

(d) Reserves. The Community Association shall maintain such reserves as it deems reasonable or necessary for (i) working capital, (ii) contingencies, (iii) replacements, and (iv) the performance of such other coordinating or discretionary functions not contrary to the terms of this Declaration which the Board of Directors may from time to time approve, which may be collected as part of the Annual Assessment as provided above. The Developer's obligation to fund the deficit shall not include any obligation to fund any reserve component of the budget. The amount and manner of collection of reserves shall be as determined by the Board of Directors, in its sole discretion. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose unless approved by a vote or written consent of the Members owning a majority of the Lots and Units. If the reserves are inadequate for any reason, including nonpayment of any Owner's Assessment, the Board of Directors may, at any time, levy a Special Assessment or Emergency Assessment by establishing a budget for such Assessment and then after approved by the Board of Directors levying this Assessments, which may be payable in a lump sum or in installments as the Board of Directors may determine. In the event there is a balance of reserves at the end of any fiscal year and the Board of Directors so determines, any excess reserves may be taken into account in establishing the next year's budget and may be applied to defray general expenses incurred thereunder.

(e) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt an annual budget or adjusted budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his Assessments, as herein provided, whenever the same shall be determined. In the absence of any annual Community Association budget or adjusted budget, each Owner shall continue to pay the Assessments at the then existing rate established for the previous fiscal period, in the manner such payment was previously due, until notified otherwise.

(f) Accounts. Except as otherwise provided herein, all sums collected by the Board of Directors with respect to Assessments against the Owners may be commingled in a single fund.

#### 8.15 Exempt Property.

The following properties subject to this Declaration shall be exempted from the Assessments, Assessment Charges, and liens created herein: (a) all properties dedicated to and accepted by a governmental body, agency or authority; (b) all Common Property (except that portion of the Common Property located within a Lot); and (c) all Lots, Units or Property owned by Developer (including, without limitation, any Lot or Unit used or leased by Developer for a model home, construction facility, or other use) shall be exempt from payment of Assessments for so long as Developer funds any deficit in the annual budget, which deficit shall be the difference between the actual expenses incurred by the Community Association and the budgeted amounts due from the Owners of Lots and Units other than Developer (excluding any obligation to fund reserves). Developer shall fund such expenses only as they are actually incurred by the Community Association during the period that Developer is funding the deficit. Developer's obligation to fund any deficits shall terminate at Turnover. Developer may, but is not obligated to, assign this exemption right to any entity it may determine, including without limitation any builder owning Lots or Units solely for the purpose of constructing Residences intended to be sold to ultimate purchasers. Any such assignment of Developer's exemption shall have no effect on Developer's exemption hereunder. Notwithstanding the foregoing, after Turnover, Developer shall pay one half (1/2) of the Assessments attributable to such Lots, Units or Property, from and after the date that the landscaping is installed on such Lot, Unit or Property owned by Developer (including, without limitation, any Lot or Unit used or leased by Developer for a model home, construction facility, or other use).

#### 8.16 Real Estate Taxes.

In the event the Common Property is taxed separately from the Lots or Units, the Community Association shall include such taxes as part of the Annual Assessment. In the event the Common Property is taxed as a component of the value of the Lot or Unit owned by each Owner, it shall be the obligation of such Owner to promptly pay such taxes prior to their becoming a lien on the Property.

#### 8.17 Certificate of Payment.

The Treasurer of the Community Association, or the management company authorized by the Board of Directors, upon demand of any Owner liable for an Assessment, shall furnish to such Owner a certificate in writing setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge for the services involved in preparing such certificate may be assessed by the Community Association or management company, as applicable.

### Article 9 ARCHITECTURAL CONTROL; GENERAL POWERS

#### 9.1 Purpose.

Except for the Initial Improvements, the Community Association, through the ARB, shall have the right to exercise architectural control over all Improvements constructed, erected, or placed upon any part of the Property, to assist in making the Property a community of high standards and aesthetic beauty. Such architectural control may include all architectural aspects of any such Improvement including, without limitation, size, height, site planning, setbacks, exterior design, materials, colors, open space, landscaping, waterscaping, and aesthetic criteria; provided however, that any ARB approval shall not be deemed a statement, representation or indication that such Improvement complies with any applicable law, regulation or ordinance. The ARB review is not intended to be a condition to the issuance of a building permit by the County and the review undertaken by the Developer or the ARB is not to be construed as any quasi governmental action. The Developer shall have the sole right to approve the Initial Improvements on the Property and the rights granted to the ARB hereunder shall only be in effect after the Lot or Unit has been completed.

#### 9.2 Members of ARB.

The ARB shall consist of three (3) members. The initial members of the ARB shall consist of persons designated by Developer. Each of the initial members shall hold office until all Lots, Units and improvements planned for the Property and the Future Development Property have been constructed and conveyed (if appropriate), or sooner at the option of Developer. Thereafter, each new member of the ARB shall be appointed by the Board of Directors and shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. If the Board of Directors fails to so appoint the ARB, then the Board of Directors shall constitute the ARB. Members of the ARB (other than those appointed or designated by the Developer) may be removed by the Board of Directors at any time without cause. Members of the ARB appointed or designated by the Developer may only be removed by the Developer. The Community Association reserves the right to delegate the duties of the ARB to the respective Condominium Associations.

#### 9.3 Meetings of the ARB.

The ARB shall meet from time to time as necessary to perform its duties hereunder. The ARB may from time to time, by resolution unanimously adopted in writing, designate a ARB representative (who may, but need not, be one of its members) to take any action or perform any duties for and on

behalf of the ARB, except the granting of variances pursuant to Section 9.11 hereof. In the absence of such designation, the vote of any two (2) members of the ARB shall constitute an act of the ARB.

9.4 Compensation of Members.

The members of the ARB shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder, or unless engaged by the Community Association in a professional capacity.

9.5 Improvements Subject to Approval.

Construction, modifications and alterations subject to approval by the ARB specifically include, but are not limited to, (a) altering, painting, erecting or maintaining on the property a building, fence, wall, shed, storage, or other secondary or detached structure or improvement (including, but not limited to, landscaping, hurricane protection, basketball hoops, pool, birdhouses, other pet houses, swales, asphaltting or other improvements or changes of any kind); (b) any addition, change or alteration (including paint or exterior finishing) visible from the exterior of any Lot or Unit; (c) any painting or other alteration of the exterior appearance of the Lot or Unit or appurtenance including but not limited to garage, doors and windows; (d) installation of antennae, satellite dishes or receivers, solar panels or other similar devices; (e) screened enclosures; (f) signs, whether located on the Lot or Unit, on a Limited Common Element of the Lot or Unit or in the windows of the Lot or Unit; (g) gates; (h) playground equipment; (i) flower boxes, shelves, statuettes or other outdoor ornamentation; (j) patterned or brightly colored window coverings; (k) alteration of the landscaping or topography of the Property, including without limitation, any cutting or removal of trees (unless replacing an original tree with the exact same type of tree), planting or removal of plants; (l) construction, modification or alteration of any Improvement, any nature whatsoever, except for interior alterations not affecting the external structure or appearance of any Lot or Unit or any Improvement; (m) attachment of or placement upon outside walls or roofs of buildings or other improvements of an awning, canopy or shutter; (n) in-ground swimming pools and/or hot tubs; and (o) all other modifications, alterations or improvements visible from any road or other Lots or Units. All of the foregoing are jointly referred to herein as "Proposed Improvements". Interior alterations not affecting the external structure or appearance of any Lot or Improvement shall not require the approval of the ARB.

None of the above shall be commenced until the plans and specifications showing the nature, kind, shape, height, materials and location of the proposed construction, alteration or addition shall have been submitted to, and approved in writing by, the ARB. Notwithstanding the foregoing, all Owners (except Unit Owners) may paint without the approval of the ARB provided that the paint color is the same or substantially similar to the color originally painted. The ARB shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby, in the locations indicated, will not be detrimental to the appearance of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and landscaping and is otherwise desirable. If the proposed construction, alterations or additions are to common elements of a condominium, said approval shall also be subject to the prior approval of the applicable condominium association. The ARB may condition its approval of proposals and plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted.

