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## **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LOTIS PALM BAY**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LOTIS PALM BAY** (the “Declaration,” as such term is hereinafter further defined) is made this \_\_\_\_ day of \_\_\_\_\_, 2025 by **JKM ACQUISITIONS, LLC**, a Florida limited liability company (the “Declarant,” as such term is hereinafter further defined), and is joined by **LOTIS PALM BAY PROPERTY OWNER’S ASSOCIATION, INC.**, a Florida not for profit corporation (the “Association”), in acknowledgement of its duties, responsibilities, and obligations hereunder,

**WHEREAS**, the Declarant is the record title owner of the real property located in Brevard County, Florida, more particularly described on Exhibit “A” attached hereto and incorporated as if fully set forth herein, as may be supplemented from time to time (the “Property,” as such term is hereinafter further defined), and desires to develop a mixed-use project to be known as “**LOTIS PALM BAY**” on the Property; and

**WHEREAS**, in order to preserve and enhance the values and amenities of the Property, the Declarant declares, commits, and subjects the Property and the “Improvements” (as such term is hereinafter defined) now or hereafter constructed thereon to certain land use covenants, restrictions, reservations, regulations, burdens, liens, and easements, and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance, and enforcement; and

**WHEREAS**, this Declaration is a covenant running with all of the land comprising the Property, and each present and future owner of interests therein and their heirs, successors, and assigns are hereby subject to this Declaration.

**NOW THEREFORE**, in consideration of the promises and covenants contained in this Declaration, the Declarant hereby declares that every portion of the Property is to be owned, held, transferred, sold, conveyed, leased, mortgaged, improved, used, and occupied subject to the covenants, conditions, restrictions, easements, reservations, rules, regulations, charges, and liens hereinafter set forth.

### **ARTICLE I DEFINITIONS**

In addition to the terms defined elsewhere in this Declaration, all initially capitalized terms herein shall have the following meanings:

1.1 "ACC" shall mean the Association's Architectural Control Committee established pursuant to Article X hereof.

1.2 "Architectural Guidelines" shall mean such standards of maintenance, repair, replacement, reconstruction, refurbishment, addition, alteration, improvement, or other activity, if any, established pursuant to Section 10.4 hereof.

1.3 "Articles" shall mean the Articles of Incorporation of Lotis Palm Bay Property Owner's Association, Inc., attached hereto and incorporated as if fully set forth herein as Exhibit "B," as may be amended from time to time.

1.4 "Assessments" shall mean any assessments made in accordance with this Declaration and as further set forth in Article IX hereof, whether "General Assessment(s)," "Individual Assessment(s)," "Special Assessment(s)" (as such terms are hereinafter defined), or any combination thereof, and any and all other assessments and monetary fines and charges which are or may be levied by the Association in accordance with the "Governing Documents" (as such term is hereinafter defined).

1.5 "Board" shall mean the Board of Directors of the Association.

1.6 "By-Laws" shall mean the Amended and Restated By-Laws of Lotis Wellington Property Owner's Association, Inc., attached hereto and incorporated as if fully set forth herein as Exhibit "D," as amended from time to time.

1.7 "Common Areas" shall mean all real property interests and personalty and Improvements within the Property which is not included in any "Tract" (as such term is hereinafter defined) and which is (i) designated as Common Areas from time to time by the Declarant, by the "Plats" (as such term is hereinafter defined), or by recorded amendment to this Declaration and is provided for, owned, or leased by the Association for the common use and enjoyment of the "Owners" (as such term is hereinafter defined) and/or the public, or (ii) dedicated to or reserved for the Association on the Plat. The Common Areas shall be maintained, repaired, replaced, altered, and improved in the manner set forth in Article VI of this Declaration. The Common Areas may include, without limitation, the "Stormwater Management System" (as such term is hereinafter defined), landscaped and open space areas dedicated to the public, roadways, entrance features, landscaped areas, open space areas, internal buffers, perimeter buffers, perimeter walls and fences, easement areas owned by others, rights-of-way, irrigation facilities, sidewalks, street lights, and commonly used utility facilities. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DEFINITION OF "COMMON AREAS" AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND, OBLIGATE, OR LIMIT THE DECLARANT TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET FORTH IN

SUCH DESCRIPTION, THE CONSTRUCTION OR SUPPLYING OF ANY SUCH ITEM BEING IN THE DECLARANT'S SOLE DISCRETION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY, IF ANY, AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED BY THE ASSOCIATION, EXCEPT AFTER CONSTRUCTION OF SUCH ITEM AND CONVEYANCE OF ANY SUCH ITEM TO THE ASSOCIATION.

