited to, snakes and big cats (e.g., tigers, cougars, etc.) are not considered Pets and are expressly prohibited, as are breeds of any kind of Pet deemed aggressive from time to time by the Board. "**Dangerous dogs**", as that term is defined in Chapter 767 of the Florida Statutes, or as determined from time to time by the Local Government, are prohibited on the Property. Only a reasonable number of Pets, as determined in the Board's discretion, may be kept on a Lot at any one time. Pets shall be sheltered inside buildings/improvements. No separate or exterior building/improvement for Pets shall be permitted on the Property. All Pets must be kept in a fully fenced area or leashed when outside of any building/improvement and shall not be permitted to run loose. Invisible dog fences or barriers, if allowed at all within the Community, must first be approved by the ARC. No Pet shall be permitted to remain on the Property if it or they disturb the tranquility of the Property, the Community, the Association, or the other Owners or residents (e.g., excessive dog barking), if it or they are unlawful, dangerous, annoying, or a nuisance to or destructive of wildlife, or if it or they are expressly excluded from the Property by the Board after notice and hearing. All owners of Pets are responsible for timely cleanup of Pet waste and the Board may elect to promulgate Rules and Regulations to enforce the same and other matters concerning Pets. Each Owner who determines to keep a Pet hereby agrees to indemnify the Association and Declarant and hold each of the Association and Declarant harmless against any loss or liability of any kind or character whatsoever arising from or growing out of such Owner having any animal on the Property.

**Section 9.05**                    **Garbage and Trash; Recycling.**

(a)            No garbage, trash, junk, refuse, rubbish, or waste materials shall be placed, kept, maintained, or stored on any Lot, except in covered containers and sealed sanitary containers of a type, size, color, and style which are required by the Local Municipality or pre-approved by the ARC. All such containers shall be kept inside Dwellings and screened from view from outside of the Lot, except when they are being transported and made available for collection. Containers transported and made available for collection shall not be placed at any Lot curb or outside any Dwelling earlier than twenty-four (24) hours prior to scheduled pickup, and must be retrieved and returned to storage inside the Dwelling by no later than twenty-four (24) hours after the pickup occurs. Garbage, trash, junk, refuse, rubbish, or waste materials, regardless of the type or cause, must be removed from the Lot by the Lot Owner and may not be permitted to stay or accumulate on any Lot. Outdoor incinerators may not be kept or maintained on any Lot. Notwithstanding anything to the contrary set forth above in this Section 9.05 if required by the Local Government in connection with the development of the Community, Declarant shall establish, on Common Area or otherwise, a centralized garbage collection and recycling facility (collectively, "Garbage Facility") at or near the main entrance of the Community, all in accordance with the Local Government requirements regarding establishment of the Garbage Facility. After Declarant establishes and constructs the same, the

administration, regulation, care, maintenance, repair, restoration, replacement, insuring, preservation and protection of the Garbage Facility, regardless of whether or not the same is located on Common Area, shall be done by the Association at Common Expense, all in accordance with the Local Government 's requirements regarding same. Rules and Regulations may be promulgated from time to time regarding the use of the Garbage Facility.

(b) The Board may establish a recycling program and recycling center within the Community and in such event, all occupants of Dwellings shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

**Section 9.06**                    **Storage Receptacles.** No fuel tanks or similar storage receptacles may be exposed to view, and the same may be installed only within an approved accessory building or structure, within a screened area, and they shall otherwise comply with Rules and Regulations established from time to time and applicable Law.

**Section 9.07**                    **Vehicles.**

(a) Unless express prior written approval is given by the Board, in the Board's sole and absolute discretion, no "Commercial Vehicle" (as defined below), recreational vehicle (including, but not limited to, personal water craft, all-terrain vehicles, and two-wheeled dirt bike motorcycles), camper, mobile home, motor home, boat, house trailer, boat trailer, or trailer of any other kind or description (collectively, "Prohibited Vehicle(s)"), shall be permitted to be parked or to be stored at any place on the Property, unless Declarant designates specifically certain spaces for some or all of the above, in which case Declarant or the Association may change for the use of such spaces. "Commercial Vehicle" means any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight. The foregoing prohibition of parking shall not apply to temporary parking of commercial Prohibited Vehicles, such as for pick-up and delivery and other bona fide temporary commercial services being delivered or provided to a Lot or Dwelling, nor to Prohibited Vehicles which are stored within a Dwelling's closed garage or within locations within an Owner's Lot which are not visible from either the front of the Lot (i.e., within the public view) and adjacent Lot, or Common Property, or as otherwise permitted by the Association Act, nor to any Prohibited Vehicles of Declarant or its affiliates or any Builder or building contractor designated by Declarant in writing from time to time. Marked or unmarked police cars and other municipal vehicles are specifically excluded from the definition of Prohibited Vehicles. No bus or tractor trailer or any other truck larger than a full size pickup truck may be parked on the Property, except for the following: (i) the personal vehicle, including a pickup truck, of an Owner or their family members, guest, invitees, or tenants; (ii) temporarily as in the case of a moving van or other such vehicle necessary to provide service to an Owner; (iii) any vehicles necessary for any construction activity being performed by or on behalf of Declarant; or (iv) as otherwise permitted by the Association Act. Further, and notwithstanding anything herein to the contrary, the foregoing restrictions shall not apply to the installation, display, and storage of items on a Lot expressly permitted and contemplated by Section 720.3045 of the Association Act, which shall control to the extent of any conflict with the prohibitions in this Section or any of the Governing Documents.

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

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

(d) No Owner or other occupant of the Community shall repair or restore any vehicle of any kind upon or within the Community, except for (i) emergency repairs and then only to the extent necessary to enable the movement thereof to a proper repair facility; or (ii) repairs completed within the garage (in which case no garage doors shall be left open overnight or at any other time when the subject vehicle is not actually being worked on or repaired).

(e) Inoperable vehicles (e.g. missing major components such as engines and/or transmissions, one or more flat tires, etc.), or derelict vehicles (e.g. broken glass, severely damaged body panels, unpainted body panels, etc.) must be fully enclosed within a closed garage at all times or within locations within an Owner's Lot which are not visible from either the front of the Lot (i.e., within the public view), an adjacent Lot, or Common Property.

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

**Section 9.08**                    **Visibility of Intersections.** No obstruction to visibility at Street intersections shall be permitted; provided that the Association shall not be liable in any manner to any person or entity, including Owners, their guests, tenants, subtenants, licensees and invitees, for any damages, injuries or deaths arising from any violation of this Section 9.08.

**Section 9.09**                    **Temporary Structures.** No building or structure of a temporary or portable character such as trailers, tents or shacks shall be permitted in the Property, except as approved by the ARC, and except for temporary improvements used solely in connection with the construction of ARC approved permanent improvements and removed immediately upon completion of such ARC approved permanent improvement, unless such structures are not visible from either the front of the Lot (i.e., within the public view), an adjacent Lot, or Common Property. Neither Declarant nor any Builders doing business in the Property shall be prohibited from erecting or maintaining temporary dwellings, model homes and other structures for development and marketing purposes, provided the same are in compliance with all applicable Laws, and further provided that any such Builder first obtains Declarant's written approval of such temporary dwelling, home or structure prior to installing or constructing same, such approval to be granted, conditioned or denied by Declarant in Declarant's sole and absolute discretion.

**Section 9.10**                    **Signs.** No signs, advertisements, billboards, solicitation or advertising structures or materials of any kind shall be displayed or placed upon any Lot (including within any window) without the prior written approval of the ARC. Notwithstanding the foregoing, the following shall be permitted without prior approval of the ARC: (i) street number and name signs; and (ii) one (1) professionally made, non-digital, non-electric (or otherwise illuminated) sign constructed of metal or wood, installed on one wooden 4" by 4" post, and of not more than eight (8) square feet of surface area per side (2 sides maximum), containing no handwriting whatsoever, and used solely in connection with the marketing of the affected Lot for sale or lease. Wire-stake signs, commonly known as "H-Frame" or "U-Frame" signs, are expressly prohibited. The ARC shall have the right to establish

guidelines so as to require a uniform standard for signs in the subdivision ("Sign Criteria"). Additionally, an Owner may display a sign of reasonable size provided by a contractor for security services, provided that said sign is located no more than ten (10) feet from any entrance to a Dwelling. Declarant or the Association may enter upon any Lot and remove and destroy any sign which violates this Section 9.10. This Section 9.10 shall not apply to Declarant or to any Builder doing business in the Property provided that any such Builder first obtains Declarant's written approval of any such signs, structures or materials prior to installing same, such approval to be granted, conditioned or denied by Declarant in Declarant's sole and absolute discretion.

**Section 9.11**            **Air Conditioning Equipment.** No air conditioning equipment other than compressor units may be visible on the exterior of any Dwelling unless previously approved by the ARC, which approval may be based on the aesthetics or adequacy of screening of such equipment. Window and wall air conditioning units are prohibited on the Property.

**Section 9.12**            **Exterior Electronic or Electric Devices; Solar Panels.**

(a)            No exterior antennas and no citizen band or short wave antennas or satellite dishes ("Exterior Antennas") in excess of one (1) meter in diameter shall be permitted on any Lot or improvement thereon, except that Declarant and its affiliates shall have the right to install and maintain community antenna, microwave antenna, dishes, satellite antenna and radio, television and security lines. The location of any approved satellite dish must be approved by the ARC, which may require appropriate screening; provided, however, that the satellite dish shall be allowed in the least obtrusive location where the satellite signal may be received.

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

**Section 9.13**            **Subdivision.** No part of the Property shall be further subdivided without the prior written consent of Declarant for so long as Declarant owns any Lot, and thereafter, by the Board.

**Section 9.14**            **Completion.** Upon commencement of construction of improvements on any Lot, the Owner shall diligently prosecute the work to the end so that the improvements shall be completed as expeditiously as is reasonable. The Owner of the Lot on which improvements are being built shall keep the Streets and areas adjacent to the Lot free from dirt, mud, garbage, trash or other debris occasioned by construction.

**Section 9.15**            **Excavation.** No clearing or excavation shall be made except incident to construction, maintenance or repair of an ARC-approved improvement (or by Declarant, by a Builder, or in connection with development of the Property) and must be in accordance with the Permit; and upon completion thereof, exposed openings shall be back-filled, and disturbed ground shall be leveled, graded and covered with sod or seeded in accordance with the approved Plans and the Permit.

**Section 9.16**                    **Sidewalks**. If required by the Local Government, the Owner of each Lot shall construct, prior to occupancy of the Dwelling on that Lot, a sidewalk along each boundary line of the Lot which abuts a platted Street shown on any Recorded Plats.

**Section 9.17**                    **Fences and Walls**. Except for fences and walls constructed by Declarant or a Builder, there shall be no fence or wall permitted on any Lot unless it has been approved by the ARC as to size, material, color, location, etc. Landscape buffers may be required by the ARC on the outside of any fences and walls. All fences must be of a material approved by the ARC and must be installed with the posts and supports on the inside. If the Owner of a Lot fails to timely remove any unauthorized or unapproved fence or portion thereof, the Declarant may remove such fence or portion thereof, in its discretion, without any liability whatsoever to said Owner, whereupon the fence or portion thereof may be disposed of. Notwithstanding anything herein to the contrary, so long as Declarant or any Builders designated by Declarant maintain any model homes within the Property, they shall have the right to fence all or any part of any Lots being used for parking for the term of such permitted use.

**Section 9.18**                    **Yard Accessories and Play Structures**.

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

- (i) basketball hoops and structures must be well-maintained;
- (ii) backboards must be transparent or white, NBA-approved, with a limit of two colors of trim;
- (iii) nets are limited to white nylon;
- (iv) the location of the basketball hoop and structure must first be approved by the ARC;
- (v) If pole-mounted, the pole must be metal, either black or galvanized and permanently mounted into the ground with a concrete base; and
- (vi) No permanent basketball structures may be placed in any side yard.

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

(b) Tree houses are prohibited within the Community.

(c) The ARC may regulate the size and number (which could be zero) of permitted decorative statues or figures, birdbaths, bird houses, lawn ornaments and other yard art.

**Section 9.19****Use; Rentals; Timesharing.**

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

(b) Owners shall be permitted to lease their Dwelling, provided that such lease shall require the tenant thereunder to comply with the Governing Documents and the terms and conditions of the Rules and Regulations. "Short-Term Rentals" (as that term is defined below) of Dwellings are prohibited. For purposes of this Declaration, the term "Short-Term Rentals" shall mean and refer to the leasing or rental of any Dwelling or Lot to a person or entity for a period of less than seven (7) consecutive months. Should an Owner enter into a lease or rental agreement, and said lease or rental agreement shall terminate or expire earlier than stated therein, the Owner may only enter into one more lease or rental agreement in the calendar year in which the previous lease or rental agreement terminated or expired. The subleasing or sub-renting of a Dwelling is subject to the same requirements and limitations as are applicable to the leasing or renting thereof. The Association may charge a reasonable administrative fee not to exceed One Hundred and No/100 Dollars (\$100.00) for the required review of any lease or rental agreement, or other such amount as permitted by law from time to time. Dwellings shall be leased in their entirety, and no individual rooms may be leased. A copy of all lease or rental agreements shall be provided by the Owner to the Association upon execution, but no less than ten (10) business days following full execution of such lease or rental agreement.

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

**Section 9.20** **Dwellings.** Each Dwelling is subject to all restrictions, restraints, criteria, conditions and constraints as are set forth in any and all permits or approvals applicable to the development and construction of the Property.

- (a) No Dwelling shall contain less than one thousand (1,000) square feet of air conditioned area under roof, exclusive of screened area, open porches, terraces, patios and the garage.
- (b) Each Dwelling shall have an attached fully enclosed garage capable of housing not less than one (1) standard sized automobile, which shall not be enclosed for use as a living area.
- (c) Setbacks for Dwellings shall be as permitted by the Local Government.
- (d) No Dwelling shall exceed two (2) stories in height.
- (e) Except as permitted pursuant to Section 9.12 hereof or by the ARC, no projections of any type other than chimneys, skylights and vent stacks shall be placed or permitted to remain above any roof of any Dwelling.
- (f) No Dwelling shall have exposed structural block on its front elevation.
- (g) All driveways shall be constructed of solid concrete or decorative pavers approved by the ARC.
- (h) Except as may otherwise be provided herein (if at all) with regard to central air conditioning compressor units, all oil tanks, soft water tanks, wood piles, water softeners, well pumps, sprinkler pumps, pool and spa equipment and heaters, and other or similar mechanical fixtures and equipment, shall be screened or located so as not to be visible from a Street or other Lot.
- (i) Unless installed by Declarant or the Association, the following fence materials are expressly prohibited: (a) metal, other than decorative aluminum; (b) plastic, other than PVC as approved by the ARC; (c) fabric of any type; (d) wood of any type; (e) bamboo; or (f) chain link.