9.6 Procedures.

(a) Application. It shall be the responsibility of each Owner to supply two (2) sets of the following documents, materials and items to the ARB for use in its reviewal process: (i) the

construction plans and specifications, if any, including all proposed landscaping; (ii) an elevation or rendering of all Proposed Improvements, if any; (iii) samples of materials or paint colors; and (iv) such other items as the ARB may deem appropriate. Until receipt by the ARB of any required plans and specifications, the ARB may postpone review of any plans submitted for approval. The ARB shall approve or disapprove the documents properly submitted to it in writing within thirty (30) days of such submission. If the ARB does not act within the thirty (30) day period (unless an extension is agreed to) from receipt of all required documentation in acceptable form, the plans and specifications for the Proposed Improvements shall be deemed to have been disapproved. With respect to all Improvements, other than the Initial Improvements, a review fee may be established and charged on a case by case basis, in the sole discretion of and in an amount set by the ARB. If a review fee is charged by the ARB, it shall be non-refundable in any event, whether or not the application submitted by an Owner is approved.

(b) Compliance Binder. At the time of submission of the review fee and the documents, materials and items listed above (as to other Proposed Improvements), and upon the request of the ARB, the Owner and/or builder shall also submit a construction compliance binder in such amount as may be required by the ARB from time to time in the sole discretion of the ARB. The construction compliance binder is intended to insure that the Owner and any contractors or builders comply with the plans approved by the ARB, the Declaration and any rules or regulations established by the ARB and to insure the satisfactory completion of all Proposed Improvements according to the plans approved by the ARB. If, in the opinion of the ARB, the Proposed Improvements have been satisfactorily completed in substantial compliance with the plans and specifications approved by the ARB, then the ARB agrees to return the construction compliance binder, less any fees or penalties as set forth below. The ARB has complete discretion to retain all or any portion of the construction compliance binder for any non-compliance, which remedy shall be in addition to any other remedy under this Declaration. Any retained sums shall be remitted to and shall be the property of the Community Association.

(c) Basis for Decision. Approval shall be granted or denied by the ARB based upon compliance with the provisions of this Declaration and any guidelines established pursuant thereto, the quality of workmanship and materials, the harmony of external design with its surroundings, the effect of the construction on the appearance from surrounding Lots, and all other factors, guidelines and standards promulgated from time to time, including purely aesthetic considerations, which, in the sole opinion of the ARB, will affect the desirability or suitability of the construction. In connection with its approval or disapproval of an application, the ARB shall evaluate each application for total effect. The evaluation relates to matters of judgment and taste which cannot be reduced to a simple list of measurable criteria. It is possible, therefore, that an application may meet individual criteria and still not receive approval, if in the sole judgment of the ARB, its overall aesthetic impact is unacceptable. The approval of an application shall not be construed as creating any obligation on the part of the ARB to approve applications involving similar designs for different Lots. In addition, the ARB shall have the right to waive or modify the requirements as more fully set forth in Section 9.11.

(d) Uniform Procedures. The ARB may establish revised uniform procedures for the review of applications, including the assessment of the Compliance Binder, review costs and fees, if any, to be paid by the applicant and the time and place of meetings. No submission for approval shall be considered by the ARB unless and until such submission, in compliance with the provisions of this Article, has been accepted by the ARB. Any architectural guidelines established by the Developer or ARB may be amended as the Developer or ARB may determine.

(e) Notification. Approval or disapproval of applications to the ARB shall be given to the applicant in writing within thirty (30) days of receipt thereof, by the ARB in accordance with the procedures adopted by the ARB. If the ARB disapproves the requested Proposed Improvement, it

shall provide written notice of such disapproval to the Owner. Disapproval by the ARB may be appealed to the Board of Directors, and the determinations of the Board of Directors shall be dispositive. If the ARB does not act within the thirty (30) day period (unless an extension is agreed to) from receipt of all required documentation in acceptable form, the plans and specifications for the Proposed Improvements shall be deemed to have been disapproved. No construction (other than Initial Improvements) on any Lot or Unit or within the Property shall be commenced, and no Lot or Unit shall be modified, except in accordance with such approved plans and specifications. All work done by a Member after receiving the approval of the ARB shall be subject to the inspection by, and final approval of, the ARB in accordance with its procedural rules adopted as herein provided. All changes and alterations shall also be subject to all applicable permit requirements and to all applicable governmental laws, statutes, ordinances, rules, regulations, orders and decrees.

9.7 No Waiver of Future Approvals.

The approval of the ARB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

9.8 Enforcement.

In the event this paragraph is violated in that any Improvement is made without first obtaining the approval of the ARB, or is not made in strict conformance with any approval given or deemed given by the ARB, the ARB, as the authorized representative of the Community Association, shall specifically have the right to injunctive relief to require the applicable Owner to stop, remove and/or alter any Improvement in a manner which complies with the requirements of the ARB, or the ARB may pursue any other remedy available to it. In connection with the enforcement of this paragraph, the ARB shall have the right to enter onto any Property and make any inspection necessary to determine that the provisions of this paragraph have been complied with. The failure of the ARB to object to any Improvement prior to the completion of the Improvement shall not constitute a waiver of the ARB's right to enforce the provisions of this paragraph. Any action to enforce this paragraph must be commenced within one (1) year after notice of the violation by the ARB, or within three (3) years after the date of the violation, whichever occurs first. The foregoing shall be in addition to any other remedy set forth herein for violations of this Declaration.

9.9 ARB Rules.

The ARB shall adopt reasonable rules of procedure and standards for the submission and review of any matter to be brought before it and the inspection and final approval of any completed work done pursuant to an approval of the ARB. Such rules shall be (i) subject to the prior approval of the Board of Directors, (ii) consistent with the covenants and restrictions set forth in this Declaration and (iii) published or otherwise made available to all Members and their contractors, subcontractors and other appropriate designees. All rules of the ARB shall be adopted and/or amended by a majority vote thereof, provided that no amendment shall be applicable to any matter submitted to the ARB prior to the making of such amendment.

9.10 Non-Liability.

The ARB and Developer shall merely have the right, but not the obligation, to exercise architectural control and thus neither the Community Association, the Board of Directors, the ARB, the Developer nor any member thereof, nor any duly authorized representative of any of the foregoing, shall be liable to any Condominium Association or to any Owner, its successors, assigns, personal representatives or heirs or any other person or entity for any loss, damage or injury arising out of or

in any way connected with the performance or non-performance of the ARB's duties hereunder. The ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition solely on the basis of aesthetic considerations and the benefit or detriment which would result to the immediate vicinity and to the Property, generally. The ARB shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. Furthermore, the approval of any plans and specifications or any Proposed Improvements shall not be deemed to be a determination or warranty that such plans and specifications or Proposed Improvements are complete, do not contain defects, are structurally safe or in fact meet any standards, guidelines, or criteria of the ARB or Developer, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental or industry requirements, standards or codes and neither the ARB, the Community Association, nor Developer shall be liable for any defect or deficiency in such plans and specifications or Proposed Improvements, the safety, soundness, workmanship, materials, usefulness for any purpose or any injury to persons or property resulting therefrom. By submitting a request for the approval of any improvement or alteration, the requesting Owner shall be deemed to have automatically agreed to hold harmless and indemnify the aforesaid members and representatives, and the Community Association generally, from and for any loss, claim or damages connected with the aforesaid aspects of the improvements or alterations. Additionally, neither the Community Association, the Board of Directors, any member or representative of the ARB nor Developer shall be liable for any work or construction performed by any builder approved by the ARB and/or Developer, and the selection or inclusion of any builder shall not be deemed to be a determination or warranty of such builder's skills, workmanship, product or abilities. An Owner shall rely exclusively on its contracts with the builder for any and all rights, obligations and remedies it may have with respect to the construction of the Residence.

#### 9.11 Variance.

The ARB may authorize variances from compliance with any of the architectural control provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, 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) stop the ARB from denying a variance in other circumstances.

#### 9.12 Exemptions.

Developer and its affiliates shall be exempt from the provisions hereof with respect to alterations and additions desired to be effected by any of them and shall not be obligated to obtain ARB approval for any construction or changes which any of them may elect to make at any time.

#### 9.13 Reservation of Right to Release Restrictions.

In each instance where a structure has been erected, or construction thereof has substantially advanced, in such a manner that some portion of the structure encroaches on any Lot or Unit line, setback line, or easement area, Developer reserves for itself, its successors, assigns and designees, the right to release such Lot or Unit from the encroachment and to grant a variance to permit the encroachment without the consent or joinder of any person, irrespective of who owns the burdened Lot, Unit or easement areas, so long as Developer, in the exercise of its sole discretion, determines that the release or exception will not materially or adversely affect the value of the adjacent Lot or Unit and the overall appearance of the Property. This reserved right shall automatically pass to the Community Association when Developer no longer owns any portion of the Property. Upon granting of an exception to an Owner, the exception shall be binding upon all subsequent Owners of the affected Lots or Units.