1.8 "Common Expenses" shall mean all actual and estimated costs and expenses of the Association, including, without limitation, the following: (i) all costs and expenses of ownership, maintenance, repair, replacement, reconstruction, operation, and administration of the Common Areas, any portion thereof and Improvements thereon, and all other property owned by the Association; (ii) all amounts payable by the Association under the terms of this Declaration; (iii) all costs and expenses of lighting the Property, including, without limitation, up-lighting and entrance lighting; (iv) all amounts payable in connection with any private street lighting agreement between the Association and a utility provider; (v) all costs and expenses of utilities providing services for the Common Areas or to the Tracts on a bulk basis (if any), such as water, gas, electricity, telephone, cable television, internet, sanitation, sewer, and any type of utility or any other type of service charge which is not separately billed to an Owner; (vi) all taxes, assessments, and tax liens which may be assessed or levied at any and all times against the Common Areas or against any and all personal property or Improvements thereon; (vii) all costs and expenses for the maintenance, operation, management, repair, and replacement of the irrigation system throughout the Common Areas; (viii) the premiums on policies of insurance, including, but not limited to, liability and casualty insurance for the Common Areas and liability insurance for the "Directors" and "Officers" (as such terms are hereinafter defined) of the Association; (ix) salaries, management fees, professional fees, and associated costs for all employees, management firms and agents, and professionals hired or retained by the Association; (x) all costs and expenses relating to the discharge of the Association's powers and duties; (xi) all costs and expenses as determined to be part of the Common Expenses by the Board; and (xiii) all other costs and expenses incurred and lawfully imposed by the Association.

1.7.1 Any expenses which are required by the Declaration to be a matter of Individual Assessment shall not be deemed to be Common Expenses. The Common Expenses with respect to the Common Areas are payable by each Owner to the Association notwithstanding the fact that the Declarant may not have as yet conveyed title to the Common Areas to the Association.

1.7.2 Notwithstanding anything to the contrary herein, Common Expenses shall not include reserve accounts for capital expenditures and/or deferred maintenance ("Reserves") prior to "Turnover" (as such term is hereinafter defined). Prior to Turnover, use of the term "reserves" or "Reserves" in any budget shall not be construed to mean the Declarant created Reserves. After Turnover, the Board may, as it finds necessary or appropriate, establish reserves and include same in the Association's annual budget as Common Expenses. However, through the "Property Completion Date" (as such term is hereinafter defined), no such establishment of Reserves shall be effective against the

Declarant. Therefore, to the maximum extent allowed by law, the Declarant shall have no obligation to fund Reserves.

1.9 "County" shall mean Brevard County, Florida.

1.10 "Declaration" shall mean this Declaration, together with all amendments, supplements, modifications, and exhibits hereto.

1.11 "Declarant" shall mean JKM ACQUISITIONS, LLC, a Florida limited liability company, LOTIS WELLINGTON 2, LLC, a Florida limited liability company, and any successor or assignee who has or takes title to any portion of the Property for development and/or sale and who is designated as Declarant in a written instrument which is signed by the Declarant and recorded among the Official Records of the County or which succeeds to such rights by merger or consolidation. The Declarant shall have the right to assign all or a portion of any rights granted to the Declarant in this Declaration. The Declarant shall also have the right to assign all or a portion of any obligations and liabilities of the Declarant in this Declaration. In the event of a partial assignment of some, but not all, Declarant rights and/or obligations and liabilities, the assignee shall not be deemed the Declarant, but may exercise only those rights, or shall be responsible for only those obligations and liabilities, of the Declarant assigned to such assignee.

1.12 "Director" shall mean a member of the Board.

1.13 "Florida Not For Profit Corporation Act" shall mean Chapter 617 of the Florida Statutes as it exists through the date of recording this Declaration.

1.14 "General Assessment(s)" shall mean Assessments levied to fund the Common Expenses of the Association as further set forth in Section 9.3 hereof.

1.15 "Governing Documents" shall mean this Declaration, the Articles, the By-Laws, the Architectural Guidelines, the "Rules and Regulations" (as such term is hereinafter defined), and any applicable "Supplemental Declaration" (as such term is hereinafter defined), all as amended from time to time.