**Section 9.21** **Tree Removal and Landscaping.** Except if done by Declarant, trees measuring six inches (6") or more in diameter at three feet (3') or more above ground level shall not be cut or removed without the prior written consent of the ARC; provided, however, trees located within six feet (6') of the location of the Dwelling may be removed, regardless of size, without prior approval of the ARC. More restrictive arbor ordinances or environmental laws shall control in the event of conflict herewith. There shall be no removal of trees or Lot clearing, other than clearing of underbrush, until the ARC has approved in writing a general, conceptual landscape plan that designates those existing trees to be retained and preserved on the Lot. All Lots shall have fully sodded front and side lawns using St. Augustine Grass (i.e., *Stenotaphrum Secundatum* "Floritam" or a similar variety) Zoysia, or Bahia grass, except in approved landscape or retained natural areas, or as otherwise installed by Declarant or permitted by the ARC. All areas of each Lot not covered by building improvements or included within approved gardens and natural areas within the Lot shall be sodded prior to occupancy of the Dwelling on that Lot. Unless prohibited by law, natural areas shall be finished by removal of underbrush and addition of mulch. Notwithstanding anything contained herein to the contrary and unless done so by Declarant, prior to Turnover, no tree, regardless of size, shall be removed without prior written consent of the ARC.

**Section 9.22** **Debris.** Except for normal construction debris on any Lot during the course of construction of the Dwelling, no weeds, garbage, refuse or debris of any kind shall be placed or permitted to accumulate upon any portion of any Lot.

**Section 9.23**                    **Pumping or Draining; Drilling or Mining**. The Owner of any Lot which includes or is adjacent to any pond, creek, bay head, or other body of water shall not reduce the depth or size of said body of water by pumping or draining therefrom, or by placing fill dirt or any other material or debris in said body of water. No Owner of any Lot may drill or mine for, or otherwise extract or attempt to extract, minerals, oil, gas, or any other natural resources or geological materials from the subsurface of said Owner's Lot or from any other portion of the Property.

**Section 9.24**                    **Ramps**. No skateboard or bicycle ramp or similar structure shall be permanently installed or maintained overnight on any portion of any Lot located forward of the rear wall of the Dwelling or adjacent to any side Street.

**Section 9.25**                    **Firearms**. The discharge of firearms within the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types and sizes. Each Owner who determines to keep a firearm on or about the Property hereby agrees to indemnify the Association and Declarant and hold each of the Association and Declarant harmless against any loss or liability of any kind or character whatsoever arising from or growing out of such Owner having a firearm on the Property.

**Section 9.26**                    **Declarant Reservation**. Any provision of this Declaration to the contrary notwithstanding, until Declarant and its successors and assigns have completed all of the contemplated improvements and closed the sales of all of the Lots, neither the Owners nor the Association shall interfere with, or allow the interference with, the completion of Declarant's planned improvements and the sale of the Lots. Declarant and Builders may make such lawful use of the unsold Lots and the Common Area, without charge, as may facilitate such completion and sale, including, but not limited to, maintenance of sales and construction trailers and offices, the showing of the Lots and the display of signs and the use of Lots for vehicular parking. Without limiting the generality of the foregoing, except only when the express provisions of this Declaration prohibit Declarant from taking a particular action, nothing in this Declaration shall be understood or construed to prevent or prohibit Declarant from any of the following:

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

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

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

(d) Determining in its sole discretion the nature of any type of improvements to be initially constructed as part of the Development or the Property; or

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

(f) Recording Supplemental Declarations which modify or amend this Declaration, which add or withdraw Additional Property, or that otherwise allow or permit Declarant to effect any action which

may be required of Declarant by the Local Government or any other Governmental Authority or quasi-governmental agency in connection with the development and continuing operation of the Property; or

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

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

**Section 9.27**                    **Conservation Tracts.** If any conservation tract is specifically designated as such on any Recorded Plat of the Property, then, except for those alterations made by Declarant and those additional alterations which may be permitted by applicable Governmental Authorities and the ARC, there shall be no further clearing, construction, grading or alteration of such tracts. Any portion of the Property which is designated on any Recorded Plat as "open space" shall not be developed in the future with any Dwellings or improvements and shall remain open space in perpetuity.

**Section 9.28**                    **Mailboxes.**

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

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

**Section 9.29**                    **Windows.** No security bar system may be installed or placed on any window or door of any Dwelling in the Property. Window treatments within any Dwelling constructed on a Lot shall consist of drapery, blinds, decorative panels, or other window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding twenty- one (21) days after an Owner or tenant first moves into a Dwelling or while permanent window treatments are being installed, cleaned, or repaired. All window coverings shall be professionally made, uniform in appearance, and generally keeping with

the exterior scheme of the Dwelling. No awnings, canopies or shutters shall be affixed to the exterior of a Dwelling on a Lot without the prior written approval of the ARC. No reflective tinting or mirror finishes on windows on any Dwelling on a Lot shall be permitted unless approved by the ARC. Window treatments on any Dwelling facing the street shall be of a neutral color, such as white, off-white or wood tones.

**Section 9.30**            **Outdoor Drying**. No clothing, laundry or wash shall be aired or dried outside of any building structure on any Lot, unless such clothing, laundry, wash and drying apparatus are fully screened from view from adjacent property and Streets by fencing or landscaping. Such clothing, laundry, or wash shall not be placed outside before sunrise and shall be removed from the exterior of the Lot by sunset each day.

**Section 9.31**            **Use of Name "Trout River Gardens"**. No Owner shall use the name(s) "Trout River Gardens" or any logo associated with such name(s) and used by Declarant in connection with the Property, or any derivative of such name or logo, in any printed or promotional material or in any activity, without Declarant's prior written consent. Declarant may, however, use such names and logos with respect to any property or other development activities of Declarant, without the consent of any party, including any Owner.

**Section 9.32**            **Garages**. Garages are intended primarily for parking and vehicle storage. No garages may ever be converted to or otherwise used as: living space/quarters such as, but not limited to, family rooms, bedrooms, bonus rooms, recreational (rec) rooms, or secondary/mother-in-law suites; office space; or a workshop. Only the number of cars exceeding occupied garage spaces shall be parked on the driveway. Vehicles parked in the driveway shall be parked such that they are not blocking the sidewalk.

**Section 9.33**            **Flags**. Except as otherwise permitted by applicable law, no flag (including flagpole), banner, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in, or upon any part of the Property, including, without limitation, any Dwelling, Lot or vehicle, that is visible from the outside; provided, however, an Owner may display up to two of the following portable, removable flags not larger than four and one-half feet (4 ½') by six feet (6') in a respectful manner: (i) the United States flag; (ii) the official flag of the State of Florida; (iii) a flag that represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard; (iv) a POW-MIA flag; and (v) a "first responder flag." The term "first responder flag" shall have the meaning ascribed to such term in the Association Act. Additionally, an Owner may erect a freestanding flagpole ("Flagpole") no more than twenty feet (20') high on any portion of the Owner's Lot as long as the Flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The Flagpole may not be installed any closer than ten feet (10') from the back of curb, or within ten feet (10') of any Lot boundary line. The Owner may further display in a respectful manner from that Flagpole, one official United States flag, not larger than four and one-half feet (4 ½') by six feet (6'), and may additionally display one other flag permitted above. Such additional flag must be equal in size to or smaller than the United States flag. The Flagpole and aforementioned displays are subject at all times to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances of the County, and to all setback and locational criteria set forth in the Governing Documents.

**Section 9.34**            **Holiday Decorations**. The Board may, from time to time, as necessary, adopt reasonable size, location, time, place, manner, and other Rules and Regulations with respect to holiday symbols and decorations outside Dwellings or on Lots generally, which Rules and Regulations may include, but shall not be limited to, establishing schedules and time periods during which such displays are allowed. For example, a Rule and Regulation may provide that Christmas displays may not be erected or permitted on any Lot, or to be visible outside any Dwelling, prior to Thanksgiving in the year that the subject Christmas occurs, and must be removed no later than the end of the second week of January of the next calendar year.

**Section 9.35**            **Approved Builders**. All development, construction, and reconstruction of any Dwelling or other improvements on or about a Lot shall be performed by a Builder approved by Declarant, or by another licensed residential building contractor approved by Declarant or the ARC (after Turnover).

**Section 9.36**            **Solicitation**. No soliciting shall be allowed at any time within the Property. Owners should notify the Association if a solicitor appears, and appropriate action may be taken by the Board.

**Section 9.37**            **Yard Sales**. The Board, in its sole and absolute discretion, may designate up to two (2) dates or weekends during each calendar year to hold and promote community-wide yard and/or garage sales. No other yard or garage sales shall ever be permitted to be held at any time within the Community by Owners or residents thereof.

**Section 9.38**            **Exterior Lighting**. Except as may be installed initially by Declarant, no spotlights, seasonal and special effect lighting, floodlights or similar high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon or upon any Common Area, or any part thereof without the prior written approval of the ARC and in accordance with the Planning Criteria and the Rules and Regulations. Low intensity lighting which does not disturb the Owners or other occupants shall be permitted.

**Section 9.39**            **Traffic Hazards**. Nothing shall be erected, constructed, planted or otherwise placed in the Community subsequent to the initial construction of Improvements in the Community by Declarant which creates a traffic hazard or blocks the vision of motorists upon any of the Streets or intersections of the Community.

**Section 9.40**            **Hurricane Shutters**. Any hurricane shutters or other protective devices visible from the outside of a Dwelling (collectively, "Hurricane Shutters") shall be of a type approved in writing by the ARC. Unless applicable law otherwise expressly permits the permanent affixing of same, Hurricane Shutters may only be used on a temporary basis, and shall not be stored on the exterior of any Residence. Any approval by the ARC shall not be deemed as an endorsement of the effectiveness of any Hurricane Shutters. Hurricane Shutters may not be left closed for any extended period beyond the time needed to protect the Dwelling from damage caused by a hurricane, tropical storm, or other high winds event (collectively, "Storm Event"). Any approved Hurricane Shutters may be installed or closed up to five (5) days prior to the expected arrival of a Storm Event, and must be removed or opened within five (5) days after the end or passing of the Storm Event or as the Board may determine otherwise. Except as the Board may otherwise decide, Hurricane Shutters may not be closed at any time other than a Storm Event. A Lot Owner or occupant who plans to be absent during all or any portion of a hurricane season, i.e., June 1st through November 30th ("Hurricane Season") must prepare their Dwelling prior to their departure by designating a responsible firm or individual to care for their Dwelling should a Storm Event threaten or damage the Dwelling. Said Lot Owner or occupant must furnish the Association with the names of such firm or individual prior to any Storm Event.

**Section 9.41**            **Variances**. Declarant and the Board shall have the right and power to grant variances from the provisions of this Article IX, and from the Rules and Regulations for good cause shown, as determined in the reasonable discretion of the Board. No variance granted as aforesaid shall alter, waive or impair the operation or effect of the provisions of this Article IX in any instance in which such variance is not granted.

**Section 9.42**            **Pools**. Swimming pools may not be located in the front or side yard of any Lot, nor nearer than the Dwelling to any side Street lot line. Swimming pools, spas, hot tubs, decks, screens, screen enclosures, lanais, etc. (collectively, "Pool Improvements"), shall be designed to be compatible and "tie in" with the architecture and material of the subject Dwelling. Screen enclosures and lanais shall be a maximum of one (1) story in height (unless building architecture, as determined by the ARC, requires two (2) stories in height). Tree protection barricades shall remain throughout construction of all Pool Improvements. All swimming pools shall be constructed and built at existing grade unless otherwise expressly approved by the ARC. All Pool Improvements construction shall, at all times, be in accordance with all applicable laws. In no event shall any above-ground swimming pool be permitted within the Community. All swimming pool materials, equipment, and play toys stored on any Lot shall be screened from view from outside the Lot. Swimming pool security fencing and screen enclosures shall be installed subject to applicable hurricane standards within the Florida Building Code or other applicable

jurisdictional codes. No Pool Improvements may be constructed, erected, or maintained upon any Residential Property without the prior written approval of the ARC.

## ARTICLE X

### STORMWATER MANAGEMENT

#### **Section 10.01 Association.**

(a) Pursuant to Fl. Stat. §617.0302(11), the Association, as a corporation not for profit organized under Chapter 617 of the Florida statutes, has the power to sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets.

(b) Pursuant to Fl. Stat. §617.0302(2), the Association, as a corporation not for profit organized under Chapter 617 of the Florida statutes, has the power to sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person.

(c) At Common Expense, the Association shall have the authority at all times to contract for services to provide for operation and maintenance services concerning the Common Areas, the Stormwater or Surface Water Management System, any Association property, and the Association generally.

(d) The Association shall operate, maintain, and manage the Stormwater Management System(s) in a manner consistent with the requirements of the Permit and applicable District rules, and shall assist in the enforcement of the restrictions and covenants contained herein.

(e) The Association shall levy and collect adequate Assessments (e.g., Annual Assessments and Special Assessments) against Members of the Association for the cost of maintenance, operation, and replacement of the Stormwater Management System. The Assessments shall be used for the maintenance and repair of the Stormwater Management Systems and mitigation or preservation areas, including but not limited to work within retention areas, drainage structures and drainage easements.

(f) 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 District prior to such termination, dissolution or liquidation.

(g) Existence of the Association shall commence with the filing of the Articles with the Secretary of State, Tallahassee, Florida, and the Association shall thereafter exist in perpetuity. However, if the Association is dissolved, the Stormwater Management System, any property containing the Stormwater Management System, and all water management portions of Common Areas, shall be conveyed to an entity meeting the requirements of Section 10.01(f) directly above.

(h) As provided elsewhere herein, this Declaration shall run with and bind and benefit the Property for a term of thirty (30) years from the Effective Date, after which time this Declaration and each Supplemental Declaration shall be automatically extended for successive periods of ten (10) years, unless prior to the commencement of any 10-year extension period an instrument properly executed and signed by the Owners of eighty percent (80%) of the Lots and agreeing to terminate this Declaration is Recorded in the Public Records.

(i) A "Recorded Notice of Environmental Resource Permit," Form No. 62-330.090(1), shall be Recorded in the Public Records. If Rules and Regulations are promulgated, a copy of the Permit shall be attached to said Rules and Regulations as an exhibit. The Registered Agent for the Association will maintain a copy of the Permit and copies of all further permitting actions for the benefit of the Association.

**Section 10.02**                    **Ownership/Control, Maintenance, and General Use of Stormwater Management System.**

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

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

(c)        To the extent not included in the areas required to be maintained by the Association pursuant to Section 10.02(a) and Section 10.02(b) above, each Owner shall, at that Owner's expense, grass over, provide routine landscape maintenance, mow and keep free of trash and debris, on a routine basis, those portions of the Stormwater Management System located on or within that Owner's Lot (whether or not included in a platted drainage easement depicted on any Recorded Plat), failing which the Association shall perform the required maintenance and may levy an Individual Assessment to cover the costs thereof. Each Owner shall be responsible for the "Maintenance, Operation and Repair" (as that term is defined below) of the swales, if any, on the Owner's Lot, failing which the Association shall perform the required maintenance and may levy an Individual Assessment to cover the costs thereof. The term "Maintenance, Operation and Repair", as used in this Declaration, shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted or required by the Permit or the District. Filling, excavation, or construction of fences, or the existence of anything else that interferes with drainage or otherwise obstructs the surface water flow in the swales is prohibited. No alteration of the swale shall be authorized and any damage to any swale, whether caused by natural or human-induced phenomena, shall be repaired and the swale returned to its former and proper condition as soon as possible by the Owner(s) of the Lot(s) upon which the swale is located, failing which the Association shall perform the required repair and may levy an Individual Assessment to cover the costs thereof.