9.14 General Powers of the Community Association and the ARB.

The Community Association (and the ARB, as appropriate) shall have the absolute power to veto any action taken or contemplated to be taken which is or would be governed by this Article, and the Community Association shall have the absolute power to require specific action to be taken, by any Condominium Association in connection with applicable sections of the Property in that regard. The Community Association may require specific maintenance or repairs or aesthetic changes to be effected, require that a proposed budget include certain items and that expenditures be made therefore, veto or cancel any contract providing for maintenance, repair or replacement of the Property governed by any Condominium Association and otherwise require or veto any other action or decision of any Condominium Association (or committee thereof) as the Community Association deems appropriate from time to time. Any action required by the Community Association in a written notice to be taken by a Condominium Association shall be taken within the time frame set by the Community Association in such written notice. If the Condominium Association fails to comply with the requirements set forth in such written notice, the Community Association shall have the right to effect such action on behalf of the Condominium Association and shall assess the Lots and Units governed by the Condominium Association for their pro-rata share of any expenses incurred by the Community Association in connection therewith, together with an administrative charge to be determined by the Community Association under the circumstances (to cover the Community Association's administrative expenses in connection with the foregoing and to discourage the Condominium Association from failing to comply with the requirements of the Community Association). Such assessments may be collected as special assessments hereunder and shall be subject to all lien rights provided for herein.

9.15 Remedy for Violations.

If an Owner erects or constructs an Improvement or structure in violation of this Article, the Developer or the Community Association may summarily and without the permission or consent of the Owner, enter upon the Lot or Unit and remove the unpermitted Improvements or structure, in which case neither the Developer, the Community Association nor their agents or employees will be liable to the Owner or any party claiming by, through or under the Owner for any damages to person or property arising out of such entry and removal. The Owner shall be and remain liable for all costs incurred in connection therewith which costs will be due and payable to the Community Association on the day of entry and removal and will thereafter bear interest at the rate of the greater of eighteen percent (18%) per annum or the highest rate allowed by law. All such costs shall be a Special Assessment and shall be secured by a lien on the Lot or Unit, which lien is created, evidenced and enforced and is subject to those limitations as provided for in this Declaration. Alternatively, if any Improvement or structure is erected or constructed without first obtaining the approval of the ARB or Developer, as applicable, or is not constructed in strict compliance with any approval given or deemed given by the ARB or Developer, as applicable, or the provisions of this Article are otherwise violated, the ARB, as the authorized representative of the Community Association or the Developer, shall have the specific right to injunctive relief to require the Owner to stop, remove, and alter any Improvements in order to comply with the requirements hereof, or the ARB or Developer may pursue any other remedy available to it. In connection with this Section, the ARB and Developer shall have the right to enter into any Lot or Unit and make any inspection necessary to determine that the provisions of this Declaration have been complied with. The failure of the ARB or Developer to object to any Proposed Improvement prior to its completion shall not constitute a waiver of the ARB's or Developer's right to enforce this Article. The foregoing rights shall be in addition to any other remedy set forth herein, including without limitation the fining provisions set forth in Article 11 for violations of this Declaration.

#### 9.16 Design Guidelines.

The ARB or Developer, as applicable, shall have the authority to promulgate design guidelines and all Owners must comply with the restrictions, covenants and provisions set forth in the design guidelines. In the event of an inconsistency between the Declaration and design guidelines, the more restrictive of the two shall prevail.

#### 9.17 Architectural Control by Sonoc Company LLC

Sonoc Company LLC (Developer's predecessor in title) has a continuing right to review and approve plans and specifications for all exterior improvements including building, signage and landscape plans. Further, Sonoc Company LLC shall be entitled to review and approve all entry features, guard houses, master landscaping, signage and all other improvements incorporated as entranceways to the Property in the areas intersecting Crosswater Parkway adjacent to the westerly boundary of the Property and intersecting the access road to the Nocatee Preserve at the southerly boundary of the Property. No structural improvement shall be commenced, placed or maintained upon the Property nor shall any addition or change or alteration therein be made until the plans and specifications and locations of them have been submitted to and approved by Sonoc Company LLC. Each request for approval shall require submission of two (2) complete sets of all plans and specifications for any improvements or structure subject to Sonoc Company LLC's approval. Any landscape plans submitted shall be certified by a registered Florida landscape architect. Sonoc Company LLC may also require submission of samples of building materials (if not previously approved) proposed for use in connection with construction of such improvements and may require such additional information as may be reasonably necessary to completely evaluate the proposed structure or improvements. Approval by Sonoc Company LLC shall not be unreasonably withheld, but disapproval may be based upon purely aesthetic grounds determined in the reasonable discretion of Sonoc Company LLC. Approval or disapproval of applications by Sonoc Company LLC shall be given in writing with fifteen (15) days of receipt thereof by Sonoc Company LLC and if the approval or disapproval is not forthcoming within such fifteen (15) days, the application shall be deemed approved. Approval of any application by Sonoc Company LLC shall not constitute a basis for any liability of Sonoc Company LLC for any reason, including but not limited to, failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects.

### **Article 10 COMMUNITY ASSOCIATION AND OTHER ASSOCIATIONS**

#### 10.1 Preamble.

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

#### 10.2 Cumulative Effect: Conflict.

The covenants, restrictions and provisions of this Declaration shall be cumulative with those of the Condominium Associations and the Community Association may, but shall not be required to, enforce the latter; provided, however, that in the event of conflict between or among such covenants, restrictions and provisions, or any Articles of Incorporation, Bylaws, rules and regulations, policies or practices adopted or carried out pursuant thereto, those of the Condominium Associations shall be subject and subordinate to this Declaration. The foregoing priorities shall apply, but not be limited

to, the liens for assessments created in favor of the Community Association and the Condominium Associations as provided for herein. As to any Condominium Association which is a condominium association, no duties of same hereunder shall be performed or assumed by the Community Association if same are required by law to be performed by the Condominium Association or if the performance or assumption of such duties would be contrary to the purpose and intent of Section 20.8 of this Declaration.

#### 10.3 Architectural Control.

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

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

#### 10.4 Collection of Assessments.

The Community Association shall collect all assessments and other sums due the Community Association from the members thereof.

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

#### 10.5 Delegation of Other Duties.

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

#### 10.6 Acceptance of Delegated Duties.

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

#### 10.7 Expense Allocations.

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

In the event of a failure of a Condominium Association to budget or assess its members for expenses allocated as aforesaid, the Community Association shall be entitled to pursue all available legal and equitable remedies against the Condominium Association or, without waiving its right to the foregoing, specially assess the members of the Condominium Association and their Lots or Units for the sums due (such special assessments, as all others, to be secured by the lien provided for in this Declaration).

#### 10.8 Non-Performance of Condominium Association Duties.

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

#### 10.9 Conflict.

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

### **Article 11 ENFORCEMENT**

#### 11.1 Compliance by Owners.

Every Owner and Member's Permittee shall comply with the restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Community Association.

#### 11.2 Enforcement.

Failure of an Owner or his Member's Permittee to comply with such restrictions, covenants or rules and regulations 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. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the nonprevailing party as determined by the court.

### 11.3 Fines and Suspension of Privileges.

If any person, firm, corporation, trust, or other entity shall violate or attempt to violate any of the covenants or restrictions set forth in this Declaration or the Rules and Regulations, it shall be lawful for Developer, the Community Association, or any Owner: (a) to prosecute proceedings for the recovery of damages against those so violating or attempting to violate any such covenant or restriction; or (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting to violate any such covenant or restriction for the purpose of preventing or enjoining all or any such violations or attempted violations. In addition to all other remedies, the Board of Directors shall have the authority, in its sole discretion, to suspend the Owner's (and Owner's family, tenants, guests, invitees or Occupants) right to use the Common Property recreational facilities for so long as the violation continues and to levy reasonable fines against Owner or Occupant for the failure of the Owner, his family, tenants, guests, invitees or Occupants, to comply with any covenant, restriction, rule, or regulation contained in this Declaration, the Articles, or the Bylaws, provided the following procedures are adhered to:

(a) The Community Association shall give the Owner or Occupant at least fourteen (14) days notice of the violation(s) and of the right to have a hearing before a committee of at least three (3) Owners appointed by the Board of Directors, which committee members shall not be officers, directors or employees of the Community Association or the spouse, parent, child, brother, or sister of an officer, director or employee of the Community Association. The notice shall contain a date and time for a proposed hearing which shall be at least fourteen (14) days from the date of notice. If the Owner or Occupant notified of the violation(s) and the fine fails to appear at the hearing or fails to request a hearing at another time, which time shall in no event be set more than thirty (30) days after notification of the violations(s) and the fine, the right to the hearing shall be deemed to be waived and the fine shall be considered levied.