1.16 "Improvement" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within the Property, including, but not limited to, buildings, walkways, parking areas, berms, fountains, sprinkler systems, gatehouse, streets, drives, roads, driveways, fences, underground footers and other foundation supports, stairs, roofs, landscaping, trees, hedges, plantings, flower pots, poles, covered patios, screen enclosures, jogging, bicycling and walking paths, signs, site and perimeter walls, benches, mailboxes, street lights, and signs. The foregoing list of Improvements is for example purposes only and shall not create any obligation of the Declarant to construct or fund construction of same.

1.17 "Individual Assessment(s)" shall mean Assessments levied against one (1) or more Lots and/or one (1) or more Owners for such matters as set forth in Section 9.5 hereof.

1.18 "Legal Fees" shall mean all fees for attorney and paralegal services and all costs and expenses and court costs through and including all trial and appellate levels and post judgment proceedings incurred in connection with: (i) enforcement of the Governing Documents, whether or not mediation, arbitration, and/or litigation is actually begun; (ii) negotiation and preparation for mediation, arbitration, and/or litigation, whether or not an action is actually begun; (iii) collection of past due Assessments including, but not limited to, preparation of notices and liens; and (iv) litigation regarding the entitlement to Legal Fees, including, without limitation, determining or quantifying the eligibility and/or amount of recoverable Legal Fees. Additionally, and without limitation of the foregoing, Legal Fees shall include any and all costs that are taxable pursuant to any applicable statute, rule, or guideline (including, but not limited to, the Statewide Uniform Guidelines for Taxation of Costs), as well as costs not taxable thereunder, including, without limitation, the following: (i) costs of investigation; (ii) costs of copying documents and other materials, whether for discovery, filing with the court, internal review, or any other purpose; (iii) costs for electronic discovery; (iv) Westlaw, Lexis Nexis, or other electronic research service charges; (v) telephone charges; (vi) mailing, commercial delivery service, and courier charges; (vii) travel expenses, whether for investigation, depositions, hearings, trial, or any other purpose; (viii) information technology support charges; (ix) any and all consultant or expert witness fees, whether or not such fees are incurred in connection with a court-ordered report or testimony at a deposition, hearing, or trial; (x) court reported and transcript fees, whether for deposition, trial, or an evidentiary or non-evidentiary hearing; (xi) mediator fees; and (xii) any other reasonable cost incurred in connection with the dispute.

1.19 "Lender" shall mean (i) any institutional or private holder of a first mortgage encumbering a Tract or (ii) the Declarant and its affiliates, to the extent the Declarant or its affiliates finances the purchase of a Tract initially or by assignment of an existing mortgage.

1.20 "Limited Common Areas" shall mean certain portions of the Common Areas designated for the exclusive use or primary benefit of a Tract or group of Tracts. The term "Common Areas" shall include the Limited Common Areas as the context so requires.

1.21 "Member" shall mean each person or entity holding record title to any Tract, provided that any such person or entity holding any interest merely as security for the performance of an obligation shall not be a Member, and having such voting rights as set forth in the Articles.

1.22 "Officer" shall mean an officer of the Association.

1.23 "Owner(s)" shall mean the record title owner(s) (whether one (1) or more persons or entities) of fee simple interest to any Tract, or any portion thereof, but

excluding those having such interest merely as security for the performance of an obligation and excluding purchasers under executory contracts of sale. The term "Owner" shall not include the Declarant, even after Turnover, unless the Declarant, in a writing addressed to the Association, elect otherwise.

1.24 "Plats" shall mean the plat of Lotis Palm Bay, recorded in the Official Records of Brevard County, Florida, in Plat Book \_\_\_\_, Pages \_\_\_\_\_ and any replat of any portion thereof and amendment thereto as may be recorded in the Official Records of Brevard County from time to time, unless such replatted property is not intended to remain subjected to this Declaration. This definition shall be automatically amended to include the plat of any additional property added or removed to this Declaration and any replat of any portion thereof as may be recorded in the Official Records of the County from time to time.

1.25 "Property" shall mean the property described in Exhibit "A" hereto (including all Improvements thereon), and as may be applicable, such additions thereto as may hereafter be brought within the jurisdiction of this Declaration and such withdrawals therefrom as may be removed from the jurisdiction of this Declaration.

1.26 "Property Completion Date" shall mean the date upon which each and every Tract, as ultimately planned and as fully developed, has been conveyed by the Declarant to Owners.

1.27 "Residential Association" shall mean Lotis Palm Bay 1 Homeowner's Association, Inc, Lotis Palm Bay 2 Homeowner's Association, Inc, and/or Lotis Palm Bay 3 Homeowner's Association, Inc, all Florida not for profit corporations.