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

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

(f)        Fences may only be permitted within drainage easements on an Owner's Lot so long as the fence does not block or impede the flow of water through the drainage easement area. With regard to any fences permitted within drainage easements pursuant to the terms hereof, the Owner of the subject Lot shall be responsible for removal/replacement of the fence or any portion thereof if removal of same is required in connection

with any maintenance, repair, construction, or installations concerning the drainage easement area or the Stormwater Management System. Notwithstanding the foregoing, if the Owner of the subject Lot fails to timely remove any such fence or portion thereof, the Declarant, the Association, and any Governmental Authority (including, but not limited to, the District) may remove such fence or portion thereof, in its discretion, without any liability whatsoever to said Owner, whereupon the fence or portion thereof may be disposed of, and without the party removing the fence or any portion thereof being required to thereafter reinstall or replace said fence or portion thereof.

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

**Section 10.03** Easements for Access and Drainage. The Stormwater Easements for access and drainage shall be as set forth in **Article IV, Section 4.11** above.

**Section 10.04** Amendment to Declaration. Any Amendment to this Declaration which alters the Stormwater Management System, beyond maintenance in its original condition, including mitigation or preservation areas and the water management portions of the Common Areas, must have the prior approval of the District. Any proposed Amendment to this Declaration affecting the Stormwater Management System (including environmental conservation areas, mitigation areas, and the water management portions of the Common Areas) shall be submitted to the District, for a determination of whether the Amendment necessitates a modification of the Permit. If a modification is necessary, the District will so advise the Permit's permittee. The Amendment affecting the Stormwater Management System may not be finalized until any necessary Permit modification is approved by the District or the Association is advised that a modification is not necessary.

**Section 10.05** Enforcement. The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation, and repair of the Stormwater Management System. The District has the right to take enforcement action, including a civil action for an injunction and penalties, against the Association to compel it to correct any outstanding problems with the Stormwater Management System facilities or in mitigation or conservation areas under the responsibility or control of the Association.

## ARTICLE XI

### ADDITIONAL COVENANTS AND RESTRICTIONS

No Owner may impose any additional covenants, conditions or restrictions on any part of the Property without the prior written approval of Declarant, for so long as Declarant owns any Lots, and thereafter, without the prior written approval of the Board.

## ARTICLE XII

### AMENDMENT

#### **Section 12.01** Amendment by Members

(a) Amendment by Written Instrument. This Declaration may be amended (an "Amendment") at any time by the holders of a simple majority of the votes in the Association (without regard to membership class). Upon approval of an Amendment in accordance with the preceding sentence, the Board shall direct the appropriate Officer, agent or employee of the Association to have a written instrument prepared in

recordable form which instrument shall set forth the text of the approved Amendment, and which Amendment shall also comply with all requirements of the Association Act. Upon execution of the Amendment by the holders of at least a simple majority of the votes in the Association (without regard to membership class), the Board shall direct the appropriate Officer, agent or employee of the Association to Record the Amendment in the Public Records. The Amendment will be deemed effective upon Recording.

(b) Amendment by Vote at a Duly-Authorized Meeting. An Amendment may be proposed by Declarant (before or after Turnover), the Association, or after Turnover, through a petition signed by ten percent (10%) of the Owners. If a proposed Amendment is to be adopted by a vote, a written copy of the proposed Amendment shall be furnished to each Owner at least thirty (30) days, but not more than ninety (90) days, prior to a duly-authorized meeting called to discuss the proposed Amendment. To pass, the proposed Amendment shall be approved upon the affirmative vote of at least a simple majority of the membership casting votes (either in person or by proxy) (as governed by Section 12.01(a) herein) at a meeting duly called to consider the proposed Amendment. Upon the approval of an Amendment pursuant to this Section 12.01(b), the President and Secretary shall execute a written instrument in recordable form which shall set forth the text of the Amendment, the effective date of the Amendment, the date of the meeting of the Association at which such Amendment was adopted, the date that notice of such meeting was given, the total number of votes cast at the meeting (either in person or by proxy), the total number of votes necessary to adopt the Amendment, the total number of votes cast for the Amendment, and the total number of votes cast against the Amendment. The written Amendment executed by the President and Secretary shall be Recorded in the Public Records. The Amendment will be deemed effective upon Recording.

(c) Amendment by Declarant. Until such time as Turnover occurs, Declarant specifically reserves the absolute and unconditional right to alter, modify, change, revoke, rescind, amend, restate, or cancel all or any portion of this Declaration (or any of the other Governing Documents) or the restrictive covenants contained in this Declaration (or in any of the other Governing Documents); provided, however, that to be valid and enforceable, any such amendment by Declarant may not be arbitrary, capricious, or in bad faith; destroy the general plan of development of the community; prejudice the rights of existing Non-Declarant Members to use and enjoy the benefits of Common Area; or materially shift economic burdens from the Declarant to the existing Non-Declarant Members. Notwithstanding the foregoing, Declarant shall obtain Landbanker's prior written approval of any above-mentioned action so long as Landowner owns any real property within Trout River Gardens. Following Declarant's relinquishment of control of the Association, this Declaration may only be amended pursuant to the provisions of such Section 12.01(a) and Section 12.01(b) hereof.

**Section 12.02** Restrictions on Amendments Notwithstanding anything to the contrary contained in Section 12.01 hereof, no Amendment to this Declaration may: (i) remove, revoke, or modify any right or privilege of Declarant without the prior express written consent of Declarant or the assignee of any such right or privilege which consent may be granted, conditioned or denied in such party's absolute and sole discretion; (ii) impair the validity or priority of the lien of any Mortgage or impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees; (iii) to the extent that any provision of the Declaration has been included to satisfy a condition of approval of a planned development, preliminary subdivision plan, development order or a subdivision plat of the property, such provision shall not be changed, amended, modified or otherwise deleted or eliminated without the prior written consent of the applicable Governmental Authority; (iv) result in or facilitate a termination of the Association's obligation to maintain the Common Area; or (v) change, amend, modify, eliminate or delete the restrictions contained in this Section 12.02. Additionally, any proposed Amendment which would have the effect of materially altering the general plan of development for the Development or which would materially prejudice the Owners' rights to use and enjoy the benefits of the Common Area, shall require the unanimous written consent of all Owners. No Amendment shall be permitted that would violate the Association Act.

**Section 12.03**            **Recording of Amendments.** Any amendment to a Governing Document shall be recorded by the Declarant or the Board, as applicable, in the Public Records to the extent required by Section 720.306(1)(e), Florida Statutes (2024).

### ARTICLE XIII

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

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

### ARTICLE XIV

#### **ARTICLE XIV DURATION AND TERMINATION**

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

### ARTICLE XV

#### **ENFORCEMENT**

**Section 15.01**            **Compliance by Owners.** Every Owner and all guests, tenants, subtenants, occupants, licensees, and guests and invitees of any Member, shall comply with the restrictions and covenants set forth in this Declaration and any and all Rules and Regulations which from time to time may be adopted.

**Section 15.02**            **Enforcement.** Failure of an Owner or that Owner's tenants, subtenants, occupants, licensees, invitees and guests to comply with the restrictions and covenants set forth in this Declaration or the Rules and Regulations applicable to the Owner, the Lot, the Dwelling or the Property, shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The offending Owner shall be responsible for all costs and expenses of enforcement, including, but not limited to, attorneys' and paralegals' fees actually incurred and court costs, fees and expenses. If any person shall violate or attempt or threaten to violate the provisions of this Declaration, it shall be lawful for Declarant, any Owner, or the Association: (a) to prosecute proceedings for the recovery of damages against those so violating or attempting to violate the provisions of this Declaration; (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting or threatening to violate the provisions of this Declaration, for the purpose of preventing or enjoining all or any such violations or attempted or threatened violations; or (c) to maintain a proceeding for any other equitable or legal recourse or remedy available at law or in

equity to address or prevent the violation or attempted or threatened violation of this Declaration. In addition, whenever there shall have been built or there shall exist on any Lot any structure, building, thing or condition which violates the provisions of this Declaration, Declarant or the Association (but not any Owner) shall have the right, but not the obligation, to enter upon the Lot where such violation exists and summarily abate and remove the same, all at the expense of the Owner of such Lot, which expense shall constitute an Individual Assessment, and such entry and abatement or removal shall not be deemed a trespass or make Declarant, the Board, or Association, or the directors, officers, members, agents, employees, contractors or subcontractors of any of the foregoing, liable for any damages on account thereof. The remedies contained in this Section 15.02 shall be cumulative of all other remedies now or hereafter provided by law, in equity, or by virtue of this Declaration. The failure of Declarant, the Board, the Association, or an Owner to enforce any covenant, restriction, obligation, right, power, privilege or reservation contained in this Declaration, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior or subsequent thereto.

**Section 15.03** Fines; Suspension. In addition to all other remedies, and to the maximum extent lawful, in the sole discretion of the Board of Directors, (A) a fine or fines may be imposed upon an Owner for failure of an Owner or that Owner's tenants, subtenants, occupants, licensees, invitees and guests to comply with any condition, covenant or restriction contained in this Declaration or any Rule or Regulation, and (B) the Association shall have the right to suspend for a reasonable period of time the rights of use of the Common Area and the facilities located thereon (except for vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park of defaulting Owners) provided that, before imposing any fine or suspension, the following procedures are adhered to:

(a) Notice and Hearing. The Association shall notify the Owner in writing of the noncompliance and set forth the corrective action to be taken. A fine or suspension of use rights may not be imposed without providing written notice ("Hearing Notice") of at least fourteen (14) days to the Owner at his or her designated mailing or e-mail address in the Association's official records, and if applicable, any occupant, licensee or invitee of the Owner, sought to be fined or suspended and a hearing ("Hearing") before a committee ("Committee") of at least three (3) Members who are appointed by the Board of Directors. The members of the Committee shall not be Officers, Directors, or employees of the Association, or the spouse, parent, child, brother or sister of an Officer, Director, or employee of the Association. The Hearing Notice must include a description of the alleged violation, specific action required to cure such violation, if applicable, and the date and location of the Hearing, and access information if the Hearing is to be held by the Committee by telephone or other electronic means. The Hearing shall be held by the Committee within ninety (90) days of the issuance of the Hearing Notice to the Owner. The Committee, in its sole discretion, may hold the Hearing by telephone or other electronic means. The Owner shall have a right to be represented by counsel and to cross examine witnesses. If the Committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. Within seven (7) days after the Hearing, the Committee shall provide post Hearing written notice ("Post Hearing Notice") to the Owner at his or her designated mailing or e-mail address in the Association's official records and, if applicable, to any occupant, licensee, or invitee of the Owner, of the Committee's findings related to the violation, including any applicable fines or suspensions that the Committee approved or rejected, how the Owner or any occupant, licensee, or invitee of the Owner may cure the violation, if applicable, or fulfill a suspension, or the date by which a fine must be paid. At the Association's option, any fine may be levied on a daily basis in the event of a continuing violation without the necessity of a new hearing and without any limitation on the amount of such fine. If a violation has been cured before the Hearing or in the manner specified in the Hearing Notice, a fine or suspension may not be imposed.

(b) Payment. If the violation has not been cured before the Hearing or in the manner specified in the Hearing Notice, the fine shall become due on the date set by the Committee ("Accrual Date"), which date must be at least thirty (30) days after delivery of the Post Hearing Notice.

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

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

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

(d) Payment and Collection of Fines. Any Owner against whose Lot fines have been levied shall remit such fines to the Association on the Accrual Date. The Association may pursue legal and equitable remedies to recover such fines, including any legal fees incurred in connection with the collection of a fine after the Accrual Date, whether or not an action at law to collect said fine is commenced. Fines shall be treated as an Individual Assessment subject to the provisions for the collection of Individual Assessments, and the lien securing same, as set forth herein. Unless otherwise permitted by the Association Act, a fine of less than One Thousand and No/100 Dollars (\$1,000.00) may not become a lien against a Lot.

(e) Application of Proceeds. All moneys received from fines shall be allocated as directed by the Board of Directors.

(f) Non-exclusive Remedy. These fines and suspensions shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, any fines paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by Law from such Owner.

(g) CPI. Unless limited by Law, specific dollar amounts stated in this Section 15.03 shall increase from time to time by application of a nationally recognized consumer price index chosen by the Board of Directors, using the year of the Effective Date as the base year. In the event no such consumer price index is available, the Board shall choose a reasonable alternative to compute such increases.

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

## ARTICLE XVI

### DAMAGE OR DESTRUCTION TO COMMON AREA

Damage to or destruction of all or any portion of the Common Area shall be addressed in the following manner, notwithstanding any provision in this Declaration to the contrary:

**Section 16.01** Sufficient Insurance Proceeds. In the event of damage to or destruction of the Common Area, if the insurance proceeds are sufficient to effect total restoration, then the Association shall cause

such portions of the Common Area to be repaired and reconstructed substantially as previously existed prior to such damage or destruction.

**Section 16.02** **Insufficient Insurance Proceeds.** If the insurance proceeds are not sufficient to effect total restoration of the Common Area, then the Association shall cause such portions of the Common Area to be repaired and reconstructed substantially as they previously existed (or with such modifications as may be approved by the Board in its sole discretion) and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment against each of the Owners in accordance with the provisions of Article VI of this Declaration.

**Section 16.03** **Negligence or Willful Misconduct.** Each Owner shall be liable to the Association for the cost to repair any damage to the Common Area not fully covered by collected insurance which may be sustained by reason of the negligence, willful misconduct or wrongdoing of any Owner or that Owner's tenants, subtenants, occupants, licensees, guests or invitees. In addition, the Association shall have the right to charge any Owner for the increase, if any, in any insurance premiums attributable to damage caused by such Owner or that Owner's tenants, subtenants, occupants, licensees, guests or invitees. The sums due from an Owner hereunder shall be an Individual Assessment against the Owner and that Owner's Lot and may be collected as provided elsewhere in this Declaration for the collection of Individual Assessments.

## ARTICLE XVII

### ARTICLE XVII MORTGAGEE PROTECTION

**Section 17.01** **Records and Notices.** The Association shall make available to all Owners and to all Mortgagees and guarantors of any Mortgages, for inspection, upon request, during normal business hours or as set forth in the Rules, current copies of the Governing Documents and the books and records of the Association (including the Budget). All Mortgagees and guarantors of any Mortgages shall be entitled, upon prior written request, which request shall state the name and address of such holder, insurer, or guarantor, and identify with particularity the encumbered Lot: (i) to receive a copy of the Association's financial statement for the immediately preceding Fiscal Year; (ii) to receive notice from the Association of an alleged default by any Owner in the performance of such Owner's obligations under the Governing Documents, which default is not cured within thirty (30) days after the Association learns of such default, to the extent that the Mortgagee, insurer and/or guarantor has an interest, by virtue of the Mortgage, in the Lot owned by the defaulting Owner; and (iii) to receive notice of any substantial condemnation loss or any casualty loss which affects a material portion of the Property or which affects the Lot(s) on which there is a Mortgage held, insured, or guaranteed by such Mortgagee.

**Section 17.02** **Adverse Events.**

(a) Any Mortgagee, insurer or guarantor of a Mortgage shall have, if first requested in writing, which request shall state the name and address of such holder, insurer, or guarantor, and identify with particularity the encumbered Lot, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Common Area, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Lot in which said holder, insurer or guarantor has an interest, and (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(b) Any failure by the Association to furnish any notice under this Section 17.02 hereof shall not result in liability of the Association because such notice is given as a courtesy to a requesting Mortgagee and guarantors of any Mortgages, and the furnishing of such notice is not an obligation of the Association to any Mortgagee or guarantors of any Mortgages.