(b) At any hearing, the committee shall be presented with the violation(s) and shall give the Owner or Occupant the opportunity to present reasons why penalties should not be imposed. A written decision of the committee shall be provided to the Owner or Occupant within twenty-one (21) days after the date of the hearing.

(c) If a hearing is requested and results in the approval of the fine by the committee, the fine levied by the Board of Directors may be imposed against the Owner, his family, tenants, guests, invitee or Occupants.

(d) Each incident which is grounds for a fine shall be the basis for a separate fine. In case of continuing violations, each continuation after notice is given shall be deemed a separate incident.

(e) Amounts: The Board of Directors (if its or such panel's findings are made against the Owner) may impose Special Assessments against the Lot or Unit owned by the Owner as follows:

(i) First non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00);

(ii) Second non-compliance or violation: a fine not in excess of Five Hundred Dollars (\$500.00);

(iii) Third and subsequent non-compliance, or a violation or violations which are of a continuing nature after notice thereof (even if in the first instance): a fine not in excess of One Thousand Dollars (\$1,000.00);

(iv) Provided, however, to the extent that state law is modified to permit fines of greater amounts, the Declaration shall be automatically amended to include such increase.

(f) Payment of Fines: Fines shall be paid not later than thirty (30) days after notice of the imposition or Assessment of the penalties.

(g) Collection of Fines: Fines shall be treated as an Assessment subject to the provisions for the collection of Assessments, and the lien securing same, as set forth herein.

(h) Application of Proceeds: All monies received from fines shall be allocated as directed by the Board of Directors.

(i) Non-Exclusive Remedy: The imposition of a fine shall not be an exclusive remedy and shall exist in addition to all other rights and remedies to which the Community Association may otherwise be entitled, including without limitation the right to impose a Special Assessment as a lien on the Lot; however, any fine paid by the Owner or Occupant shall be deducted from or offset against any damages which the Community Association may otherwise be entitled to recover by law from such Owner or Occupant. The limitations on fines in this paragraph does not apply to suspensions or fines arising from failure to pay Assessments.

(j) The failure of Developer, the Community Association, or any Owner, or their respective successors or assigns, to enforce any covenant, restriction, obligation, right, power, privilege, authority, or reservation herein contained, however long continued, shall not 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.

11.4 Initial Rules and Regulations.

The Board of the Community Association shall have the right to implement rules and regulations for the Community Association and its Members.

**Article 12**  
**DAMAGE OR DESTRUCTION TO COMMON PROPERTY**

12.1 Damage or Destruction.

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

(a) In the event of damage to or destruction of the Common Property, if the insurance proceeds are sufficient to effect total restoration, then the Community Association shall cause such portions of the Common Property to be repaired and reconstructed substantially as it previously existed.

(b) If the insurance proceeds are within One Hundred Thousand Dollars (\$100,000.00) or less of being sufficient to effect total restoration of the Common Property, then the Community Association shall cause such portions of the Common Property to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a special assessment against each of the Owners in equal shares in accordance with the provisions of Article 8 of this Declaration.

(c) If the insurance proceeds are insufficient by more than One Hundred Thousand Dollars (\$100,000.00) to effect total restoration of the Common Property, then by written consent or vote of two thirds (2/3) of the Board of Directors, subject to Article 14 hereof, the Board shall

determine whether (1) to rebuild and restore the Common Property in substantially the same manner as they existed prior to damage and to raise the necessary funds over the insurance proceeds by levying special assessments against all Members, (2) to rebuild and restore in a way which is less expensive than replacing the Common Property in substantially the same manner as they existed prior to being damaged, or (3) subject to the approval of the Board, to not rebuild and to retain the available insurance proceeds.

(d) Each Member shall be liable to the Community Association for any damage to the Common Property not fully covered by collected insurance which may be sustained by reason of the negligence or willful misconduct of any Member or his Member's Permittees. Notwithstanding the foregoing, the Community Association reserves the right to charge such Member an assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Member. In the case of joint ownership of a Lot or Unit, the liability of such Member shall be joint and several. The cost of correcting such damage shall be an assessment against the Member and may be collected as provided herein for the collection of assessments.

### **Article 13 INSURANCE**

#### **13.1 Common Property.**

The Community Association shall keep all improvements, facilities and fixtures located within the Common Property insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters), and may obtain insurance against such other hazards and casualties as the Community Association may deem desirable. The Community Association may also insure any other property, whether real or personal, owned by the Community Association, against loss or damage by fire and such other hazards as the Community Association may deem desirable, with the Community Association as the owner and beneficiary of such insurance for and on behalf of itself and all Members. The insurance coverage with respect to the Common Property shall be written in the name of, and the proceeds thereof shall be payable to, the Community Association. Insurance proceeds shall be used by the Community Association for the repair or replacement of the Property for which the insurance was carried. Premiums for all insurance carried by the Community Association are common expenses included in the Annual Assessments made by the Community Association.

To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Community Association shall contain provisions, or be accompanied by endorsements, for agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction.

All insurance policies shall contain standard mortgagee clauses, if applicable.

The Community Association shall also maintain flood insurance on the insurable improvements on the Common Property in an amount equal to the lesser of 100% of the replacement costs of all insurable improvements (if any) within the Common Property or the maximum amount of coverage available under the National Flood Insurance Program, in either case if the insured improvements are located within an "A" flood zone.

#### **13.2 Replacement or Repair of Common Property.**

In the event of damage to or destruction of any portion of the Common Property, the Community Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article 13 of this Declaration.

### 13.3 Waiver of Subrogation.

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

### 13.4 Liability and Other Insurance.

The Community Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, with coverage of at least \$1,000,000.00 (if available at reasonable rates and upon reasonable terms) for any single occurrence, insuring against liability for bodily injury, death and property damage arising from the activities of the Community Association or with respect to property under its jurisdiction, including, if obtainable, a cross liability endorsement insuring each Member against liability to each other Member and to the Community Association and vice versa and coverage for legal liability resulting from lawsuits related to employment contracts shall also be maintained. The Community Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Member and the Community Association and its Board of Directors and officers, from liability in connection with the Common Property, the premiums for which shall be Common Expenses and included in the assessments made against the Members. The Community Association may also obtain such other insurance as the Board deems appropriate. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board or any management company engaged by the Community Association against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or any committee thereof. At a minimum, however, there shall be blanket fidelity bonding of anyone (compensated or not) who handles or is responsible for funds held or administered by the Community Association, with the Community Association to be an obligee thereunder. Such bonding shall cover the maximum funds to be in the hands of the Community Association or management company during the time the bond is in force.

### 13.5 "Blanket" Insurance.

The requirements of this Article may be met by way of the Community Association being an insured party under any coverage carried by the Developer or under coverage obtained by the Community Association as long as such coverage is in accordance with the amounts and other standards dated in this Article.

## Article 14 MORTGAGEE PROTECTION

The following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

- (a) The Community Association shall be required to make available to all Owners and Mortgagees, and to insurers and guarantors of any first Mortgage, for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of this Declaration (with all amendments) and the Articles, Bylaws and rules and regulations and the books and records of the Community Association. Furthermore, such persons shall be entitled, upon written request, to (i) receive a copy of the Community Association's financial statement for the

immediately preceding fiscal year, (ii) receive notices of and attend the Community Association meetings, (iii) receive notice from the Community Association of an alleged default by an Owner in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation or the Bylaws of the Community Association, which default is not cured within thirty (30) days after the Community Association learns of such default, and (iv) receive notice of any substantial damage or loss to the Common Property.

(b) Any holder, insurer or guarantor of a Mortgage on a Lot or Unit shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Common Property, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Lot or Unit, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Community Association, and (iv) any proposed action which requires the consent of a specified number of Mortgage holders.

(c) Any holder, insurer or guarantor of a Mortgage on a Lot or Unit shall have the right to pay, singly or jointly, taxes or other charges that are delinquent and have resulted or may result in a lien against any portion of the Common Property and receive immediate reimbursement from the Community Association.

(d) Any holder, insurer or guarantor of a Mortgage on a Lot or Unit shall have the right to pay, singly or jointly, any overdue premiums on any hazard insurance policy covering the Common Property or obtain, singly or jointly, new hazard insurance coverage on the Common Property upon the lapse of a policy and, in either case, receive immediate reimbursement from the Community Association.