1.28 "Residential Declaration" shall mean those certain Declarations of Covenants, Conditions, and Restrictions for Lotis Palm Bay 1 Homeowner's Association, Inc, Lotis Palm Bay 2 Homeowner's Association, Inc, and/or Lotis Palm Bay 3 Homeowner's Association, Inc. to be recorded in the Official Records of the County, as such Residential Declaration may be amended from time to time.

1.29 "Residential Property" shall mean that portion of the Property subject to Residential Declarations intended for fee-simple single-family homes and fee-simple townhomes without regard to whether such Residential Properties are owned by one (1) or more persons or entities.

1.30 "Rules and Regulations" shall mean the rules and regulations governing the Property as adopted by the Board from time to time. The Rules and Regulations may be incorporated in the Architectural Guidelines or may be adopted separately by the Board.

1.31 "Special Assessment(s)" shall mean Assessments levied for such matters as set forth in Section 9.4 hereof.

1.32 "SJRWMD" shall mean the Saint Johns River Water Management District.

1.33 "SJRWMD Permit" shall mean the Individual Environmental Resource Permit No. \_\_\_\_\_ issued by SJRWMD regarding the Property, a copy of which is attached hereto and incorporated as if fully set forth herein as Exhibit "B". Copies of the SJRWMD Permit and any future permit actions of SJRWMD shall be maintained by the Secretary of the Association for the benefit of the Association.

1.34 "Stormwater Management System" means a system, wherever situated within the Property, that is designed and constructed or implemented to control discharges that are necessary by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, over-drainage, environmental degradation, and water pollution otherwise affecting the quantity and quality of discharges from the system, as applicable.

1.35 "Supplemental Declaration" shall mean and refer to an instrument filed in the Official Records of the County pursuant to Article V hereof which subjects additional property to this Declaration, withdraws property from this Declaration, designates neighborhoods, creates additional classes of members, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The Declarant may, by Supplemental Declaration, create additional classes of membership, with such rights, privileges, and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

1.36 "Title Documents" shall mean, if any, certain land use and title documents recorded in the County's Official Records to which all or a part of the Property may be subject, and upon the Property Completion Date, the Association shall assume all of the obligations of the Declarant under the Title Documents, unless otherwise provided by the Declarant by amendment to this Declaration and in the sole and absolute discretion of Declarant.

1.37 "Tract" shall mean any platted tract of land and any platted lot shown on the Plats and the Improvements thereon and appurtenances thereto which may be independently owned and conveyed. In the event any Tract, or portion thereof, shall be converted to the condominium form of ownership and therefore made subject to Chapter 718, Florida Statutes, "Tract" shall also mean each condominium unit so created, as the context may require or permit. A Tract shall be deemed created and have perpetual existence upon the issuance of a final or temporary Certificate of Occupancy for such Tract; provided, however, the subsequent loss of such Certificate of Occupancy (e.g., by casualty or remodeling) shall not affect the status of a Tract, or the obligation of an Owner to pay Assessments with respect to such Tract.

1.38 "Turnover" shall mean the transfer of operation of the Association by the Declarant to the Owners, such that the Owners are entitled to elect Directors, which occurs upon the earliest of the following events: (i) upon the Property Completion Date;

or (ii) the Declarant voluntarily relinquishes control of the Association in a writing delivered to the Association.

1.39 "Village" shall mean the Village of Wellington.