**Section 17.03** **Failure of Mortgagee to Respond.** Any Mortgagee or guarantors of any Mortgage who receive a written request from the Board to respond to or consent to any action shall be deemed to

have approved such action if the Association does not receive a written response from the Mortgagee within sixty (60) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## ARTICLE XVIII

### ARTICLE XVIII GENERAL PROVISIONS

**Section 18.01**        **Notice.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 18.02**        **Enforcement.** Without limiting the generality of Article XV, enforcement of the covenants and restrictions of the Declaration and the other Governing Documents may be accomplished by any proceeding at law or in equity against any person or persons violating or attempting or threatening to violate any condition, covenant or restriction of the Declaration or the other Governing Documents, either to restrain violation or to recover damages, and against the Lots to enforce any lien created by the conditions, covenants and restrictions of this Declaration; and failure to enforce any condition, covenant or restriction of the Declaration or the other Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

**Section 18.03**        **Interpretation.** The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions and interpretation or construction of this Declaration. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter genders shall each include the others.

**Section 18.04**        **Severability.** If any clause or provision of any Governing Document is deemed by a court of law illegal, invalid, or unenforceable under any present or future Law, the remainder of such Governing Document shall not be affected thereby. It is the intention of Declarant that if any such provision of any Governing Document is held to be illegal, invalid, or unenforceable, there shall be added in lieu thereof a provision as similar in terms to such provision as is possible and still be legal, valid and enforceable.

**Section 18.05**        **Effective Date.** This Declaration shall become effective on the Effective Date.

**Section 18.06**        **Conflict.** As more specifically addressed below, this Declaration shall take precedence over conflicting provisions in the Articles and Bylaws and the Rules and Regulations, said Articles shall take precedence over conflicting provisions in the Bylaws and the Rules and Regulations, said Bylaws shall take precedence over conflicting provisions in the Rules and Regulations, and the Rules shall take precedence over conflicting provisions in the Planning Criteria.

**Section 18.07**        **Cooperation.** Each Owner, by acceptance of a deed conveying a Lot to the Owner or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree with Declarant, to cooperate in, and support, any and all zoning, administrative, governmental and/or quasi-governmental filings, applications, requests, submissions and other actions deemed necessary, convenient or desirable by Declarant for development and/or improvement of the Property, including, without limitation, signing any required applications, subdivision plats, etc., as the owner of any portion of the Property owned or controlled thereby when necessary or requested to do so by Declarant.

**Section 18.08**        **Easements.** Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees

for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners hereby designate Declarant and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary or convenient for the purpose of later creating such easement as it was intended to have been created herein. All parties using easements granted in this Declaration shall use reasonable efforts to minimize interference with all other permitted uses of the easements and the property subject thereto and shall restore any damage to such property caused in the exercise of any rights granted in any such easement.

**Section 18.09** **No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Area to the public, or for any public use.

**Section 18.10** **Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest whatsoever in or to any Lot, shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition, lien and covenant contained in this Declaration, whether or not any reference hereto is contained in the instrument by which such person acquired such interest in such Lot.

**Section 18.11** **Execution of Documents Required by the Local Government.** Declarant's plan for the development of the Development may require from time to time the execution of certain documents required by the Local Government. To the extent that said documents require the joinder of any or all Owners each of said Owners, by virtue of said Owner's acceptance of a deed to the Owner's Lot or other conveyance thereof, does irrevocably give and grant to Declarant, or any of its officers individually, full power of attorney to execute said documents as the Owner's agent and in the Owner's place and stead.

**Section 18.12** **Construction.** This Declaration may be amended without amending any of the other Governing Documents. The provisions of the Governing Documents shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of the Association and the community; to effectuate the purpose of creating a uniform plan for the operation of the Property; for the preservation of the value of the Property; and the protection of Declarant's rights, benefits, and privileges contemplated herein, in the other Governing Documents, and under the Association Act, to the fullest extent permitted by Florida law. If there is or should there ever be any conflicts between Florida law and the terms and provisions of the Governing Documents, or between the terms and provisions of more than one Governing Document, then the following order of priority and governance shall prevail, but only as necessary to resolve such specific conflict(s): (A) Florida law; (B) this Declaration; (C) any Supplemental Declaration (in the event that there are multiple Supplemental Declarations, then the order of priority and governance of such Supplemental Declarations shall be based upon Recording order); (D) the Articles; (E) the Bylaws; (F) the Planning Criteria and (G) the Rules and Regulations. If a Governing Document of a higher priority and governance, as established above, is amended in such a way that the terms and provisions of such Governing Document conflict with the terms and provisions of any lower priority Governing Documents, as established above, then the lower priority Governing Documents shall be deemed automatically and simultaneously amended with the amendment of the higher priority Governing Document, so that such lower priority Governing Documents may be read and interpreted to be consistent with the higher priority Governing Document. In no event shall any lower priority Governing Documents be amended if such amendment would conflict with the terms and provisions of any higher priority Governing Document, and any such purported amendment shall be automatically ineffective and void. Notwithstanding that some or all of the Governing Documents may have been prepared, initially, at the direction of Declarant, and notwithstanding any rule of construction to the contrary, the Governing Documents shall not be more strictly construed or interpreted against Declarant or any of Declarant's affiliates than against any other person or entity.

**Section 18.13** **Assignment of Rights and Duties.** Declarant hereby expressly reserves and shall hereafter have the right to assign all or any part of the rights, powers, benefits, and reservations under the Governing Documents and under the Association Act to any corporation, company, partnership, firm, or any other legal entity of any kind, character or nature, whatsoever, that has or acquires fee simple interest in any part of the Property, and

that accepts and assumes in writing the duties and liabilities of Declarant pertaining to the particular rights, powers, benefits, and reservations so assigned ("Assignee"). Upon the Recording of such instrument of assignment and assumption in the Public Records ("Assignment and Assumption"), Assignee shall, to the extent expressly set forth in such Assignment and Assumption, have the same rights, powers, benefits, and reservations of Declarant, and be subject to the same obligations, duties, and liabilities of Declarant as are herein or under the Association Act given to, accepted, and assumed by Assignee, as the case may be. Declarant hereby expressly reserves and shall hereafter have the right to appoint or designate one or more Co-Declarants, subject to the terms and conditions of the specific Assignment and Assumption appointing such Co-Declarant(s). Notwithstanding anything to the contrary contained herein, in any Assignment and Assumption, or otherwise, to the extent that any rights and liabilities of Declarant under this Declaration and under the Association Act are not expressly assigned and assumed pursuant to an Assignment and Assumption, such rights and liabilities shall remain Declarant's rights and liabilities.

**Section 18.14** **Breach Shall Not Permit Termination**. No breach of this Declaration shall entitle any Member or Owner to cancel, rescind, or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Member or Owner may have hereunder by reason of any breach of this Declaration. Any breach of any of said covenants or restrictions, however, shall not defeat or render invalid the lien of any Mortgage, but such covenants or restrictions shall be binding upon and effective against such Owner of any of said Property or any portion thereof whose title thereto is acquired by foreclosure, deed in lieu, trustee sale or otherwise.

**Section 18.15** **Negation of Partnership**. None of the terms, conditions, or provisions of this Declaration shall be deemed to create a partnership between or among the Owners, Members, Association, or Declarant, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each such entity shall be considered a separate entity and no such entity shall have the right to act as an agent for another unless expressly authorized to do so herein or by separate instrument signed by the party(ies) to be charged.

**Section 18.16** **Attorney Fees**. In the event of the institution of any legal proceedings for any violation or attempted or threatened violation of any of the terms, covenants, restrictions and conditions contained herein, or concerning the interpretation or application of any of the foregoing to any person or property, or for the collection of any sums due and payable hereunder, or for the foreclosures of any liens provided for herein, the prevailing party(ies) shall be entitled to recover all expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees, legal fees, and other costs and expenses of litigation connected therewith, which fees, costs, and expenses shall include those caused by reason of any appellate proceeding, re-hearing, appeal, post-judgment action, or otherwise, from the non-prevailing party(ies).

**Section 18.17** **No Vested Rights**. Each Owner by acceptance of a deed to a Dwelling irrevocably waives any claim that such Owner has any vested rights pursuant to case law or statute with respect to this Declaration or any of the other Governing Documents. It is expressly intended that Declarant and the Association shall have the broad right to amend this Declaration and the other Governing Documents, except as limited by applicable law as it exists on the Effective Date or except as expressly set forth herein.

**Section 18.18** **Community Signage**. Declarant may, but is not obligated, in its sole discretion, to construct or otherwise install signage at any entrance(s) of the Community which identifies the Community and includes a notation indicating that the Community was developed by "Starlight Homes Florida L.L.C." or is a Starlight Homes Florida community (or some similar reference to Declarant or an entity affiliated with Declarant), including the use of any particular logos and/or trademarks utilized by Declarant, and convey any such signage to the Association along with a non-exclusive license to use the logos and/or trademarks depicted on the signage (but only for purposes of maintaining such logos/trademarks in the manner depicted on the signage at the time of conveyance and for no other purpose, such license being revocable by Declarant at any time). If any such signage is constructed/installed and conveyed to the Association, the Association shall thereafter perpetually maintain such signage, at Common Expense, including perpetually maintaining the notation that the Community was developed by "Starlight Homes Florida L.L.C." or is a Starlight Homes Florida community (or some similar reference to

Declarant or an entity affiliated with Declarant) in the same presentation as was utilized when such signage was conveyed to the Association, until such time as the Declarant may determine, in its sole and absolute discretion, that it no longer wishes to be referenced on the signage (upon which the Association shall, at Common Expense, remove such references). In addition to the foregoing, Declarant may elect at any time (prior to or after Turnover) to itself remove any such references on the signage, and Declarant hereby reserves any such rights and easements that are necessary to allow Declarant to do so. Declarant, via a Recorded instrument, may assign its rights under this Section 18.18 to any entity related to or affiliated with Declarant, or to one or more Builders.

## ARTICLE XIX

### ARTICLE XIX ALTERNATIVE DISPUTE RESOLUTION

**Section 19.01**            **Introduction.** The Association, Owners, Declarant, any Approved Builders, all persons subject to this Declaration, and each person not otherwise subject to this Declaration who agrees to submit to this Article XIX by written instrument delivered to the Claimant, which may include, but is not limited to, a builder, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of a Dwelling, Common Property or any improvement within, serving or forming a part of the Community (individually, a "Party" and collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Community and the Common Property to avoid the emotional and financial costs of litigation and arbitration if at all possible. This Article XIX may only be amended with the prior written approval of the Declarant, any Approved Builder, the Association (acting through a majority of the Board), and Members representing 100% of the total voting interests of the Association.

**Section 19.02**            **Right of Action by Association.** The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation, arbitration or other adversarial proceedings in the name of or on behalf of any Owner or Member (whether one or more) except in accordance with Section 720.303(1), Florida Statutes, concerning matters of common interest to the Members for which the Association is responsible under Article VIII of the Declaration; representations of the Developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities ("Matters of Common Interest"). The Association may defend actions in eminent domain or bring inverse condemnation actions. Nothing herein is intended to or shall be construed as expanding the obligations of the Association as set forth in the Maintenance Responsibility Chart. The Association's election to perform all or part of any maintenance, repair, replacement, or other obligations described in Section 8.01(d) not performed by the subject Owner, shall not, in any way, constitute or impose an obligation or responsibility upon the Association to perform all or any part of such work. As such, each Owner and Member acknowledges and agrees that the performance by the Association of such work does not thereby grant or provide the Association authority or standing pursuant to Section 720.303(1), Florida Statutes, to institute, maintain, settle, or appeal actions or hearings in its name on behalf of Members related to improvements for which the Owner is responsible for maintaining as described in the Maintenance Responsibility Chart. The Members, Board of Directors, and Association expressly waive any right to bring a class action proceeding against the Declarant, Developer, any Builder, or otherwise, with respect to any Dwellings, Residences, or other improvements owned by a Member on a Lot. Notwithstanding the foregoing, nothing herein shall preclude the Declarant or Developer from joining potentially responsible parties to any litigation, arbitration or other adversarial proceeding.

**Section 19.03**            **Disputes Between Owner and Declarant.** If there is a purchase and sale agreement or construction agreement between an Owner and Declarant or a Builder concerning the purchase and sale and construction of a Dwelling or Lot ("Builder Contract"), the terms and conditions of the Builder Contract shall govern and control in the event of any conflict with the provisions of this Article XIX. Notwithstanding the foregoing, if such Owner is either not a party to a Builder Contract, or otherwise not subject to a warranty or other covenants and conditions set forth in a Builder Contract with respect to a Dwelling or Lot, then the terms and conditions of this Article XIX shall govern. Class action proceedings are prohibited, and no Owner or Member shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other adversarial proceedings as a

class member or class representative in any such proceedings under this Declaration. Notwithstanding the foregoing, nothing herein shall preclude the Declarant or Developer from joining potentially responsible parties to any litigation, arbitration or other adversarial proceeding.

**Section 19.04**            **Disputes Governed by Section 720.311, Florida Statutes.** Certain disputes by and between the Association and Owners are governed exclusively by Section 720.311, Florida Statutes. Such disputes include, but are not limited to, disputes concerning recall, election, use or changes to a Lot or Common Area, amendments, board and committee meetings, membership meetings and access to official records. Accordingly, each Party hereby covenants and agrees that any other Claim (as defined herein), shall be subject to the provisions of this Article XIX.

**Section 19.05**            **Definitions.** As used in this Article only, the following words, when capitalized, have the following specified meanings:

(a)        “Claim” means:

(i)        Claims relating to the rights and/or duties of Declarant, the Association, any Approved Builder, or the ARC, under the Declaration, Bylaws and Planning Criteria.

(ii)       Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association, and any claim asserted against the ARC.

(iii)      Claims relating to the design or construction of the Common Property or any improvements located within or on the Community.

(iv)      Claims by a Member relating to the design or construction of the Dwelling or any improvements owned by a Member on a Lot.

(b)        “Claim” shall not mean or relate to:

(i)        Actions brought by the Association to enforce the provisions of this Declaration.

(ii)       The imposition and collection of assessments as provided herein.

(iii)      Proceedings involving challenges to ad valorem taxation.

(iv)      Counterclaims and/or crossclaims brought by the Association in proceedings instituted against it.

(v)        Actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party.

(vi)      Proceedings involving the defense of actions in eminent domain brought against the Association, or inverse condemnation actions brought by the Association.

(c)        “Claimant” means any Party having a Claim against any other Party.

(d)        “Respondent” means any Party against which a Claim has been asserted by a

Claimant.

**Section 19.06**                    **MANDATORY PROCEDURES.** CLAIMANT MAY NOT INITIATE ANY PROCEEDING BEFORE ANY JUDGE, JURY, ARBITRATOR OR ANY JUDICIAL OR ADMINISTRATIVE TRIBUNAL SEEKING REDRESS OR RESOLUTION OF ITS CLAIM UNTIL CLAIMANT HAS COMPLIED WITH THE PROCEDURES OF THIS ARTICLE. AS PROVIDED IN SECTION 19.14 BELOW, A CLAIM MUST BE RESOLVED BY BINDING ARBITRATION, TO THE EXTENT AUTHORIZED BY LAW. IN THE EVENT A COURT OF COMPETENT JURISDICTION DETERMINES THAT A CLAIMANT MAY INITIATE ANY SUCH PROCEEDING OTHERWISE, SUCH CLAIMANT MUST, AS A CONDITION TO BRINGING SUCH PROCEEDING, FIRST PARTICIPATE IN PRE-SUIT MEDIATION AND NON-BINDING ARBITRATION, AND UNDER NO CIRCUMSTANCES SHALL A CLAIMANT BE ENTITLED TO A TRIAL BY JURY.