**Article 15**  
**DISCLAIMER OF LIABILITY OF**  
**COMMUNITY ASSOCIATION AND DEVELOPER**

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, ANY RULES OR REGULATIONS OF THE COMMUNITY ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE COMMUNITY ASSOCIATION (COLLECTIVELY, THE "COMMUNITY ASSOCIATION DOCUMENTS"), NEITHER THE COMMUNITY ASSOCIATION NOR THE DEVELOPER SHALL BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER 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, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

(a) IT IS THE EXPRESS INTENT OF THE COMMUNITY ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE COMMUNITY ASSOCIATION AND WHICH GOVERN OR REGULATE 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;

(b) NEITHER THE COMMUNITY ASSOCIATION NOR THE DEVELOPER IS EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF

FLORIDA, THE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES AND

(c) ANY PROVISIONS OF THE COMMUNITY ASSOCIATION 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 COMMUNITY ASSOCIATION OR THE DEVELOPER TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS LOT OR UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS ARTICLE AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE COMMUNITY ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE COMMUNITY ASSOCIATION HAS BEEN DISCLAIMED IN THIS ARTICLE.

AS USED IN THIS ARTICLE, "COMMUNITY ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE COMMUNITY ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS, THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF DEVELOPER, WHICH SHALL BE FULLY PROTECTED HEREBY.

**Article 16  
STORMWATER MANAGEMENT SYSTEM**

**16.1 Blanket Easement.**

The plan for the development of the Property includes the construction of a Stormwater Management System, which may include, without limitation, retention lakes, swales, conduits, weirs, pipes, pumps, and berms across the rear of certain Lots or Units and access easements to the Stormwater Management System. Developer hereby reserves for itself, its successors and assigns, and grants to the Community Association and its designees, a perpetual, nonexclusive easement over and across all areas of the Stormwater Management System for the drainage of stormwater from the Property. Portions of the Stormwater Management System are located entirely within Lots or Units. The Community Association is hereby granted an easement over any Lots or Units which is necessary or convenient for the Community Association to perform its maintenance obligations hereunder, provided however, such easement shall be released with respect to any portion of the Lots or Units on which an approved Improvement is constructed and located.

**16.2 Maintenance Easement.**

The Community Association is granted a perpetual, nonexclusive easement for ingress and egress, at all reasonable times and in a reasonable manner, over and across the Stormwater Management System and over any portion of a Lot or Unit which is a part of the Stormwater Management System, or upon which a portion of the Stormwater Management System is located to operate, maintain, and repair the Stormwater Management System as required by the SJRWMD permit. Such right expressly includes the right to cut any trees, bushes or shrubbery, to make any gradings of soil, construct or modify any berms placed along the rear of any Lots as part of the Stormwater Management System, or take any other action reasonably necessary, following which Developer or

the Community Association shall restore the affected property to its original condition as nearly as practicable; provided, however, that Developer or the Community Association shall not be required to replace or repair fences, walks, structures, landscaping, or other improvements which are removed or damaged. Developer or the Community Association shall give reasonable notice of its intent to take such action to all affected Owners, unless, in the opinion of Developer or the Community Association, an emergency exists which precludes such notice. The right granted herein may be exercised at the sole option of Developer or the Community Association and shall not be construed to obligate Developer or the Community Association to take any affirmative action in connection therewith. The Owners of Lots adjacent to or containing a portion of the retention areas are granted a perpetual, nonexclusive easement for ingress and egress over and across the Stormwater Management System for the purpose of providing maintenance and erosion control to the embankments of such retention areas.

### 16.3 Maintenance.

Except as specifically set forth herein to the contrary, the Community Association shall be responsible for the maintenance, operation, and repair of the Stormwater Management System. Such maintenance shall include the exercise of practices which allow the Stormwater Management System to provide drainage, water Storage, conveyance, or other capabilities in accordance with all the permits, statutes, rules, and regulations pertaining to surface water management, drainage, and water quality promulgated by the SJRWMD, Florida Department of Environmental Protection, and all other local, state and federal authorities having jurisdiction. Maintenance of the Stormwater Management System shall mean the exercise of practices which allow the Stormwater Management System to provide drainage, water Storage, conveyance and other stormwater management capabilities as permitted by the SJRWMD.

The Community Association shall maintain and control the water level and quality of the Stormwater Management System; the bottoms of any retention lakes or drainage easements which retain or hold stormwater on a regular basis. The Community Association shall have the power, as may be required by any applicable governmental entity, to control and eradicate plants, fowl, reptiles, animals, fish, and fungi in and on any portion of the retention lakes or drainage easements. The Owners of Lots adjacent to or containing any portion of the Stormwater Management System shall maintain all shoreline vegetation, landscaping, irrigation, grade and contour of all embankments to the water's edge (as it may rise and fall from time to time) and drainage easements irrespective of ownership of such land, keep the grass, plantings, and other lateral support of the embankments in a clean and safe manner and to prevent erosion and shall remove trash and debris as it may accumulate in the System, from time to time. Maintenance of the Stormwater Management System shall mean the exercise of practices which allow the Stormwater Management System to provide drainage, water Storage, conveyance or other surface water capabilities as permitted by the SJRWMD. Any repair or reconstruction of the Stormwater Management System shall be consistent with the Permit as originally issued or any modification that may be approved by the SJRWMD. In order to provide adequate assurance that the Stormwater Management System will adequately function, the following maintenance procedures shall be followed:

- (a) The Community Association shall inspect or cause to be inspected all inlets and control structures for vandalism, deterioration or accumulation of sand and debris.
- (b) The Community Association shall assure that all debris or sand shall be removed from the inlets and control structures and any orifice system.
- (c) The Community Association shall inspect and repair or cause to be inspected and repaired all skimmer boards around control structures as necessary.

#### 16.4 Improvements.

No docks, bulkheads, or other structures, permanent or temporary, shall be constructed on, over, or under any portion of the Stormwater Management System without the prior written consent of the Community Association and the approval of the ARB or Developer, which consent or approval may be withheld for any reason. Any improvements to the Stormwater Management System permitted by the Community Association and installed by the Owner shall be maintained by such Owner in accordance with the maintenance provisions of this Declaration. All improvements to the Stormwater Management System may also require the prior written approval of the SJRWMD. After receiving the approval of the ARB, Owner shall be solely liable for obtaining all governmental permits necessary or convenient to construct such Improvements. Notwithstanding the foregoing, docks bulkheads or other structures, permanent or temporary, that are constructed as initial improvements, may not be constructed without obtaining the prior written consent of the Developer.

#### 16.5 Use and Access.

Developer and the Community Association shall have the right to adopt reasonable rules and regulations from time to time in connection with the use of the surface waters of any portion of the Stormwater Management System, and shall have the right to deny such use to any person who, in the opinion of Developer or the Community Association, may create or participate in a disturbance or nuisance on any part of the Stormwater Management System. The use of such surface waters by the Owners shall be subject to and limited by the rules and regulations of Developer and the Community Association, all permits issued by governmental authorities, and any rights granted to other persons pursuant to the rules and regulations of Developer and the Community Association. Only Developer and the Community Association shall have the right to pump or otherwise remove any water from any part of the Stormwater Management System for purposes of irrigation or any other use.

#### 16.6 Liability.

NEITHER DEVELOPER NOR THE COMMUNITY ASSOCIATION SHALL HAVE ANY LIABILITY WHATSOEVER TO OWNERS, GUESTS, TENANTS, OR INVITEES IN CONNECTION WITH THE RETENTION LAKES AND DRAINAGE EASEMENTS OR ANY PART OF THE STORMWATER MANAGEMENT SYSTEM. EACH OWNER, FOR ITSELF AND ITS GUESTS, TENANTS, OR INVITEES, RELEASES DEVELOPER AND THE COMMUNITY ASSOCIATION FROM ANY LIABILITY IN CONNECTION THEREWITH.

NEITHER DEVELOPER, THE COMMUNITY ASSOCIATION, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, RETENTION AREA, CANAL, CREEK, MARSH AREA, STREAM OR OTHER WATER BODY WITHIN OR ADJACENT TO THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR ENTITY AS REFERENCED HEREIN. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID AREAS SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF A DEED TO, OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ALL LIABILITY RELATED TO ANY CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

#### 16.7 Wetlands, Jurisdictional Land and Swales.

This Declaration is subject to the rights of the State of Florida over portion of the Property which may be considered wetlands, marshes, sovereignty or jurisdictional lands, and every Owner shall obtain any permit necessary prior to undertaking any dredging, filling, mowing, improving, landscaping, or removal of plant life existing on his Lot.