## **ARTICLE II**

### **DESCRIPTION OF THE PROPERTY**

2.1 General Plan of Development. The Property is a mixed-use development intended to encompass approximately six hundred eighty-seven (687) Single-Family Homes; one hundred fifty-six (156) Townhomes; five hundred twenty-nine (529) Multi-Family Units; one hundred thousand square feet (100,000 SF.) of Commercial Uses; twenty thousand square feet (20,000 SF.) of Institutional Uses; and Common Areas, including, without limitation, the Stormwater Management System, the "Greenway" (as such term is hereinafter defined), "Public Recreation Areas" (as such term is hereinafter defined), private recreation areas, open spaces, landscape buffers, rights-of-way, and driveway tracts. The Declarant makes no representations concerning development both within and outside the boundaries of the Property, including, but not limited to, the number, design, boundaries, configuration, and arrangements, prices of Tracts and buildings in all other proposed forms of ownership and/or other Improvements on the Property or adjacent to or near the Property, including, but not limited to, the size, location, configuration, elevations, design, building materials, height, view, airspace, number of Tracts, number of buildings, location of easements, parking, and landscaped areas, and services and amenities offered. The Declarant hereby reserves the right to modify its general plan of development of the Property (including, without limitation, the right to modify the site plan of the Property and the right to supplement, change, or reduce the number of Tracts and/or buildings to be constructed within the Property) and/or the right to add land to the Property or to withdraw land from the Property, all in the Declarant's sole and absolute discretion. Therefore, in the event the Declarant modifies its general plan of development of the Property, adds land to the Property, and/or withdraws land from the Property, the number of Tracts, the layout of Tracts, the use(s) of Tracts, and/or the size of Tracts within the Property may change and the Assessments required to be paid pursuant to this Declaration may increase or decrease, as applicable. Further, the Declarant hereby reserves the right to modify, amend, or revise the Plat or any replat thereof, from time to time, and the right to record, modify, amend, or revise, from time to time, one (1) or more additional plats or replats thereof, setting forth such information as the Declarant may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of Tracts, Common Areas, Limited Common Areas, additional property, roads, sidewalks, utility systems, drainage systems, and easements. The Declarant's general plan of development further contemplates that such Tracts shall be whatever types of structures the Declarant may choose which are in conformance with this Declaration. THE DECLARANT MAY PRESENT TO THE PUBLIC OR TO OWNERS RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER DOCUMENTS RESPECTING THE PROPERTY. SUCH RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER DOCUMENTS ARE NOT A GUARANTEE



OF HOW THE PROPERTY WILL APPEAR UPON COMPLETION, AND THE DECLARANT RESERVES THE RIGHT TO CHANGE ANY AND ALL OF THE FOREGOING AT ANY TIME AS THE DECLARANT DEEMS NECESSARY IN ITS SOLE AND ABSOLUTE DISCRETION.

2.2 Absence of Obligation. The planning process for the Property is an ever-evolving one and must remain flexible in order to be responsible to and accommodate the needs of the Property. Subject to the Title Documents (if any), the Declarant may and has the right to develop the Property, and any adjacent property which may be owned by the Declarant, into commercial and/or residential projects (comprised of homes, villas, coach homes, townhomes, patio homes, single-family homes, estate homes, multi-family homes, condominiums, rental apartments, and other forms of residential dwellings). The existence at any point in time of walls, landscape screens, or berms is not a guaranty or promise that such items will remain or form part of the Property as finally developed. Additionally, the Declarant expressly reserves the right as to the Property to (i) commence construction and development of the Property if and when the Declarant desires; (ii) develop the Property upon such timetable as the Declarant, without obligation and in its sole discretion, chooses; and (iii) modify the general plan of development of the Property (including, without limitation, the right to modify the site plan of the Property and the right to change the number of Tracts to be developed within the Property) in such manner as the Declarant, in its sole and absolute discretion, chooses. Nothing contained herein shall be construed as obligating the Declarant to construct the Property according to the present general plan of development or as obligating the Declarant to declare any additional property to be Property hereunder.

2.3 Model Homes. The Declarant intends to construct and operate model single-family homes and/or model townhomes within the Residential Property. The model homes may contain models for the Residential Property or other properties being developed by the Declarant or affiliate(s) of the Declarant, as they may so determine in their sole discretion. In the event the Declarant constructs model homes in the Residential Property, such model homes may be used for such period of time that the Declarant and/or any of the Declarant's affiliates determine to be necessary in their sole discretion. Each Owner, by acceptance of a deed or title to a Tract, acknowledges and agrees that: (i) the Declarant has a right to construct model homes; (ii) the Declarant and the affiliate(s) of the Declarant, and their affiliates, guests, invitees, and prospective purchasers, have an easement over the Property for ingress and egress to and from each and every model home and to operate, use, and show the model homes to prospective purchasers in the Residential Property or other communities being developed by the Declarant and/or any of the Declarant's affiliates, for so long as such model homes exist; and (iii) the Residential Association, the Owners, and the Owner's residents, tenants, guests, employees, agents, and invitees shall not interfere in any manner whatsoever in the sales process by the Declarant and/or any of the Declarant's affiliates, including, without limitation, the carrying of signs, the posting of signs, or other types of demonstrations in or around the Property or any public right-of-way adjacent to the Property. The Residential Association and each Owner acknowledges and agrees that any sales interference by the Residential Association or an Owner, or an Owner's resident, tenant, guest, employee, agent, or

invitee, shall be deemed a nuisance and therefore detrimental to: (i) the quiet enjoyment of the Property by others, (ii) the value of the Tracts, and (iii) the Declarant's and/or any of the Declarant's affiliates' ability to conduct their business.