**Section 19.07**                    **Easement to Inspect and Right to Correct.** For a period of ten (10) years after Turnover, Declarant reserves for itself and for the Declarant's architect, engineer, other design professionals, builder and general contractor the right, but not the obligation to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. This Section 19.07 may not be construed to create a duty for Declarant, the Association, or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Dwelling or Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Areas, and the Owner's Lot and all improvements thereon for the purposes contained in this Section 19.07.

**Section 19.08**                    **Claim Affecting Matters of Common Interest.** No Owner or Member shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other adversarial proceedings relating to disputes or claims involving Matters of Common Interest. Each Owner, by accepting an interest in or to title to a Dwelling or Lot, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other adversarial proceedings relating to any dispute or claim involving Matters of Common Interest. In the event the Association asserts a Claim related to Matters of Common Interest, as a precondition to providing the Notice defined in Section 19.10, initiating the mandatory dispute resolution procedures set forth in this Article XIX, or taking any other action to prosecute a Claim related to Matters of Common Interest, the Association must:

(a)        **Obtain Owner Approval of Engagement.** Unless otherwise approved by Members representing a majority of the total voting interests of the Association at a meeting of the membership at which a quorum has been attained, the Association, acting through its Board, shall in no event have the authority to engage (retain or hire) a law firm or attorney to prosecute a Claim relating to the design or construction of the Matters of Common Interest if the agreement between the Association and law firm or attorney includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm or attorney, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the engagement with the law firm or attorney or engages another firm or third party to assist with the Claim; (ii) if the Association agrees to settle the Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third party; (iii) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney; and/or (iv) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney. For avoidance of doubt, it is intended that Members representing a majority of the total voting interests of the Association must approve the law firm and attorney who will prosecute the Claim and the written agreement between the Association and the law firm and/or attorney.

(b)        The approval of the members required under Section 19.08(a) must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws, but the notice must also include: (a) the name of the law firm and attorney; (b) a copy of

the proposed written agreement between the Association and the law firm and/or attorney; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Association; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Association if the conditions for payment occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm and/or attorney will use to evaluate the Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Common Property or improvements on the Community). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Dwelling, Lots, or the Common Property will be affected by such testing, and if the destructive testing occurs the means or method the Association will use to repair the Common Property or improvements affected by such testing and the estimated costs thereof. The notice required by this paragraph must be signed by a person other than the law firm or attorney who is a party to the proposed agreement being approved by the members. In the event Members representing at least a majority of the total voting interests of the Association approve the law firm and/or attorney who will prosecute the Claim and the written agreement between the Association and the law firm and/or attorney, the Board shall have the authority to engage the law firm and/or attorney and enter into the written agreement approved by the Members.

(c) Provide Notice of the Inspection. As provided in Section 19.08(d) below, a Common Property Report is required, which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Common Property Report, the Association must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent, which notice shall identify the Inspection Company preparing the Common Property Report, the specific Common Property to be inspected, the inspection and/or removal protocol to be employed, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

(d) Obtain a Common Property Report. The Association must obtain a written independent third-party report (the "Common Property Report") for the Matters of Common Interest from a professional engineer licensed by the Florida Board of Professional Engineers (the "Inspection Company"). The Common Property Report must include: (i) a description with photographs of the Matters of Common Interest subject to the Claim; (ii) a description of the present physical condition of the Matters of Common Interest subject to the Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Matters of Common Interest performed by the Association or a third party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Matters of Common Interest subject to the Claim. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Common Property Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located within one hundred (100) miles of the Property, and each such contractor providing the estimate must hold all necessary or required licenses, active and in good standing, from the Florida Department of Business and Professional Regulation or otherwise required by applicable law for the work to which the cost estimate relates.

(e) The Common Property Report will not satisfy the requirements of this Section and is not an "independent" report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Association or proposes to represent the Association; (b) the costs and expenses for preparation of the Common Property Report are not required to be paid directly by the Association to the Inspection Company at the time the Common Property Report is finalized and delivered to the Association; or (c) the law firm or attorney that presently represents the Association or proposes to represent the Association has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Association's agreement with the law firm or attorney) the Association for the costs and expenses of preparation of the Common Property Report. For avoidance of doubt,

an "independent" report means that the Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Association will directly pay for the report at the time the Common Property Report is finalized and delivered to the Association.

(f) Provide a Copy of Common Property Report to all Respondents and Owners. Upon completion of the Common Property Report, and in any event no later than three (3) days after the Association has been provided a copy of the Common Property Report, the Association will provide a full and complete copy of the Common Property Report to each Respondent and to each Owner. The Association shall maintain a written record of each Respondent and Owner who was provided a copy of the Common Property Report, which will include the date the report was provided. The Common Property Report shall be delivered to each Respondent and any identified counsel of Respondent by hand-delivery and to each Owner by mail.

(g) Provide a Right to Cure Defects and/or Deficiencies Noted on Common Property Report. Commencing on the date the Common Property Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Common Property Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Property Report (any associated costs to be borne by Claimant); and (iii) initiate repairs and/or remediation of any condition identified in the Common Property Report. As provided in Section 19.07 above, the Declarant has an easement throughout the Community for itself, and its successors, assigns, architects, engineers, other design professionals, each builder, other builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to initiate repairs and/or remediation of any condition identified in the Common Property Report.

(h) Unless otherwise approved by Members representing a majority of the total voting interests of the Association at a meeting of the membership at which a quorum has been attained, the Association, acting through its Board, shall in no event have the authority to commence litigation, arbitration, or other adversarial proceeding against any Party in the name of the Association involving amounts in controversy in excess of \$100,000.00. Following Turnover, Declarant retains any and all rights to enforce the provisions of this section as an intended third-party beneficiary. In accordance with such rights, Declarant may defend against a Claim or otherwise pursue dismissal of a Claim for failure to comply with these conditions precedent.

(i) Hold Owner Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of the attorney and/or law firm engagement agreement, the Association must obtain approval from Members representing a majority of the total voting interests of the Association, to provide the Notice described in Section 19.10, initiate the mandatory dispute resolution procedures set forth in this Article XIX, or take any other action to prosecute or litigate against any Party in the name of the Association involving amounts in controversy in excess of \$100,000.00, which approval from members must be obtained at a meeting of the membership at which a quorum has been attained, in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws, but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Property Report; (iii) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Claim; (v) a summary of the steps previously taken by the Association to resolve the Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Claim may affect the market value, marketability, or refinancing of a Lot while the Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be signed by a person who is not (a) the attorney who represents or will represent the Association in the Claim; (b) a member of the law firm of the attorney who represents or will represent the Association in the Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Claim. Any Declarant-owned units are not required to receive such notice(s) of meeting. In the event members approve providing the Notice described in Section 19.10, or taking

any other action to prosecute a Claim, the Members representing a majority of the total voting interests of the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim. Written notice shall be provided in accordance with Section 19.10 to the Respondent within seven (7) business days of the affirmative vote to discontinue prosecution or pursuit of the Claim.

**Section 19.09** **Claim by Owners – Improvements on Lots.** If an Owner brings a Claim, as defined in Section 19.05, relating to the design or construction of any improvements located on a Lot (whether one or more) that is not otherwise subject to a Builder Contract pursuant to Section 19.03 above, as a precondition to providing the Notice defined in Section 19.10, initiating the mandatory dispute resolution procedures set forth in this Article XIX, or taking any other action to prosecute a Claim, the Owner must:

(a) Provide Notice of the Inspection. As provided in Section 19.09(b) below, an Owner Improvement Report is required, which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Owner Improvement Report, the Owner must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent, which notice shall identify the Inspection Company preparing the Owner Improvement Report, the improvements and areas of the improvements to be inspected, and the date and time the inspection will occur. Each Respondent must be allowed to attend the inspection, personally or through an agent.

(b) Obtain an Owner Improvement Report. The Owner must obtain a written independent third-party report for the improvements (the “Owner Improvement Report”) from an Inspection Company. The Owner Improvement Report must include: (i) a description with photographs of all improvements subject to the Claim; (ii) a description of the present physical condition of the improvements; (iii) a detailed description of any modifications, maintenance, or repairs to the improvements performed by the Owner or a third party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the improvements. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Owner Improvement Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located within one hundred (100) miles of the Property, and each such contractor providing the estimate must hold all necessary or required licenses, active and in good standing, from the Florida Department of Business and Professional Regulation or otherwise required by applicable law for the work to which the cost estimate relates.

The Owner Improvement Report will not satisfy the requirements of this Section and is not an “independent” report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Owner or proposes to represent the Owner; (b) the costs and expenses for preparation of the Owner Improvement Report are not directly paid by the Owner to the Inspection Company no later than the date the Owner Improvement Report is finalized and delivered to the Owner; or (c) the law firm or attorney that presently represents the Owner or proposes to represent the Owner has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Owner’s agreement with the law firm or attorney) the Owner for the costs and expenses for preparation of the Owner Improvement Report. For avoidance of doubt, an “independent” report means that the Owner has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Owner will directly pay for the report no later than the date the Owner Improvement Report is finalized and delivered to the Owner.

(c) Provide a Copy of Owner Improvement Report to all Respondents. Upon completion of the Owner Improvement Report, and in any event no later than three (3) days after the Owner has been provided a copy of the Owner Improvement Report, the Owner will provide a full and complete copy of the Owner Improvement Report to each Respondent. The Owner shall maintain a written record of each Respondent

who was provided a copy of the Owner Improvement Report, which will include the date the report was provided. The Owner Improvement Report shall be delivered to each Respondent and any identified counsel of Respondent by hand-delivery.

(d) **Right to Cure Defects and/or Deficiencies Noted on Owner Improvement Report.** Commencing on the date the Owner Improvement Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Owner Improvement Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Owner Improvement Report (any associated costs to be borne by Claimant); and (iii) initiate repairs and/or remediation of any condition identified in the Owner Improvement Report. As provided in Section 19.07 above, the Declarant has an easement throughout the Community for itself, and its successors, assigns, architects, engineers, other design professionals, each builder, other builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to initiate repairs and/or remediation of any condition identified in the Owner Improvement Report.

(e) **Claims Pertaining to the Matters of Common Interest.** Pursuant to Section 19.08 above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other adversarial proceedings relating to the design or construction of the Common Property. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other adversarial proceedings relating to the design or construction of the Matters of Common Interest, such Owner shall be required, since a Claim affecting the Common Property could affect all Owners, as a precondition to providing the Notice defined in Section 19.10, initiating the mandatory dispute resolution procedures set forth in this Article XIX, or taking any other action to prosecute a Claim, to comply with the requirements imposed by the Association in accordance with Section 19.08(c) (Provide Notice of Inspection), Section 19.08(d) (Obtain a Common Property Report), Section 19.08(f) (Provide a Copy of Common Property Report to all Respondents and Owners), Section 19.08(g) (Provide Right to Cure Defects and/or Deficiencies Noted on Common Property Report), Section 19.08(i) (Owner Meeting and Approval), and Section 19.10 (Notice). Notwithstanding the foregoing, nothing herein shall preclude the Declarant or Developer from joining potentially responsible parties to any litigation, arbitration or other adversarial proceeding.

**Section 19.10** **Notice.** Claimant must notify Respondent in writing of the Claim (the “Notice”), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Declaration, Bylaws, Planning Criteria or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section. The one hundred and twenty (120)-day period for mediation set forth in Section 19.12 below is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to Section 19.12 is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) if the Claim relates to the design or construction of the Matters of Common Interest, a true and correct copy of the Common Property Report and any and all other reports, studies, analyses, and recommendations obtained by the Association related to the Matters of Common Interest; (b) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (c) if the Claim relates to the design or construction of the Matters of Common Interest, reasonable and credible evidence (to include, but not limited to, approved meeting minutes, a copy of all proxies and/or voting ballots tallied) confirming that Members representing a majority of the voting interests of the Association approved the law firm and attorney and the written agreement between the Association and the law firm and/or attorney in accordance with Section 19.08(a); (d) a true and correct copy of the special meeting notice provided to members in accordance with Section 19.08(b) above; and (e) reasonable and credible evidence confirming that members

representing a majority of the voting interests of the Association approved providing the Notice. If the Claimant is not the Association and the Claim pertains to the Matters of Common Interest, the Notice will also include a true and correct copy of the Common Property Report. If the Claimant is not the Association and the Claim relates to the design or construction of improvements of a Dwelling, the Notice will also include a true and correct copy of the Owner Improvement Report.

**Section 19.11**            **Negotiation.** Claimant shall make every reasonable effort to meet Respondent in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant shall meet at a mutually acceptable place and time to discuss the Claim. The time permitted for an in-person meeting shall not be extended unless agreed to in writing by Respondent. If the Claim involves all or any portion of the Community, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Community that is subject to the Claim for the purposes of inspecting the Community.

**Section 19.12**            **Mediation.** If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. If Claimant does not submit the Claim to mediation within the 30-day period, the Claim shall be automatically deemed abandoned and the Claimant must reinitiate the resolution process as a new Claim. The mediator must have at least five (5) years of experience serving as a mediator, have technical knowledge or expertise appropriate to the subject matter of the Claim, and have an office located within one hundred (100) miles of the Property. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with Section 19.14.

**Section 19.13**            **Construction Defects Governed by Ch. 558, Florida Statutes.** Notwithstanding anything to the contrary set forth in this Article XIX, prior to any Claim being brought with respect to a construction defect governed by Chapter 558, Florida Statutes, such Claimant shall first be required to follow the respective requirements under Chapter 558, Florida Statutes prior to proceeding hereunder. Once the Claimant has complied with such requirements, including but not limited to the notice and opportunity to repair requirements set forth in Section 558.004, Florida Statutes, the Claimant shall then have ten (10) days in which to submit the Claim to final and binding arbitration as described in Section 19.14 below.

**Section 19.14**            **Binding Arbitration-Claims.** All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this Section 19.14.

(a)            **Governing Rules.** If a Claim has not been resolved after mediation in accordance with Section 19.12, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 19.14 and the American Arbitration Association (the "AAA") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "AAA Rules"). In the event of any inconsistency between the AAA Rules and this Section 19.14, this Section 19.14 will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, except as set forth below, but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

- (i) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;
- (ii) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and
- (iii) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

(b) **Exceptions to Arbitration; Preservation of Remedies.** No provision of, nor the exercise of any rights under, this Section 19.14 will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

(c) **Statute of Limitations.** All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Section 19.14.

(d) **Scope of Award; Modification or Vacation of Award.** The arbitrator shall resolve all Claims in accordance with applicable law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this Section 19.14 and subject to Section 19.15; provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent. In all arbitration proceedings, the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings, the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on: (i) conclusions of law that are erroneous; (ii) an error of applicable law; or (iii) a cause of action or remedy not expressly provided under applicable law. In no event may an arbitrator award speculative, special, exemplary, treble, or punitive damages for any Claim.