#### 16.8 Rights of the SJRWMD.

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

#### 16.9 Indemnity.

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

#### 16.10 Permits.

THIS PROPERTY WAS DEVELOPED IN ACCORDANCE WITH REQUIREMENTS OF PERMIT NUMBER SAJ-2003-1267-MRE, ISSUED BY THE ACOE AND PERMIT NUMBER 40-031-87432-4 AND PERMIT NUMBER 40-031-87432-1 ISSUED BY THE SJRWMD. ANY OWNER OWNING A LOT WHICH CONTAINS OR IS ADJACENT TO JURISDICTIONAL WETLANDS AS ESTABLISHED BY THE ACOE OR SJRWMD, SHALL, BY ACCEPTANCE OF TITLE TO THE LOT, BE DEEMED TO HAVE ASSUMED ALL OBLIGATIONS UNDER THE FOREGOING PERMITS AS SUCH RELATES TO ITS LOT AND SHALL AGREE TO MAINTAIN SUCH JURISDICTIONAL WETLANDS IN THE CONDITION REQUIRED UNDER THE PERMITS AND TO OTHERWISE COMPLY THEREWITH. IN THE EVENT THAT AN OWNER VIOLATES THE TERMS AND CONDITIONS OF SUCH PERMITS AND FOR ANY REASON THE DEVELOPER IS CITED THEREFORE, THE OWNER AGREES TO INDEMNIFY AND HOLD THE DEVELOPER HARMLESS FROM ALL COSTS ARISING IN CONNECTION THEREWITH, INCLUDING

WITHOUT LIMITATION ALL COST AND ATTORNEYS' FEES AS WELL AS ALL COSTS OF CURING SUCH VIOLATION. THE COMMUNITY ASSOCIATION HEREBY AGREES TO ACCEPT THE TRANSFER OF THE ACOE AND SJRWMD PERMITS SET FORTH ABOVE, AND ALL RIGHTS AND OBLIGATIONS THEREUNDER, FROM THE DEVELOPER PRIOR TO OR UPON TURNOVER OF THE ASSOCIATION FROM THE DEVELOPER TO THE OWNERS.

16.11 Developer's Rights.

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

16.12 Nocatee Stormwater Pollution Prevention Plan.

In order to ensure the preservation of water quality and the prohibition of encroachment into environmentally sensitive areas, the Developer and all Owners of all or any portion of the Property shall adhere to the Nocatee Stormwater Pollution Prevention Plan, Appendix "F" to the Nocatee Environmental and Water Resource Area Plan, dated July 25, 2000 as on file with the SJRWMD, a copy of such plan is attached hereto as **Exhibit "E"**.

16.13 Homeowners Stormwater Training Program.

In compliance with the requirements of the Permits, the Developer, for so long as it controls the Community Association, and thereafter the Association, shall conduct periodic stormwater training for Owners, in accordance with the Outline for Homeowners Stormwater Training Program attached hereto as **Exhibit "F"**.

16.14 Conservation Easement.

(a) The Property is subject to a conservation easement over and upon (i) all upland buffer areas as required by the DRI, including an area known as the Greenway Buffer; and (ii) all SJRWMD wetland areas within the Property.

(b) The Property is subject to a Conservation Easement in favor of St. Johns River Water Management District, recorded on April 3, 2006 at Official Records Book 2675, page 1696, of the public records of St. Johns County, Florida.

(c) The Property is subject to a Conservation Easement in favor of St. Johns River Water Management District, recorded on April 3, 2006 at Official Records Book 2675, page 1594, of the public records of St. Johns County, Florida.

(d) From time to time the Developer may be required to record additional conservation easement(s) over a portion of the Property, as determined by the SJRWMD, Department of Environmental Protection and/or the ACOE. Such land would be subject to a conservation easement

as a mitigation area and would be subject to the jurisdiction of such agencies and such land is referred to as "Restricted Land". The use of such Restricted Land is hereby restricted as follows:

(i) There shall be no construction or placing of buildings, roads, signs, billboards or other advertising, utilities or structures above the ground in the Restricted Land.

(ii) No soil or other substance or material used as land fill, and no trash, waste, unsightly or offensive materials may be dumped or placed on the Restricted Land.

(iii) No trees, shrubs or other vegetation on the Restricted Land may be removed or destroyed.

(iv) There shall be no excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such a manner as to affect the surface of the Restricted Land.

(v) There shall be no surface use of the Restricted Land except for purposes that permit the land or water to remain predominantly in their natural condition.

(vi) There shall be no activities within the Restricted Land which are detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish or wildlife habitat preservation.

(vii) There shall be no use made of the Restricted Land and no act shall be undertaken which is detrimental to the retention of land or water areas or which are detrimental to the preservation of structural integrity or physical appearance of sites or properties of historical, architectural, archaeological or cultural significance.

(e) Upon the recording of a conservation easement, the foregoing restrictions shall be deemed covenants running with the Restricted Land, will be binding upon the Owner(s) of the Restricted Land, their successors and assigns, and shall inure to the benefit of the SJRWMD.

(f) Notwithstanding any other provisions hereof, the terms of this Section 16.14 shall not be amended or modified without the written consent of the SJRWMD. Further, this Section 16.14 may be enforced by the SJRWMD, its successors and assigns.

**16.15 District Wetland Areas.**

The plat for the Property and the master development plan for the Property includes certain wetland areas within the Property, certain upland buffers required under the DRI and certain greenway buffers as conservation areas which have been or will be subjected to SJRWMD and ACOE conservation easements.

**16.16 Minimum Buffer Adjacent to District Wetland Buffers.**

The Property is subject to a 25-foot minimum buffer to be maintained adjacent to the SJRWMD wetland areas constituting part of the Nocatee Greenway (the "Greenway Buffer"), which Greenway Buffer is located upon the Property. Developer has or will convey (or take title subject to) conservation easements in form and content required by the SJRWMD and ACOE as to the Greenway Buffer and incorporate the Greenway Buffer into the master development plan for the Property and any plat of the Property and convey the fee simple title to the Greenway Buffer, without consideration, to the Tolomato CDD upon recordation of any plat of the Property.

#### 16.17 Surface Run-off.

Maintenance of water quality within the Stormwater Management System is both necessary and desirable to preserve the values of the property surrounding the Stormwater Management System and to comply with statutes, rules and regulations of agencies having jurisdiction over the Stormwater Management System. As a result, each Owner, the Community Association and each Condominium Association are prohibited from discharging or allowing the discharge of any objects, components or elements of any kind or nature into the Stormwater Management System, or obstructing the Stormwater Management System by encouraging the growth of algae, causing extraordinary siltation within the Stormwater Management System or of degrading the water quality below acceptable levels and shall be prohibited from otherwise interfering with the flow of water within the Stormwater Management System or creating unsightly conditions in the Stormwater Management System. To the extent that any party shall be determined to be responsible for such discharge, the cost of any maintenance, repair or reconstruction activity within the Stormwater Management System area or upon upland properties, including without limitation, redesign and reconstruction of underdrain, inlets and other similar drainage structures necessitated by the effects of such discharge shall be solely the responsibility of such party which shall be chargeable by the CDD in connection with the performance of its maintenance of the pond or the Community Association in connection with the performance of its maintenance of the other drainage improvements and such sums shall be due and payable within fifteen (15) days of demand for same. Any sums not paid when due shall bear interest at the highest rate permitted under Florida law. In addition, if necessary to correct a violation of this Section, the CDD shall be entitled to enter upon any portion of the Property as may be necessary to conduct such repairs or reconstruction at the expense of such responsible party.

#### 16.18 Drainage System Maintenance and Use.

No boats shall be permitted to be operated in the pond except that the Community Association may use boats in performing their maintenance responsibilities. All land within the Property which is adjacent to the pond shall be maintained by the Community Association so that such grass, planting or other lateral support to prevent erosion of the embankment adjacent to the pond and the height, grade and contour of the embankments shall not be changed without the prior written consent of the Community Association. Further, all shoreline vegetation, including cattails and the like, shall be maintained and controlled by the Community Association. No docks or other structures shall be constructed on any embankments of the pond unless or until the same has been approved by the Community Association.

### **Article 17 DISCLOSURES**

#### 17.1 Preserve.

Each Owner acknowledges and agrees that by acceptance of a deed to any portion of the Property, he/she understands and agrees that certain property adjacent to and/or in close proximity to the Property has been designated as "preserve property" under the DRI and/or the PUD. The preserve property may contain wildlife, animals and plant life that may or may not be desirable to Owners. Further, there are points of public access to the preserve property that may affect the Property. Each Owner agrees that the Developer and the Community Association shall not have any liability whatsoever to Owners, guests, tenants, or invitees in connection with the preserve property. Each Owner, for itself and its guests, tenants, or invitees, releases Developer and the Community Association from any liability in connection therewith. The preserve property is intended to be donated to St. Johns County.