### **ARTICLE III** **COMMON AREAS**

3.1 Common Areas. The Declarant anticipates it will construct certain facilities and Improvements as part of the Common Areas to include whatever facilities and Improvements the Declarant considers in its sole judgment to be appropriate to the Property, as well as any changes thereto. The Declarant shall be the sole judge of the composition of any Improvements to the Common Areas constructed by the Declarant. Prior to the Property Completion Date, the Declarant reserves the absolute right to construct additional Improvements on the Common Areas within the Property, from time to time, in its sole discretion, and to remove, add to, modify, and change the boundaries, facilities, and Improvements now or then part of the Common Areas. The Declarant is not obligated to, nor has it represented that it will, construct any Improvements within the Common Areas. The Declarant is the sole judge of the Improvements constructed by the Declarant within the Common Areas, including, without limitation, the plans, specifications, design, location, completion schedule, materials, size, and contents of the facilities, Improvements, appurtenances, personal property, color, textures, finishes, or changes or modifications to any of them. Notwithstanding anything contained herein, neither the Declarant nor the Association makes any representations whatsoever to commence, complete, or construct any of the Common Areas within any specific time period. By way of example, and not limitation, the facilities and Improvements may include, without creating any obligation to provide same: landscaped and open space areas dedicated to the public; private streets, roads, rights-of-way, and sidewalks; streets, roads, rights-of-way, and sidewalks dedicated to the public; the Stormwater Management System; water collection, treatment, and distribution facilities; sewage collection facilities and related wastewater treatment and disposal facilities (including, but not limited to, an irrigation system utilizing treated effluent from the Stormwater Management System); mailbox facilities; and utility and maintenance facilities. The description of the Common Areas on the Plats is subject to change and the notes on the Plats are not a guarantee of what Improvements and facilities will be constructed as Common Areas. Site plans, the Plats, and renderings used by the Declarant may illustrate the types of Improvements and facilities that may be constructed as Common Areas but such site plans, the Plats, and renderings are not a guarantee of what Improvements will actually be constructed. Each Owner should not rely on the Plats or any site plans or renderings used for illustration purposes as this Declaration governs the rights and obligations of the Declarant and the Owners with respect to the Common Areas. No person or entity shall have any right in or to any Common Areas referred to in this Declaration unless and until same are actually constructed, completed, and conveyed to the Association. Prior to the Property Completion Date, the Declarant reserves the absolute right to add to, delete from, or modify any of the Common Areas at its discretion without notice and to dedicate and/or transfer any portion of the Common Areas for various public purposes, or to make any portions of the Property part of the Common Areas. SALES/LEASING BROCHURES,

SITE PLANS, AND MARKETING MATERIALS ARE CURRENT CONCEPTUAL REPRESENTATIONS AS TO WHAT IMPROVEMENTS, IF ANY, WILL BE INCLUDED WITHIN THE COMMON AREAS. THE DECLARANT SPECIFICALLY RESERVES THE RIGHT TO CHANGE THE LAYOUT, COMPOSITION, AND DESIGN OF ANY AND ALL COMMON AREAS, AT ANY TIME, WITHOUT NOTICE AND AT ITS SOLE AND UNFETTERED DISCRETION.

### 3.2 Limited Common Areas.

3.2.1 Commercial Parking Tract. The parking spaces located within the "Commercial Parking Tract," as depicted on the site plan for the Plat, shall be reserved for the exclusive use of the commercial tenants as Limited Common Areas of the Commercial Tract(s) and shall be available on a first come, first served basis, unless later specifically assigned by the Declarant for the exclusive use of a particular Tract or Tracts as evidenced by a recorded assignment which shall run with the land.

3.2.2 Daycare Parking Tract. The parking spaces located within the "Daycare Parking Tract," as depicted on the site plan for the Plat, shall be reserved for the exclusive use of the Daycare Tract as a Limited Common Area of the Daycare Tract and shall be available on a first come, first served basis, unless later specifically assigned by the Declarant for the exclusive use of a particular Tract or Tracts as evidenced by a recorded assignment which shall run with the land.