(e) **Other Matters.** To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in the County. Unless otherwise provided by this Section 19.14, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Florida Rules of Civil Procedure, and applicable law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

**Section 19.15**            **Allocation of Costs.** Notwithstanding any provision in this Declaration to the contrary, each party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney and expert fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

**Section 19.16**            **General Provisions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

**Section 19.17**            **Severability.** If any clause or provision of this Article XIX is deemed by a court of law illegal, invalid, or unenforceable under any present or future Law, the remainder of the Declaration shall not be affected thereby. It is the intention of Declarant that if any such provision of this Article XIX is held to be illegal, invalid, or unenforceable, there shall be added in lieu thereof a provision as similar in terms to such provision as is possible and still be legal, valid and enforceable.

**Section 19.18**            **Funding the Resolution of Claims.** The Association must levy a special assessment to fund the estimated costs to initiate, prosecute and/or resolve a Claim pursuant to this Article XIX. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Claim unless the Association has previously established and funded a dispute resolution fund.

## ARTICLE XX

### DISCLAIMERS

**Section 20.01**            **Disclaimer of Representations or Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY DECLARANT OR ITS DIRECTORS, OFFICERS, MEMBERS, SHAREHOLDERS, AGENTS OR EMPLOYEES (OR THE SUCCESSORS OR ASSIGNS OF ANY OF THE FOREGOING) IN CONNECTION WITH THE PROPERTY (INCLUDING ANY LOT, DWELLING, COMMON AREA OR AREAS OF COMMON RESPONSIBILITY), ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES, REGULATION THEREOF OR OTHERWISE. IF ANY SUCH REPRESENTATION OR WARRANTY CANNOT LAWFULLY BE DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, PRESUMPTIVE AND SPECIAL DAMAGES ARISING THEREFROM ARE HEREBY FULLY, FOREVER AND IRREVOCABLY WAIVED AND DISCLAIMED.

**Section 20.02**            **Retaining Walls.** Each Owner (by virtue of the Owner's acceptance of title to the Owner's Lot) acknowledges and agrees that elevation changes within the Property may have necessitated or required, or in the future may necessitate or require, the construction or installation of one or more retaining walls on or about the Property (collectively, "Retaining Wall(s)"). In connection with any such Retaining Walls, each Owner, occupant, tenant, subtenant, invitee, licensee or guest of any Lot or of the Property generally agrees to and shall: (a) exercise caution and care when around or near any Retaining Walls; and (b) not utilize any Retaining Wall or part thereof in any way, including, by way of example but not limitation, by climbing, scaling, or walking on a Retaining Wall; by affixing lights or hanging baskets or decorations on or to a Retaining Wall; by striking, piercing or damaging a Retaining Wall; or by otherwise directly or indirectly interfering with the intended purpose of any Retaining Wall. Without express prior written approval of the ARC, digging is prohibited within all easement areas adjacent to any Retaining Walls, as shown on any Recorded Plat, or as established by any written instrument Recorded by Declarant or the Association.

**Section 20.03**            **Safety.** Neither the Declarant nor the Association, nor any of their respective partners, members, officers, directors, employees, or agents shall, in any manner or way, whatsoever, be considered as or deemed or construed to be insurers or guarantors of the personal safety or security of any persons, including, without limitation, any Owner or Member or any tenant, guest, invitee, employee, agent, or family member of such Owner or Member, or of any property, whether real, personal, or otherwise, from time to time located within or

upon the Property or any portion thereof. Accordingly, neither the Declarant nor the Association, nor any of their respective partners, members, officers, directors, employees, or agents shall be responsible or held liable or accountable for the injury or death of any person or for the loss of or damage to any property by reason or on account of the failure of the Declarant or the Association to limit or control access to the Property or any Retaining Walls, or by reason or on account of the ineffectiveness of any activities directed, conducted, maintained, or supported by the Declarant or Association from time to time for such purposes. In this regard, each Owner and Member, for itself and on behalf of any tenants, employees, agents, guests, invitees, or family members of such Owner or Member, shall, by virtue of the acceptance of a deed or other conveyance of a Lot or any other portion of the Property, be deemed to have acknowledged, understood, and agreed to the foregoing and further: (i) that notwithstanding any efforts or activities on the part of the Declarant or Association from time to time to limit or control access to the Property in general and any Retaining Wall in particular, each Owner and Member, for itself and on behalf of any tenants, employees, agents, guests, invitees, and family members of such Owner or Member: (x) shall take title to its Lots or any other part of the Property subject to, and hereby assumes, all risk of personal injury or death and damage to or loss of property, of whatever nature, while present or situate within or upon the Property; and (y) waives, and forever and irrevocably releases Declarant and Association from, any and all claims, losses, damages, causes of action or liabilities of any kind, character, or nature whatsoever with respect to any personal injury or death or damage to or loss of property while present or situate within or upon the Property; and (ii) that neither Declarant nor the Association, nor any of their respective partners, members, officers, directors, employees, or agents have made, nor has any Owner or Member, or any of Owner's or Member's tenants, employees, agents, guests, invitees, or family members relied upon, any representation or warranty, whether express or implied, pertaining to: (A) the safety of the Property; or (B) the effectiveness of any activities directed, conducted, maintained or supported by the Declarant or Association from time to time in order to limit or control access to the Property in general and any Retaining Walls in particular.

**Section 20.04**            **Wet and Dry Retention Areas.** Neither the Declarant nor the Association make any representation concerning the current or future water levels in any of the water bodies, including, but not limited to, wet or dry retention areas within the Community; provided, further, neither the Declarant nor the Association bear any responsibility to attempt to adjust or modify the water levels since such levels are subject to seasonal groundwater and rainfall fluctuations that are beyond the control of the Declarant and the Association. By acceptance of a deed to a Dwelling or Lot, each Owner acknowledges that the water levels of all wet or dry retention areas may vary. There is no guarantee by Declarant or the Association that water levels will be constant or aesthetically pleasing at any particular time; at times, water levels may be nonexistent. Declarant and the Association shall not be obligated to erect fences, gates, or walls around or adjacent to any wet or dry retention areas within the Community.

**Section 20.05**            **Water Bodies and Wildlife.** THE SUBDIVISION MAY CONTAIN WATER BODIES SUCH AS LAKES, PONDS, CANALS, CREEKS, STREAMS, PRESERVES OR OTHER BODIES OF WATER AND THERE MAY ALSO BE SUCH WATER BODIES IN THE VICINITY OF THE SUBDIVISION (COLLECTIVELY "WATER BODIES") OR OTHER MANMADE, NATURAL, AND/OR ENVIRONMENTALLY SENSITIVE NATURE AREAS IN OR IN THE VICINITY OF THE SUBDIVISION (COLLECTIVELY, WITH WATER BODIES, THE "NATURE AREAS"). SUCH NATURE AREAS MAY SERVE AS HABITATS FOR A VARIETY OF NATIVE PLANTS AND WILDLIFE, INCLUDING, WITHOUT LIMITATION, INSECTS, VENOMOUS AND NON- VENOMOUS SNAKES AND OTHER REPTILES, ALLIGATORS, AND OTHER ANIMALS (THE "WILDLIFE"), SOME OF WHICH MAY POSE HAZARDS TO PERSONS OR PETS COMING INTO CONTACT WITH THEM. ALL OWNERS, OCCUPANTS AND USERS OF THE PROPERTY ARE HEREBY PLACED ON NOTICE THAT THE DECLARANT, THE ASSOCIATION, AND ANY OF THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL NOT BE LIABLE TO OWNERS, OCCUPANTS AND USERS FOR, OR RESPONSIBLE FOR MAINTAINING OR ASSURING, THE WATER QUALITY OR WATER LEVEL OF OR IN ANY WATER BODIES. ALL OWNERS, OCCUPANTS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR

ACCEPTANCE OF THE DEED TO OR USE OF SUCH PROPERTY, TO HAVE RELEASED THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH WATER BODIES. DECLARANT AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO ERECT FENCES, GATES, OR WALLS AROUND OR ADJACENT TO ANY WATER BODIES WITHIN OR IN THE VICINITY OF THE COMMUNITY. FURTHER, THE LISTED PARTIES ARE NOT RESPONSIBLE FOR MAINTAINING OR ASSURING SAFETY OF ANY OWNERS, OCCUPANTS OR USERS OF NATURE AREAS. NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY NATURE AREAS. ALL PERSONS USING OR ENJOYING NATURE AREAS OR SURROUNDING PROPERTY SHALL DO SO AT THEIR OWN RISK. ALL OWNERS, OCCUPANTS AND USERS ARE FURTHER HEREBY NOTIFIED THAT FROM TIME TO TIME ALL TYPES OF WILDLIFE, INCLUDING, BUT NOT LIMITED TO, ALLIGATORS, SNAKES, BOBCATS, PANTHERS, BEARS AND OTHER ANIMALS AND INSECTS, MAY LIVE, MIGRATE, CREATE HABITATS OR ENTER INTO THE SUBDIVISION, INCLUDING, BUT NOT LIMITED TO, THE NATURE AREAS AND SURROUNDING PROPERTY AND MAY POSE A HEALTH AND SAFETY 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. NO PERSONS SHALL SWIM IN ANY WATER BODIES WITHIN THE COMMUNITY NOT SPECIFICALLY DESIGNATED FOR SWIMMING AND NO PERSONS IN THE COMMUNITY SHALL FEED ANY WILDLIFE IN OR AROUND THE COMMUNITY.

**Section 20.06**

**General.**

(a) Notwithstanding anything to the contrary or otherwise contained in the Governing Documents, neither the Association, the Board, nor Declarant shall be liable or responsible for, or in any manner considered or deemed 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, residents and their families, agents, employees, contractors, subcontractors, licensees, tenants, subtenants, occupants, guests or invitees, or for any property of any such persons. Without limiting the generality of the foregoing:

(i) it is the express intent of the Governing Documents that the various provisions thereof which are enforceable by the Association or Declarant or which govern the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof;

(ii) the Association is not empowered, nor has it been created, to act as an entity which enforces or ensures compliance with the Laws, or prevents tortious activities, actions or omissions; and

(iii) any provisions of the Governing Documents setting forth the uses of Assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of Assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if Assessment funds are chosen to be used for such reason.

(b) Each Owner (by virtue of the Owner's acceptance of title to the Owner's Lot) and each other person having an interest in or lien upon, or making any use of, said Lot or any portion of the Property (by virtue of accepting such interest or lien or making such uses) shall be bound by this Article XX and shall be deemed to have automatically and irrevocably waived any and all rights, claims, demands and causes of action against the Board, the ARC, Association or Declarant and arising from or connected with any matter for which the liability of the Board, the ARC, Association or Declarant has been disclaimed in this Article XX or in this Declaration generally.

(c) UNLESS OTHERWISE EXPRESSLY SET FORTH HEREIN, EACH OWNER (BY VIRTUE OF THE OWNER'S ACCEPTANCE OF TITLE TO THE OWNER'S LOT) ACKNOWLEDGES AND AGREES THAT SAID OWNER SHALL HAVE NO RIGHTS, RIPARIAN OR OTHERWISE, IN OR TO ANY BODY OF WATER, IF ANY, LYING WITHIN OR ADJACENT TO THE DEVELOPMENT.

(d) As used in this Article XX, the words "Association" and "Declarant" shall each include within their meanings all of the respective directors, officers, committees and board members, employees, agents, contractors, subcontractors (including without limitation management companies), and successors and assigns of each.

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the Effective Date.

Signed, sealed and delivered in the presence of:

"DECLARANT"

Sign: [Signature]  
Print Name: Joseph L. Pirra  
Address: 12926 CORAL BAY PKWY HOOD  
JAR, FL 32258

STARLIGHT HOMES FLORIDA L.L.C., a  
Delaware limited liability company

Sign: [Signature]  
Print Name: Chelsea A. O'Keefe  
Address: 64 ROSEWOOD PL  
ST. JOHNS, FL 32259

By: [Signature]  
Name: Steve Merten  
Title: Authorized Representative  
Date: 10-9-2025

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 9<sup>th</sup> day of October, 2025 by Steve Merten, as Auth. Rep. of Starlight Homes Florida L.L.C., a Delaware limited liability company, on behalf of said company, who is  personally known to me or ( ) produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]



[Signature]  
Print Name: Jacob O'Keefe  
Notary Public, State of Florida  
Commission #: HH 305981  
My Commission Expires: 8-28-2026

**JOINDER AND CONSENT OF CW – TROUT RIVER, LLC  
TO DECLARATION**

**LANDBANKING JOINDER**

CW – TROUT RIVER, LLC, a Delaware limited liability company, having an address of 7855 South River Parkway, Ste 222, Tempe, Arizona 85284, being the record title holder of the Property by virtue of that certain Special Warranty Deed recorded in Official Records Book 21110, Page 1834 of the Public Records of Duval County, Florida, does hereby join and consent to the terms and conditions of this DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR TROUT RIVER GARDENS (the “**Declaration**”), to which this Joinder is attached, and hereby declares that the Property shall be held, sold, conveyed, leased, mortgaged and otherwise dealt with, subject to the easements, covenants, conditions, restrictions, reservations, liens and charges contained within this Declaration.

Signed, sealed and delivered in the presence of:

Sign: [Signature]  
Print Name: Dayton McClann  
Address: 7855 S River Pkwy, #222  
Tempe, AZ 85284

Sign: [Signature]  
Print Name: Robert Erhard  
Address: 7855 S River Pkwy, #222  
Tempe, AZ 85284

**CW – TROUT RIVER, LLC**, a Delaware limited liability company

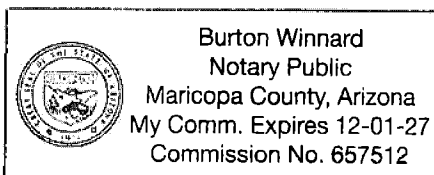
By: [Signature]  
Name: JOHN E. CORK  
Title: PRESIDENT  
Date: 10/14/25

STATE OF ARIZONA

COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 14 day of OCTOBER, 2025 by JOHN E. CORK, as PRESIDENT of CW – Trout River, LLC, a Delaware limited liability company, on behalf of said company, who is  personally known to me or ( ) produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]



[Signature]  
Print Name: Burton Winnard  
Notary Public, State of ARIZONA  
Commission #: 657512  
My Commission Expires: 12-1-27

**JOINDER AND CONSENT  
TO DECLARATION**

The undersigned hereby certifies that, pursuant to that certain Assignment recorded May 30, 2025 in Official Records Book 21488, Page 764, it is the holder of a mortgage, lien or other encumbrance upon the property described in that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing recorded July 3, 2024 in Official Records Book 21110, Page 1862; that certain Collateral Assignment of Rights under Option Agreement, recorded July 3, 2024 in Official Records Book 21110, Page 1906; and Uniform Commercial Code Financing Statement, recorded July 3, 2024 in Official Records Book 21110, Page 1885, all of the Public Records of Duval County, Florida, and that the undersigned hereby joins in and consents to:

That certain Declaration of Covenants, Conditions, Easements, and Restrictions for Trout River Gardens (the "Declaration"), to which this Joinder and Consent to Declaration is attached, and agrees that its mortgage, lien or other encumbrance shall be subordinated to the Declaration.