## 17.2 School Site.

Each Owner acknowledges and agrees that by acceptance of a deed to any portion of the Property, he/she understands and agrees that certain land within close proximity to the Property has been designated as "school site" under the DRI and/or the PUD. The school site may contain wildlife, animals and plant life that may or may not be desirable to Owners. Further, there are points of public access to the school site that may affect the Property. Each Owner agrees that the Developer and the Community Association shall not have any liability whatsoever to Owners, guests, tenants, or invitees in connection with the school site. Each Owner, for itself and its guests, tenants, or invitees, releases developer and the Community Association from any liability in connection therewith.

## Article 18 SPECIAL COVENANTS

### 18.1 Preamble.

In recognition of the fact that certain special types of platting and/or construction require special types of covenants to accurately reflect the maintenance and use of the affected Lots and Units, the following provisions of this Article 18 shall apply in those cases where the below-described types of improvements are constructed within the Property, subject, however, to variance pursuant to Section 2.2 of this Declaration. However, nothing herein shall necessarily suggest that Developer will or will not, in fact, construct such types of improvements nor shall anything herein contained be deemed an obligation to do so.

### 18.2 Condominiums.

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

(a) The board of directors of the condominium association shall constitute the Condominium Association for such condominium.

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

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

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

**Article 19**  
**TOLOMATO COMMUNITY DEVELOPMENT DISTRICT**

19.1 Taxes and Assessments Levied by CDD.

The Tolomato CDD has been created. The CDD is a special purpose form of local government established and existing pursuant to Chapter 190, Florida Statutes. The CDD has been established to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain certain community infrastructure systems, facilities and services for storm water management and drainage including roadways, parks and recreation, water and sewer utilities, and such other systems, facilities and services as are allowed by Chapter 190, Florida Statutes. **EACH OWNER AGREES AND ACKNOWLEDGES THAT THE TOLOMATO CDD MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON THE PROPERTY. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO THE COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW.**

**Article 20**  
**GENERAL PROVISIONS**

20.1 Duration.

The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Community Association, Developer (at all times) and the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the Voting Members representing the votes of 75% of all the Lots and Units subject hereto and of 90% of the Mortgagees thereof has been recorded, agreeing to revoke said covenants and restrictions; provided, however, that no such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any approvals being obtained.

20.2 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 Community Association at the time of such mailing.

20.3 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. 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. The terms

of this Declaration shall be literally construed in favor of the party seeking to enforce its provisions to effectuate their purpose of protecting and enhancing the marketability and desirability of the Property by providing a uniform and consistent plan for the development of enjoyment thereof.

20.4 Severability.

Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

20.5 Effective Date.

This Declaration shall become effective upon its recordation in the Public Records of the County. It is anticipated that this Declaration will be recorded immediately prior to the first Unit closing in the Community.

20.6 Amendment.

In addition, but subject, to any other manner herein provided for the amendment of this Declaration, prior to Turnover (as defined in the Articles), the covenants, restrictions, easements, charges and liens of this Declaration may be amended, changed or added to at any time and from time to time upon the execution and recordation of an instrument executed by Developer, for so long as it or its affiliate holds title to any Lot or Unit affected by this Declaration; provided however that any such amendment shall not (i) be inconsistent with the general scheme of development within the Community or (ii) materially and adversely alter the proportionate voting interest appurtenant to a Lot or Unit or increase the proportion or percentage by which a Lot or Unit shares in the common expenses of the Community Association, unless the record Owner of the Lot or Unit and all record owners of liens on the Lot or Unit join in the execution of the amendment. After Turnover by an instrument signed by the President of the Community Association, attested to by its Secretary and certifying that the amendment set forth in the instrument was adopted by a vote of at least 66 2/3% of the Members represented at a duly called meeting thereof; provided that so long as Developer is the Owner of any Lot or Unit affected by this Declaration, Developer's consent must be obtained if such amendment, in the sole opinion of Developer, affects its interest.

20.7 Conflict.

This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and Bylaws of the Community Association and said Articles shall take precedence over the Bylaws and the Bylaws shall take precedence over the provisions set forth in any rules and regulations adopted by the Board.

20.8 Limitation on Community Association.

Anything in this Declaration to the contrary notwithstanding, the existence or exercise of any easement, right, power, authority, privilege or duty of the Community Association as same pertains to any condominium located within the Property which would cause the Community Association to be subject to Chapter 718, Florida Statutes, or any related administrative rules or regulations, shall be null, void and of no effect to the extent, but only to the extent, that such existence or exercise is finally determined by a court or administrative hearing officer of competent jurisdiction (after all appellate rights have been exercised or waived) to subject the Community Association to said Chapter 718. It is the intent of this provision that the Community Association not be deemed to be a condominium association, nor the Common Property be deemed to be common elements of any such condominium.

20.9 Standards for Consent.

Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Developer or its affiliates, the Community Association or the Architectural Review Board, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by the Developer or its affiliates or the Community Association shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of the Developer or Community Association, as appropriate.

20.10 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 Community 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 designate hereby the Developer and the Community 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 for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

20.11 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 Property to the public, or for any public use.

20.12 Constructive Notice and Acceptance.

Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot and/or Unit or other property located on or within the Property, shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition, lien and covenant contained herein, whether or not any reference hereto is contained in the instrument by which such person acquired an interest in such Lot, Unit or other property.

20.13 Notices and Disclaimers as to Community Systems.

Developer, the Community Association, or their successors, assigns or franchisees and any applicable cable telecommunications system operator (an "Operator"), may enter into contracts for the provision of security services through any Community Systems. DEVELOPER, THE COMMUNITY ASSOCIATION, OPERATORS AND THEIR FRANCHISEES, DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR OCCUPANT OF PROPERTY SERVICED BY THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT DEVELOPER, THE COMMUNITY ASSOCIATION OR ANY SUCCESSOR, ASSIGN OR FRANCHISEE OF THE DEVELOPER OR ANY OF THE OTHER AFORESAID ENTITIES AND ANY OPERATOR, ARE NOT INSURERS OF THE OWNER OR OCCUPANT'S PROPERTY OR OF THE PROPERTY OF

OTHERS LOCATED ON THE PREMISES AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the part of a security service provider to perform any of its obligations with respect to security services and, therefore, every owner or occupant of property receiving security services agrees that Developer, the Community Association or any successor, assign or franchisee thereof and any Operator assumes no liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of (a) any failure of the Owner's security system, (b) any defective or damaged equipment, device, line or circuit, (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees, or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every owner or occupant of property obtaining security services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees, and family members that if any loss or damage should result from a failure of performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officers, agents, or employees, the liability, if any, of Developer, the Community Association, any franchisee of the foregoing and the Operator or their successors or assigns, for loss, damage, injury or death sustained shall be limited to a sum not exceeding Two Hundred Fifty and No/100 (\$250.00) U. S. Dollars, which limitation shall apply irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Developer, the Community Association or any franchisee, successor or designee of any of same or any Operator. Further, in no event will Developer, the Community Association, any Operator or any of their franchisees, successors or assigns, be liable for consequential damages, wrongful death, personal injury or commercial loss. In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider(s) of such services.

**20.14 Certain Reserved Rights of Developer with Respect to Community Systems.**

Without limiting the generality of any other applicable provisions of this Declaration, and without such provisions limiting the generality hereof, Developer hereby reserves and retains to itself:

(a) the title to any Community Systems and a perpetual easement for the placement and location thereof;

(b) the right to connect, from time to time, the Community Systems to such receiving or intermediary transmission source(s) as Developer may in its sole discretion deem appropriate including, without limitation, companies licensed to provide CATV service in the County, for which service Developer shall have the right to charge any users a reasonable fee (which shall not exceed any maximum allowable charge provided for in the ordinances of the County); and

(c) the right to offer from time to time monitoring/alarm services through the Community Systems.

Neither the Community Association nor any officer, director, employee, committee member or agent (including any management company) thereof shall be liable for any damage to property, personal injury or death arising from or connected with any act or omission of any of the foregoing during the

course of performing any duty or exercising any right privilege (including, without limitation, performing maintenance work which is the duty of the Community Association or exercising any remedial maintenance or alteration rights under this Declaration) required or authorized to be done by the Community Association, or any of the other aforesaid parties, under this Declaration or otherwise as required or permitted by law.