3.2.3 Signage Limited Common Areas. All signage situated within the Common Areas provided for the benefit of Tracts within the Property shall be private property of the Owners thereof and the real property upon which such signage is erected shall be deemed Limited Common Areas for the exclusive use of the Owners having been allocated such use as follows: (i) the north single-family residential community, as depicted on the site plan for the Plat, shall have two (2) monument signs located within the landscape buffer adjacent to the Saint John's Heritage Parkway right-of-way, and flanking either side of the vehicular point of entry, that shall be deemed Limited Common Elements for the exclusive use of the Lotis Palm Bay 1 Homeowner's Association, Inc; (ii) the north single-family residential community, as depicted on the site plan for the Plat, shall have one (1) monument sign located within the north landscape buffer adjacent to the North Spine Road right-of-way, approximately located at the vehicular entry point, that shall be deemed a Limited Common Element for the exclusive use of the Lotis Palm Bay 1 Homeowner's Association, Inc; (iii) the townhome residential community, as depicted on the site plan for the Plat, shall have one (1) monument sign located within the north landscape buffer adjacent to the North Spine Road right-of-way, approximately located at the vehicular entry point, that shall be deemed a Limited Common Element for the exclusive use of the Lotis Palm Bay 2 Homeowner's Association, Inc; (iv) the north multi-family residential community, as depicted on the site plan for the Plat, shall have one (1) monument sign located within the south landscape buffer adjacent to the North Spine Road right-of-way, approximately located at the vehicular point of entry, that shall be deemed a Limited Common Element for the exclusive use of the north multi-family residential community; (v) the south single-family residential community, as depicted on

the site plan for the Plat, shall have one (1) monument sign located within the south landscape buffer adjacent to the North Spine Road right-of-way, approximately located at the vehicular point of entry, that shall be deemed a Limited Common Element for the exclusive use of the Lotis Palm Bay 3 Homeowner's Association, Inc; (vi) the north and south single-family residential communities, as depicted on the site plan for the Plat, shall have one (1) monument sign located within the landscape buffer, approximately located at the west end of the North Spine Road, that shall be deemed a Limited Common Element for the exclusive use of both the Lotis Palm Bay 1 Homeowner's Association, Inc and the Lotis Palm Bay 3 Homeowner's Association, Inc; (vii) the south single-family residential community, as depicted on the site plan for the Plat, shall have one (1) monument sign located within the south landscape buffer adjacent to the South Spine Road, approximately located at the vehicular point of entry, that shall be deemed a Limited Common Element for the exclusive use the Lotis Palm Bay 3 Homeowner's Association, Inc; (viii) the south multi-family residential community, as depicted on the site plan for the Plat, shall have one (1) monument sign located within the north landscape buffer adjacent to the South Spine Road right-of-way, approximately located at the vehicular point of entry, that shall be deemed a Limited Common Element for the exclusive use of the south multi-family residential community; (ix) the daycare tract, as depicted on the site plan for the Plat, shall have one (1) monument sign located within the north landscape buffer adjacent to the South Spine Road right-of-way, approximately located at the vehicular point of entry, that shall be deemed a Limited Common Element of for the exclusive use of the daycare tract; (x) the Public Recreation Tract, as depicted on the site plan for the Plat, shall have one (1) monument sign located within the east landscape buffer adjacent to the Saint John's Heritage Parkway right-of-way, approximately located at the vehicular point of entry, that shall be deemed a Limited Common Element for the exclusive use of the Public Recreation Tract; (xi) two (2) entry signs located within the west buffer of the Saint Johns Heritage Parkway right-of-way, flanking both sides of the North Spine Road, as depicted on the site plan for Plat, that will hold a total of four (4) signage areas reserved for the Lotis Palm Bay 1 Homeowner's Association Inc, the Lotis Palm Bay 2 Homeowner's Association, Inc, the Lotis Palm Bay 3 Homeowner's Association Inc, and the north multi-family Tract; (xii) two (2) entry signs located within the west buffer of the Saint John's Heritage Parkway right-of-way, flanking both sides of the South Spine Road, as depicted on the site plan for Plat, that will hold a total of four (4) signage areas reserved for the Lotis Palm Bay 3 Homeowner's Association Inc, the daycare Tract, and the commercial Tracts; (xiii) the commercial Tracts, as depicted on the site plan for the Plat, shall have use of two (2) double-sided pylon signs located within the right-of-way of the South Spine Road and the landscape buffer adjacent to the North side of the Micco Road right-of-way, to be assigned by the Declarant in exchange for payment at such rates set by the Declarant in its sole discretion, the location of which shall be deemed Limited Common Areas for the exclusive use of the Owners having been assigned such use; and (xiv) the commercial Tracts, as depicted on the site plan for the Plat, shall have use of three (3) double-sided monument signs located within the west landscape buffer adjacent to the Saint John's Heritage Parkway right-of-way and the landscape buffer adjacent to the North side of the Micco Road right-of-way, to be assigned by the Declarant in exchange for payment at such rates set by the Declarant in its sole discretion, the location of which

shall be deemed Limited Common Areas for the exclusive use of the Owners having been assigned such use.