Signed, sealed and delivered in the presence of:

**PARK FUNDING II TRUST**, a Delaware statutory trust

Sign: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

By: U.S. Bank Trust National Association, not in its individual capacity but solely as trustee for Park Funding II Trust

Sign: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

By: Anchor Nationwide Loans, LLC, a California limited liability company, its attorney in fact

By: *[Signature]*  
Name: Anthony Martinez  
Title: SVP of Credit

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Ventura )

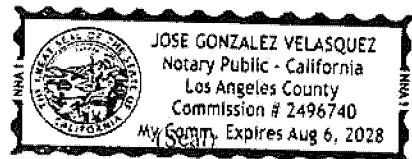
On OCT 30 2025, before me, Jose Gonzalez Velasquez,  
(insert name and title of the officer)

Notary Public, personally appeared Anthony Martinez,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *[Signature]*



**JOINDER AND CONSENT**  
**TO DECLARATION**

The undersigned hereby certifies that it is the holder of a mortgage, lien or other encumbrance upon the property described in that certain Mortgage and Security Agreement recorded July 3, 2024 in Official Records Book 21110, Page 1913, together with that certain Subordination Agreement recorded July 3, 2024 in Official Records Book 21110, Page 2237, both of the Public Records of Duval County, Florida, and that the undersigned hereby joins in and consents to:

That certain Declaration of Covenants, Conditions, Easements, and Restrictions for Trout River Gardens (the "Declaration"), to which this Joinder and Consent to Declaration is attached, and agrees that its mortgage, lien or other encumbrance shall be subordinated to the Declaration.

Signed, sealed and delivered in the presence of:

**CWI INVESTOR HOLDINGS TWO, LLC**, a Florida limited liability company

Sign: \_\_\_\_\_  
Print Name: Dayton McLann  
Address: 7855 S River Pkwy, #222  
\_\_\_\_\_ Tempe, AZ 85284

By: \_\_\_\_\_  
Name: PETER GOLD  
Title: MANAGER

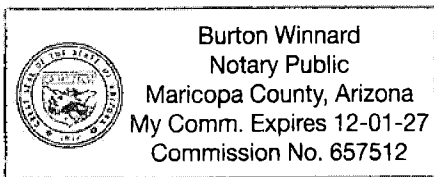
Sign: \_\_\_\_\_  
Print Name: Daniel Burns  
Address: 7855 S River Pkwy, #222  
\_\_\_\_\_ Tempe, AZ 85284

STATE OF ARIZONA  
COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 14th day of OCTOBER, 2025, by PETER GOLD, as MANAGER of CWI Investor Holdings Two, LLC, a Florida limited liability company, on behalf of such entity, who is personally known to me or who has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Print Name: Burton Winnard  
Notary Public, State of ARIZONA  
Commission #: 657512  
My Commission Expires: 12-1-27



**EXHIBIT "A"**

**ARTICLES**

**[See Next Page]**

To: Page: 1 From: Sabrina.Lappen@hklaw.com

**N2500012530**

Florida Department of State  
Division of Corporations  
Electronic Filing Cover Sheet

**Note: Please print this page and use it as a cover sheet.** Type the fax audit number (shown below) on the top and bottom of all pages of the document.

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To:  
Division of Corporations  
Fax Number : (850)617-6381

From:  
Account Name : HOLLAND & KNIGHT OF JACKSONVILLE  
Account Number : 074323003114  
Phone : (904)353-2000  
Fax Number : (904)358-1872

**\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\***

Email Address: \_\_\_\_\_

**FLORIDA PROFIT/NON PROFIT CORPORATION  
TROUT RIVER GARDENS HOMEOWNERS ASSOCIATION, INC.**

Certificate of Status	0
Certified Copy	0
Page Count	06
Estimated Charge	\$70.00

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**ARTICLES OF INCORPORATION  
OF  
TROUT RIVER GARDENS HOMEOWNERS  
ASSOCIATION, INC.,  
A FLORIDA NOT FOR PROFIT CORPORATION**

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STATE

**ARTICLE I  
NAME**

The name of this corporation shall be TROUT RIVER GARDENS HOMEOWNERS ASSOCIATION, INC. ("Association").

**ARTICLE II  
DURATION**

Existence of the Association shall commence with the filing of these Articles of Incorporation ("Articles") with the Florida Department of State Division of Corporations. The Association shall have perpetual existence.

**ARTICLE III  
PURPOSE AND POWERS OF THE ASSOCIATION**

The Association is organized for the purpose of enforcing, and fulfilling the objectives and purposes stated in the "Governing Documents" (as that term is defined in that certain Declaration of Covenants, Conditions, Easements, and Restrictions for Trout River Gardens, as same may from time to time be amended or supplemented (the "Declaration")), to be recorded in the Public Records of Duval County, Florida). Capitalized terms used above or herein without definition shall have the same meanings given or ascribed to such terms in the Governing Documents. The Association shall have all the powers of a not for profit corporation organized under Chapter 617 of the Florida Statutes, subject, however, only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents or the Association Act. The Association shall have the power to do any and all lawful things which may be authorized, assigned, required, or permitted to be done by the Association pursuant to the Governing Documents and/or the Association Act, including, but in no way limited to: (i) ownership, operation, management, administration, maintenance, repair, replacement, and insurance of the Common Areas, including but not limited to the Surface Water Management System and respective Common Area Tracts that shall be owned by the Association; (ii) the levy and collection of Assessments; and (iii) to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association as specified in the Governing Documents and/or under the Association Act, including but not limited to the adoption of Rules and Regulations.

Notwithstanding the foregoing, the Association shall specifically have the power to levy and collect adequate assessments against Members of the Association for the costs of maintenance and operation of the Surface Water Management System in a manner consistent with the requirements of District Permit No. 174621-3, as amended, and any applicable Water Management District rules, which Assessments shall be used for maintenance and repair of the

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Common Areas, including, but not limited to, the Surface Water Management System and any mitigation or preservation areas, retention areas, drainage structures, and drainage easements.

**ARTICLE IV**  
**PRINCIPAL OFFICE**

The initial principal place of business and mailing address of the Association is 12926 Gran Bay Parkway, Suite 300, Jacksonville, FL 32258.

**ARTICLE V**  
**REGISTERED OFFICE AND AGENT**

CT Corporation System, whose address is 1200 South Pine Island Road, FL 33324, is hereby appointed the registered agent of the Association and the registered office shall be at said address.

**ARTICLE VI**  
**DISSOLUTION OF THE ASSOCIATION**

Upon dissolution of the Association, all of its assets remaining after provision for creditors and payment of all costs and expenses of such dissolution shall be distributed in the following manner and order:

- 6.1 As required by Florida law.
- 6.2 As set forth in the Declaration.

6.3 Any portion of the Property then owned by Declarant and that has not been theretofore conveyed or dedicated to the Association shall be automatically deemed withdrawn by Declarant, with Declarant thereafter authorized to further evidence the withdrawal of said Property by execution of a Supplemental Declaration describing the real property withdrawn, which Declarant may then record in the Public Records.

6.4 Except as otherwise set forth in the Declaration, conveyance to a not for profit corporation homeowners' association similar to the Association or conveyance or dedication to any applicable Governmental Authority determined by the Board to be appropriate for such conveyance or dedication, which Governmental Authority is willing to accept such conveyance or dedication, of any property, duties, and responsibilities of the Association, which association or Governmental Authority shall then be responsible for the operation and maintenance thereof. With respect to the Association's responsibility for the operation and maintenance of the Surface Water Management System, such obligation must be transferred to and be accepted by an entity which satisfies the requirements of Rule 62-330.310 of the Florida Administrative Code, and Applicant's Handbook Volume 1, Section 12.3 and be approved by the District prior to such dissolution. If no other association or Governmental Authority will accept such property, duties, and responsibilities, then it will be conveyed to a trustee appointed by the Circuit Court of Duval County, Florida, which trustee shall sell such property free and clear of the limitations imposed by the Governing Documents upon terms established by the Circuit Court of Duval County, Florida. That portion of the Property consisting of the Surface Water Management System cannot be altered.

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JACKSONVILLE, FL

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changed or sold separate from the lands associated therewith. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on such property, then for the payment of any obligations incurred by the trustee in the operation, maintenance, repair and upkeep of such property. The excess proceeds, if any, from the property shall be distributed among Members in a proportion that is equal to the proportionate share of such Members in the Common Expenses of the Association.

**ARTICLE VII**  
**MEMBERSHIP**

Every person or entity which qualifies as a Member of the Association in accordance with the Declaration shall be a Member of the Association, and such membership shall carry all rights, restrictions, benefits, interests, and limitations granted pursuant to the Governing Documents, any Rules and Regulations, and the Association Act.

**ARTICLE VIII**  
**VOTING RIGHTS**

A Member's right to vote in Association matters shall vest as set forth in the Declaration. All voting rights of a Member shall be exercised in accordance with and subject to the terms, conditions, restrictions, and limitations provided in the Governing Documents.

**ARTICLE IX**  
**BOARD OF DIRECTORS**

The affairs of the Association shall be managed by the Board, who shall be appointed or elected pursuant to the provisions of the Declaration and the Bylaws. The number of Directors constituting the initial Board shall be three (3). The names and addresses of the persons who are to act in the capacity of initial Directors until the election and qualification of their successors as provided in the Declaration and the Bylaws are:

<u>Name:</u>	<u>Address:</u>
Atino Secor	12926 Gran Bay Parkway, Suite 300, Jacksonville, FL 32258
Jacob O'Keefe	12926 Gran Bay Parkway, Suite 300, Jacksonville, FL 32258
Michael Ackley	12926 Gran Bay Parkway, Suite 300, Jacksonville, FL 32258

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**ARTICLE X**  
**OFFICERS**

The affairs of the Association shall be administered by the Officers designated in the Declaration and the Bylaws. The names and addresses of the persons who are to act in the capacity of Officers until the appointment/election and qualification of their successors are:

<u>Name/Office:</u>	<u>Address:</u>
Atino Secor President	12926 Gran Bay Parkway, Suite 300, Jacksonville, FL 32258
Michael Ackley Vice President	12926 Gran Bay Parkway, Suite 300, Jacksonville, FL 32258
Jacob O'Keefe Secretary/Treasurer	12926 Gran Bay Parkway, Suite 300, Jacksonville, FL 32258

**ARTICLE XI**  
**AMENDMENT**

These Articles may be amended, supplemented, and modified at any time and from time to time in the same manner that the Declaration may be amended, supplemented, and modified.

**ARTICLE XII**  
**INDEMNIFICATION**

12.1 Every Director and every Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' and other professionals' fees, reasonably incurred by or imposed upon him in connection with any proceeding whether civil, criminal, administrative or investigative, or any settlement of any proceeding, or any appeal from such proceeding to which he may be a party or in which he may become involved by reason of his being or having been a Director or Officer of the Association, or having served at the Association's request as a director or officer of any other corporation, whether or not he so serves the Association at the time such expenses are incurred, regardless of by whom the proceeding is brought, except in relation to matters as to which any such Director or Officer shall be adjudged liable for gross negligence or willful misconduct, provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors of the Association approves such settlement and reimbursement as being for the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

12.2 Expenses incurred in defending a suit or proceeding whether civil, criminal, administrative or investigative may be paid by the Association in advance of the final disposition of such action, suit or proceeding if authorized by a majority of the Directors upon receipt of an undertaking by or on behalf of the Director or Officer to repay such amount if it shall ultimately

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be determined that he is not to be indemnified by the Association as authorized by these Articles of Incorporation.

12.3 The Association shall have the power to purchase at its expense and maintain insurance on behalf of any person who is or was a Director or Officer of the Association, or is or was serving at the request of the Association as a director or officer of another corporation, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of these Articles.

**ARTICLE XIII**  
**BYLAWS**

The initial Bylaws shall be adopted by the Board and may be amended, supplemented, and modified at any time and from time to time in the same manner that the Declaration may be amended, supplemented, and modified.


**ARTICLE XIV**  
**INCORPORATOR**

The name and address of the Incorporator of the Association is: Name: Melissa S. Turra; Address: 50 North Laura Street, Suite 3900, Jacksonville, FL 32202.

**ARTICLE XV**  
**NON-STOCK CORPORATION**

The Association is organized on a non-stock basis and shall not issue shares of stock evidencing membership in the Association; provided, however, that membership in the Association may be evidenced by a certificate of membership which shall contain a statement that the Association is a corporation not for profit.

IN WITNESS WHEREOF, the undersigned has signed these Articles this 30th day of September, 2025.

By:   
\_\_\_\_\_  
Melissa S. Turra, Incorporator

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**CERTIFICATE DESIGNATING REGISTERED AGENT FOR SERVICE OF PROCESS**

Pursuant to the provisions of Chapters 48 and 617 of the Florida Statutes, the corporation identified below hereby submits the following Certificate Designating Registered Agent for Service of Process ("Certificate") in designation of the registered office and registered agent in the State of Florida.

TROUT RIVER GARDENS HOMEOWNERS ASSOCIATION, INC., desiring to organize as a not for profit corporation under the laws of the State of Florida, with its registered office at 1200 South Pine Island Road, FL 33324, has named CT Corporation System, located at the above-registered office, as its registered agent to accept service of process within the State of Florida.

**ACKNOWLEDGMENT:**

Having been named as registered agent for the above-stated corporation at the place designated in this Certificate, I hereby acknowledge that I am familiar with the obligations of a registered agent under the laws of the State of Florida, accept to act as registered agent for the above-stated corporation, and agree to comply with the provisions of all laws applicable to the performance of such office.

*Candice Pignataro*

Name: Candice Pignataro - Assistant Secretary  
Dated: September 30, 2025

FILED  
2025 SEP 30 PM 2:23  
TALLAHASSEE FL  
STATE

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**EXHIBIT "B"**

**BYLAWS**

**[See Next Page]**

**BYLAWS OF TROUT RIVER GARDENS HOMEOWNERS' ASSOCIATION, INC.,  
A FLORIDA NOT FOR PROFIT CORPORATION**

1. Definitions. Unless otherwise indicated to the contrary, all capitalized terms used herein without definition shall have the meaning given such term in the Declaration of Covenants, Conditions, Easements, and Restrictions for Trout River Gardens, recorded or to be recorded in the Official Records of Duval County, Florida, as same may from time to time be amended or supplemented ("**Declaration**") or the Articles.

2. Board Meetings.

2.1. Except as otherwise required by the Association Act, notices of all Board meetings must specifically identify agenda items for the meetings, and be posted in a conspicuous place in the Community at least forty-eight (48) hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the Community, notice of each Board meeting must be mailed to the designated mailing address of each Member, hand delivered to each Member, or electronically transmitted to the Member's e-mail address at least seven (7) days before the meeting, except in an emergency. Notwithstanding this general notice requirement, if there are more than 100 Members, notice for each Board meeting may be by means other than posting or mailing, including, but not limited to, publication of notice, provision of a schedule of Board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the Association. However, if broadcast notice is used in lieu of a notice posted physically in the Community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required hereunder. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition, the Association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on the Association website or an application that can be downloaded on a mobile device for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on Association property. Any rule adopted must, in addition to other matters, include a requirement that the Association send an electronic notice to members whose e-mail addresses are included in the Association's Official Records in the same manner as is required for a notice of a meeting of the members. Such notice must include a hyperlink to the website or such mobile application on which the meeting notice is posted. Notices by Electronic Transmission shall be permitted as stated in the Declaration.