20.15 No Representations or Warranties.

NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DEVELOPER OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE COMMON PROPERTY, 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 OR REGULATION THEREOF, EXCEPT (A) AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION OR IN DOCUMENTS WHICH MAY BE FILED BY DEVELOPER FROM TIME TO TIME WITH APPLICABLE REGULATORY AGENCIES, AND (B) AS OTHERWISE REQUIRED BY LAW. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED. ALL OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE LOTS AND/OR UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

20.16 Covenants Running With The Land.

Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) of Section 20.1 hereof, it is the intention of all parties affected hereby (and their respective heirs, personal representatives, successors and assigns) that these covenants and restrictions shall run with the Property and with title to the Property. Without limiting the generality of Section 20.4 hereof, if any provision or application of this Declaration would prevent this Declaration from running with the Property as aforesaid, such provision and/or application shall be judicially modified, if at all possible, to come as close as possible to the intent of such provision or application and then be enforced in a manner which will allow these covenants and restrictions to so run with the Property; but if such provision and/or application cannot be so modified, such provision and/or application shall be unenforceable and considered null and void in order that the paramount goal of the parties (that these covenants and restrictions run with the Property as aforesaid) be achieved.

20.17 Tax Deeds and Foreclosure.

All provisions of the Declaration relating to a Lot and Unit which has been sold for taxes or special assessments survive and are enforceable after the issuance of a tax deed or upon a foreclosure of an Assessment, a certificate or lien, a tax deed, tax certificate or tax lien, to the same extent that they would be enforceable against a voluntary grantee of title before such transfer.

20.18 Legal Fees and Costs.

The prevailing party in any dispute arising out of the subject matter of this Declaration or its subsequent performance shall be entitled to reimbursement of its costs and attorney's fees, whether incurred before or at trial, on appeal, in bankruptcy, in post-judgment collection, or in any dispute resolution proceeding, and whether or not a lawsuit is commenced.

20.19 Law To Govern

This declaration shall be governed by and construed in accordance with the laws of the State of Florida, both substantive and remedial.

**COPY**

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IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed as of the date first written above.

Witnesses:

By: Bonnie Odell  
 Print Name: Bonnie Odell

By: Kristen Eckley  
 Print Name: Kristen Eckley

**PULTE HOME CORPORATION,**  
 a Michigan corporation

By: [Signature]  
 Print Name: Shawn Budd  
 Its: Attorney-in-Fact

[Corporate Seal]

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of June 2007, by Shawn Budd, as attorney-in-fact of Pulte Home Corporation, a Michigan corporation, on behalf of the corporation. He/she is  personally known to me or  produced \_\_\_\_\_ as identification.

{Notary Seal must be affixed}



Tiffany W. Mills  
 (Signature of Notary)  
Tiffany W. Mills  
 (Print Name of Notary Public)  
 Notary Public, State of Florida  
 My Commission Expires: Nov. 26, 2010  
 Commission No.: DD617178

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6/20/2007 4:09:40 PM

**CONSENT OF ASSOCIATION**

The undersigned, President of Riverwood by Del Webb Community Association, Inc., a Florida not-for-profit corporation ("Association"), hereby consents to the recording of this Declaration and agrees to undertake all obligations and assume all rights of the Association pursuant to this Declaration of Covenants, Conditions, Restrictions and Easements for Riverwood by Del Webb Community Association.

The undersigned sets its hand and seal this 22nd day of June, 2007.

**RIVERWOOD BY DEL WEBB COMMUNITY ASSOCIATION, INC.**, a Florida not-for-profit corporation

By: William Genovese  
William Genovese  
Its President

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 22nd day of June, 2007, by William Genovese, as the President of Riverwood by Del Webb Community Association, Inc., a Florida not-for-profit corporation, for and on behalf of said corporation, and who is  personally known to me or  has provided \_\_\_\_\_ as identification.

{Notary Seal must be affixed}

 **Tiffany W. Mills**  
Commission # DD617178  
Expires November 26, 2010  
Bonded Troy Fain Insurance Inc 800-385-7019

Tiffany W. Mills  
(Signature of Notary)  
Tiffany W. Mills  
(Print Name of Notary Public)  
Notary Public, State of Florida  
My Commission Expires: Nov. 26, 2010  
Commission No.: DD617178

**EXHIBIT A****PROPERTY**

That certain real property described in the Riverwood by Del Webb ~ Phase 1 Plat recorded at Plat Book 60, Pages 88-120 of the public records of St. Johns County Florida, less and except Tract F1 (Condominium Area) and Tracts FD1 and FD2 (Future Development Areas), which property is subject to the following easements and encumbrances:

1. Taxes and assessments for the year 2007 and subsequent years.
2. Notice of DRI Development Order (Nocatee) as set out in instrument recorded in Official Records Book 1656, page 1887, in the public records of St. Johns County, Florida.
3. Notice of Establishment of the Tolomato Community Development District as set out in instrument recorded in Official Records Book 2263, page 1747; validation recorded in Official Records Book 2340, page 1966, in the public records of St. Johns County, Florida.
4. Interlocal Agreement between Split Pine Community Development District and Tolomato Community Development District regarding the Construction, Management and Financing of Joint Improvements as set out in instrument recorded in Official Records Book 2331, page 914; First Amendment recorded in Official Records Book 2331, page 1803; Second Amendment to Interlocal Agreement between Split Pine Community Development District and Tolomato Community Development District regarding the Construction, Management and Financing of Joint Improvements, recorded in Official Records Book 2517, page 304, and Third Amendment to Interlocal Agreement between Split Pine Community Development District and Tolomato Community Development District regarding the Construction, Management and Financing of Joint Improvements, recorded in Official Records Book 2517, page 310, in the public records of St. Johns County, Florida.
5. Developer and Utility Service Agreement as set out in instrument recorded in Official Records Book 2359, page 1979, in the public records of St. Johns County, Florida.
6. Tolomato Community Development District Notice of Imposition of Special Assessments for Neighborhood Infrastructure Improvements as set out in instrument recorded in Official Records Book 2381, page 514, in the public records of St. Johns County, Florida.
7. Tolomato Community Development District Notice of Imposition of Special Assessments for Master Infrastructure Improvements as set out in instrument recorded in Official Records Book 2381, page 524, in the public records of St. Johns County, Florida.
8. Resolution establishing Oak Hammock Village Master PUD Development Plan as set out in instrument recorded in Official Records Book 2381, page 1471, in the public records of St. Johns County, Florida.
9. Special Warranty Deed from Sonoc Company, LLC to Pulte Home Corporation, dated October 31, 2005 and recorded on November 4, 2005 in Official Records Book 2576, page 76, in the public records of St. Johns County, Florida.
10. Restrictions and easements as shown in Riverwood Phase 1 subdivision plat, recorded at Plat Book 60, pages 87 – 120, of the public records of St. Johns County, Florida.

11. Declaration of Consent to Jurisdiction of Tolomato Community Development District and to Imposition of Special Assessments, recorded on February 21, 2006 in Official Records Book 2647, page 636, in the public records of St. Johns County, Florida.
12. Pulte Home Corporation Power of Attorney and Grant of Agency, recorded on March 31, 2006 in Official Records Book 2674, page 1041, in the public records of St. Johns County, Florida.
13. First Amendment to Declaration of Consent to Jurisdiction of Tolomato Community Development District and to Imposition of Special Assessments, recorded on March 31, 2006 in Official Records Book 2674, page 1283, in the public records of St. Johns County, Florida.
14. Conservation Easement in favor of St. Johns River Water Management District, recorded on April 3, 2006 in Official Records Book 2675, page 1696, of the public records of St. Johns County, Florida.
15. Conservation Easement in favor of St. Johns River Water Management District, recorded on April 3, 2006 in Official Records Book 2675, page 1594, of the public records of St. Johns County, Florida.
16. Assignment of Development Rights, recorded on November 4, 2005 in Official Records Book 2576, page 98, of the public records of St. Johns County, Florida.
17. Memorandum of Agreement [Nocatee], recorded on November 4, 2005 in Official Records Book 2576, page 106, of the public records of St. Johns County, Florida.
18. Access Easement, recorded on November 4, 2005 in Official Records Book 2576, page 114, of the public records of St. Johns County, Florida.
19. Cost Sharing Agreement between Tolomato Community Development District and Pulte Home Corporation, recorded on February 20, 2007 in Official Records Book 2869, page 978 of the public records of St. Johns County, Florida.
20. Unrecorded Partial Assignment and Assumption of Service Agreement dated October 31, 2005.
21. Unrecorded Declaration of Access Easement dated October 31, 2005.
22. Any matters shown on that certain survey of the Property prepared by Robert M. Angas Associates, Inc. dated April 27, 2005 under Work Order No. 05-056.00, File No. 118A-19, as revised.

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