2.2. An Assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that Assessments will be considered and the nature of the Assessments. Written notice of any meeting at which Special Assessments will be considered or at which amendments to Rules and Regulations regarding Lot use will be considered must be mailed, delivered, or electronically transmitted to the Members and Owners and posted conspicuously within the Community or broadcast on closed-circuit cable television not less than fourteen (14) days before the meeting.

2.3. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of Officers. Directors may use e-mail as a means of communication but may not cast a vote on an Association matter via e-mail.

2.4. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted as long as notice of such business to be conducted at the rescheduled meeting is given, if required.

2.5. Board meetings must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting.

2.6. If twenty percent (20%) of the total voting interests petition the Board to address an item of business, the Board shall 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, take the petitioned item up on an agenda. The Board shall give all Members notice of the meeting at which the petitioned item shall be addressed in accordance with the fourteen (14)-day notice requirement pursuant to Section 2.2 hereof. Each Member shall have the right to speak for at least three (3) minutes on each matter placed on the agenda by petition, provided that the Member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the Board is not obligated to take any other action requested by the petition.

2.7. All Directors shall comply with any Federal, State or local laws, statutes, rules, codes and any and all other regulations applicable to a director of a corporation not for profit, including without limitation, the Corporate Transparency Act (collectively, "**Applicable Laws**"). If a Director intentionally fails to comply with any of the Applicable Laws, and the Association incurs any expenses, penalties, or fees by reason of such Director's failure, the Association may seek reimbursement for such expenses, penalties and / or fees from such Director.

### 3. Members Meetings.

3.1. Notice of Meetings. The Association shall give all Owners and Members actual notice of all membership meetings, which shall be mailed, delivered, or electronically transmitted not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen 14-day notice requirement shall be made by an affidavit executed by the person providing the notice and filed upon execution among the official records of the Association. In addition to mailing, delivering, or electronically transmitting the notice of any meeting, the Association may, by reasonable Rules and Regulations, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the

Community. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. A meeting of the Members must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting. Notices by Electronic Transmission shall be permitted as stated in the Declaration.

3.2. Quorum: Acts of Members. A quorum at Members' meetings shall be attained by the presence, either in person or by proxy (limited or general), of Members entitled to cast in excess of 20% of the votes of members entitled to vote at the subject meeting. The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all Members for all purposes, except where otherwise provided by law, the Declaration, the Articles or these Bylaws.

3.3. Right to Speak. Members and Owners have the right to attend all membership meetings and to speak at any meeting with reference to all items opened for discussion or included on the agenda. A Member and an Owner shall have the right to speak for at least three (3) minutes on any item; provided, however, that the Association may adopt written Rules and Regulations governing the frequency, duration, and other manner of Member and Owner statements, which Rules and Regulations may include a sign-up sheet for Members wishing to speak.

3.4. Election of Directors. After the Turnover: (a) voting by secret ballot by Members who are not in attendance at a meeting of the Members for the election of Directors shall not be permitted; (b) candidates to the Board may be nominated in advance of the meeting at which the subject Director is to be elected; and (c) Directors must be elected by a plurality of the votes cast by eligible voters. Newly elected or appointed Directors must complete any educational curriculum required by the Association Act.

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

3.6. Electronic Voting. The Association may permit Members who desire to do so the ability to utilize electronic voting in conformance with the requirements of Section 720.217 of the Association Act.

3.6.1. The Board or its President may determine that utilizing electronic voting is not in the best interest of the Association as to any particular meeting. Accordingly, there shall be

no obligation for the Association to utilize electronic voting at any particular Members' meeting or election.

3.6.2. Notice to Members of the opportunity to vote through an online voting system shall be provided as required by the Association Act.

3.6.3. The Association hereby adopts the following forms which are incorporated into these Bylaws by reference:

3.6.3.1. The "Consent to Electronic Voting," attached as **Exhibit A** hereto and incorporated herein by this reference, which consent form a Member must sign and file in writing or electronically with the Association or be affirmed by the Member in order for such Member to be entitled to vote by electronic means; and

3.6.3.2. The "Revocation of Consent to Electronic Voting," attached hereto as **Exhibit B** and incorporated herein by this reference, which revocation form a Member must sign and file with the Association or be affirmed by the Member to revoke his or her consent to electronic voting.

If permitted by the HOA Act, an electronic notification from a Member to the Association may be used in lieu of a signed consent or revocation form, in which case the terms of the attached consent forms are incorporated by reference and shall be deemed affirmed by the Member when consent is given or revoked by electronic means.

3.6.4. In order to implement electronic voting, the Association may contract with an outside vendor or other party that provides electronic voting services. The Board shall use reasonable judgment to ensure that such vendor's services comply with the requirements of the Association Act.

3.6.5. At such time as the Association contracts with or otherwise arranges for a vendor to provide electronic voting services, or if the Association changes vendors, the Association or its agent shall notify the Members who have consented to electronic voting, by electronic mail or U.S. mail (or both), at the discretion of the Association, as to the identity of such vendor, including such contact or other information (including, but not limited to a vendor e-mail address or website), as the Association reasonably believes sufficient, to enable Members to communicate directly with the vendor to engage in electronic voting.

3.6.6. Members who consent to vote by electronic means may still vote in person, if they choose, by paper means (use of proxies and ballots), or may send Proxies to the Association by facsimile transmission or electronic mail, to the extent the Association otherwise receives and accepts Proxies through such media. In the event of multiple votes cast by a Member as to the same matter, the following priority shall prevail: (a) votes cast in person; (b) paper documents; (c) Proxies sent by e-mail or facsimile transmission; and (d) on-line/internet/electronic votes.

3.6.7. By signing or affirming the consent form attached as **Exhibit A** hereto, each Member recognizes that the Association cannot control the practices of third parties regarding internet communications and use of the Member's e-mail address. As such, and as a condition of

the Association's agreement to permit electronic voting, each Member who consents to electronic voting releases and waives any claim against the Association pertaining to such voting, including but not limited to the transmission or placement of "viruses," "malware," "spyware," "cookies," and the like. Each Member who consents to electronic voting also consents to the Association's publication of their e-mail address, as well as other information (including necessary personal identifying information) to vendors or other third parties to the extent and as may be reasonably necessary to enable the use of electronic voting processes. Such information shall not be considered an official record of the Association and shall not be available for inspection unless otherwise required by applicable law.

3.6.8. By signing or affirming the consent form attached as **Exhibit A** hereto, each Member further recognizes that internet/electronic communications may be subject to failure, interruptions, or other problems due to a variety of reasons, including but not limited to Member operator error, vendor system or server failures, "spam" blockers, power outages, and the like. As such, and as a condition of the Association's agreement to permit electronic voting, each Member who consents to electronic voting releases and waives any claim or challenge to such voting, including but not limited to situations where a Member vote was not received or counted by the Association due to no fault of the Board of the Association or management company.

3.7. Waivers of Notice. Notice of a meeting of Members need not be given to any Member who signs a waiver of notice, in person or by proxy, either before or after the meeting. Neither the affairs transacted nor the purpose of the meeting need be specified in the waiver. Attendance of a Member at a meeting, either in person or by proxy, constitutes waiver of notice and waiver of any and all objections to the place of the Meeting, the time of the Meeting, or the manner in which it has been called or convened, unless the Member attends a meeting solely for the purpose of stating, at the beginning of the Meeting, any such objection or objections to the transaction of affairs.

3.8. Order of Business. The order of business at annual meetings, and as far as practicable at all other meetings, shall be:

- (a) Calling of the roll and certifying of proxies.
- (b) Proof of notice of meeting or waivers of notice.
- (c) Reading and disposal of any unapproved minutes.
- (d) Reports of Officers.
- (e) Reports of committees (including the ARC).
- (f) Appointment/election of Directors (as applicable).
- (g) Unfinished business.
- (h) New business.
- (i) Adjournment.

4. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of all Association meetings, when not in conflict with the Governing Documents or the Association Act.

5. Action Without A Meeting. Notwithstanding anything to the contrary in the Declaration or these Bylaws, to the extent lawful, any action required or which may be taken at any annual or special meeting of Members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the Members (or persons authorized to cast the vote of any such Members as provided in the Declaration or these Bylaws) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of Members at which all Members (or authorized persons) entitled to vote thereon were present and voted. In order to be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving Members having the requisite number of votes and entitled to vote on such action, and delivered to the Secretary of the Association, or other authorized agent of the Association. Written consent shall not be effective to take the corporate action referred to in the consent unless signed by Members having the requisite number of votes necessary to authorize the action within sixty (60) days of the date of the earliest dated consent and delivered to the Association as aforesaid. Any written consent may be revoked prior to the date the Association receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the Secretary of the Association, or other authorized agent of the Association. Within ten (10) days after obtaining such authorization by written consent, notice must be given to Members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. A consent signed in accordance with the foregoing has the effect of a meeting vote and may be described as such in any document.

6. Minutes; Records. Minutes of all meetings shall be kept in a businesslike manner and be available for inspection by the Members and Directors at all reasonable times. The Association shall retain minutes in the manner and for the period of time as required by the Association Act. If and as required by the Association Act, the Association shall maintain the Official Records on a website.

7. Roster of Members. Each Member shall file with the Association a copy of the deed or other document showing his or her ownership interest in a Lot. The Association shall maintain a current roster of all Members and their designated mailing addresses and parcel identifications. A Member's designated mailing address is the Member's property address, unless the Member has sent written notice to the Association requesting that a different mailing address be used for all required notices. The Association shall also maintain the e-mail addresses and the facsimile numbers designated by Members for receiving notice sent by electronic transmission of those Members consenting to receive notice by electronic transmission. A Member's e-mail address is the e-mail address the Members provided when consenting in writing to receiving notice by electronic transmission, unless the Member has sent written notice to the Association requesting that a different e-mail address be used for all required notices. The e-mail addresses and facsimile numbers provided by Members to receive notice by electronic transmission must be removed from Association records when the Member revokes consent to receive notice by electronic transmission. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein.

8. Amendment. These Bylaws may be changed, amended or modified at any time and from time to time, by the Members or the Declarant, in the same manner as the Members or Declarant may change, amend, or modify the Declaration, as set forth in the Declaration.

9. Pronouns. Whenever the context permits, the singular shall include the plural and one gender shall include all.

[Signatures on Next Page]

DocuSign Envelope ID: D2A62AAF-9817-4203-B437-5489FA2C1C88

These Bylaws duly adopted by the Board on this 31st day of October, 2025.

**BOARD:**

Signed by:  
*Atino Secor*  
BF99E09BC47B43E...  
Name: Atino Secor

DocuSigned by:  
*Jacob O'Keefe*  
A87383E134D8490...  
Name: Jacob O'Keefe

Signed by:  
*Mike Ackley*  
D380DB0388C5434...  
Name: Michael Ackley

**Exhibit A to Bylaws**

**CONSENT TO ELECTRONIC VOTING**

The undersigned, being all the Owners, or the eligible voter(s) for the Lot located at \_\_\_\_\_, of Trout River Gardens, hereby consent(s) in writing (by signing this form or agreeing to electronic voting by e-mail) to voting electronically at meetings for The Trout River Gardens Homeowners Association, Inc. ("Association") to the fullest extent permitted by law, pursuant to the provisions of the Bylaws of the Association.

My/Our e-mail address that will be used for electronic voting is: \_\_\_\_\_.

The undersigned hereby understand(s) and agree(s) that in order to be valid, this consent form must be on file with the Association or an equivalent affirmation on file with the service which conducts electronic voting no later than five (5) days prior to the meeting or election in which the Owner wishes to vote by electronic means.

All Owners of the Home and Lot or the eligible voter thereof, please complete and sign below.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Home/Lot Number: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Home/Lot Number: \_\_\_\_\_  
Dated: \_\_\_\_\_

**EXHIBIT B to Bylaws**

**REVOCATION OF CONSENT TO ELECTRONIC VOTING**

The undersigned, being all the Owners, or the eligible voter(s) for the Lot located at \_\_\_\_\_, of Trout River Gardens, has/have previously consented to electronic voting at meetings for The Trout River Gardens Homeowners Association, Inc. ("Association"), as permitted by law by consent form dated \_\_\_\_\_, 20\_\_\_\_, duly filed with the Association.

I/We hereby revoke my/our consent.

The undersigned hereby understand(s) and agree(s) that in order to be valid, this revocation of consent form must be on file with the Association or an equivalent affirmation on file with the service which conducts electronic voting no later than five (5) days prior to the meeting in which the Owner wishes to revoke consent to vote by electronic means.

All Owners of the Home and Lot or the eligible voter thereof, please complete and sign below.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Home/Lot Number: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Home/Lot Number: \_\_\_\_\_  
Dated: \_\_\_\_\_

**EXHIBIT "C"****COMMON AREA TRACT(S)**

<b><u>Tract</u></b>	<b><u>Use</u></b>	<b><u>Ownership</u></b>	<b><u>Maintenance Responsibility</u></b>
A	Stormwater Management Facility	Association	Association
B	Stormwater Management Facility	Association	Association
C	Open Space	Association	Association
D	Wetland Area	Association	Association
E	Wetland Area	Association	Association
F	Wetland Area	Association	Association
G	Stormwater Management Facility	Association	Association
H	Open Space/Recreation Area	Association	Association
J	Landscape Buffer	Association	Association
K	Open Space	Association	Association

**EXHIBIT "D"**  
**MAINTENANCE RESPONSIBILITY CHART**

“All aspects” includes, but is not limited to, maintenance, repair, and replacement, as needed, in accordance with all the terms of this Declaration and any Rules and Regulations of the ARC.

PROPERTY COMPONENT	ASSOCIATION RESPONSIBILITY	OWNER RESPONSIBILITY
Roof	None.	All aspects.
Dwelling Foundation	None.	All aspects.
Exterior components of the Dwelling, building, structure and improvements on Owner's Lot including without limitation all exterior surfaces and roofs, fascias and soffits, awnings, trellises, decorative facades, stairs, stair railings, HVAC pads, screens, windows, doors, and garage doors.	None.	All aspects.  Owner's shall have their Dwellings (including the roof) and all external improvements such as driveways, sidewalks, decks, patios, and lanai floors, walls and screen professionally power washed as necessary, but no less than once every three (3) years.
Exterior Painting	None.	All aspects.  Owners shall clean, repaint or re-stain, as appropriate, the exterior portions of the Dwelling, building, structure and improvements on the Owner's Lot (with the same colors as initially approved or with another color or colors approved by the ARC), including exterior surfaces of garage doors, as often as is necessary to comply with the foregoing standards.
Dwelling interior including, but not limited to all improvements, fixtures, partition walls, floors within Dwelling and all other improvements within the Dwelling.	None.	All aspects.
Fences	None.	All aspects.
Patios, balconies, porches, and decks.	None.	All aspects.
Landscape Maintenance	None.	All aspects.  Owners shall keep, maintain and irrigate the trees, shrubbery, grass and other landscape materials located on that Owner's Lot in good repair and in a neat and attractive condition. The minimum (but not exclusive) standard for

		<p>maintenance of landscaping on the Owner's Lot shall be consistent 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). 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.</p> <p>Each Owner shall grass over, mow and keep free of trash and debris, on a routine basis, the unpaved portion of any platted Street depicted on any Recorded Plat abutting the Owner's Lot.</p> <p>The Owner of each Lot encumbered by a wall easement shall maintain all landscaping lying between the wall and that Owner's Dwelling, and said Owner shall maintain the paint or other surface finish, if any, on the vertical surface of the wall which faces the Owner's Dwelling.</p>
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