3.2.4 Intentionally Left Blank.

3.2.5 Intentionally Left Blank.

3.2.6 Intentionally Left Blank.

3.2.7 Intentionally Left Blank.

3.2.8 Additional Limited Common Areas. The Declarant may designate additional property as Limited Common Areas for the exclusive use of a Tract or group of Tracts on the Plat, in any deed conveying the Common Areas, or any portion thereof, to the Association, or in any Supplemental Declaration. At any time prior to the Property Completion Date, the Declarant may assign use of the same Limited Common Areas to additional Tracts. Limited Common Areas may include, without limitation, entry features, parking areas, signage, landscaped areas, and medians.

3.3 Public Facilities. The Property may include one (1) or more public facilities, including, without limitation, lift station(s) dedicated to the County or City or other applicable governmental entity as part of the wastewater treatment system and/or public useable open space and/or institutional uses that may promote social and cultural activities.

3.3.1 Public Recreation Tract. The Common Areas shall contain, without limitation, one (1) "Public Recreation Tract," located on the West side of the Saint John's Heritage Parkway right-of-way, containing a vehicular parking lot and pedestrian access that will serve as a potential future pedestrian connection point to adjacent publicly-owned and maintained preservation lands that may contain a multi-use trail system. The Public Recreation Tract shall be available to the public and shall be maintained, repaired, replaced, and insured by the Association as Common Areas.

3.3.2 Greenway Tract. The Common Areas shall contain, without limitation, one (1) "Greenway Tract", containing multi-use asphalt pathways with shade trees, seating areas and gathering/green space. The Greenway Tract shall be available to the public and shall be maintained, repaired, replaced, and insured by the Association as Common Areas.

3.3.3 Spine Road Tracts. The Common Areas shall contain, without limitation, two (2) "Spine Road Tracts," extending from the East side of the Saint John's Heritage Parkway right-of-way and into the Property. The North Spine Road Tract shall provide vehicular and pedestrian access to two (2) single-family home pods; one (1) townhome pod; one (1) multi-family pod; and the Greenway. The South Spine Road Tract shall provide vehicular and pedestrian access to one (1) single-family home pod; one (1) multi-family pod; the daycare tract; and the commercial tract(s). The Spine Road Tracts,

if not dedicated as public rights-of-way, shall be available to the public and shall be maintained, repaired, replaced, and insured by the Association as Common Areas.

3.4 Retention/Detention Areas. Retention/detention areas will be a part of the Property and shall be maintained, administered, and operated by the Association. In furtherance of the foregoing, the Declarant hereby reserves and grants an easement in favor of the Declarant and the Association throughout all portions of the Property as may be necessary for the purpose of constructing, accessing, maintaining, repairing, improving, and administering the retention/detention areas, and no Owner, nor any Owner's tenant, resident, guest, employee, agent, or invitee, shall do any act which may interfere with the performance by the Declarant or the Association of its obligations hereunder.

NEITHER THE DECLARANT NOR THE ASSOCIATION MAKE ANY REPRESENTATION CONCERNING THE CURRENT OR FUTURE WATER LEVELS IN ANY OF THE RETENTION/DETENTION AREAS IN THE PROPERTY; PROVIDED, FURTHER, NEITHER THE DECLARANT NOR THE ASSOCIATION BEAR ANY RESPONSIBILITY TO ATTEMPT TO ADJUST OR MODIFY THE WATER LEVELS SINCE SUCH LEVELS ARE SUBJECT TO SEASONAL GROUNDWATER, SUN EXPOSURE, AND RAINFALL FLUCTUATIONS THAT ARE BEYOND THE CONTROL OF THE DECLARANT AND THE ASSOCIATION. THERE IS NO GUARANTEE BY THE DECLARANT OR THE ASSOCIATION THAT WATER LEVELS OR RETENTION/DETENTION AREAS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME; AT TIMES, WATER LEVELS MAY BE NONEXISTENT. THE RESIDENTIAL ASSOCIATION AND EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO SUCH OWNER'S TRACT, OR PORTION THEREOF, HEREBY ACKNOWLEDGE THAT THE WATER LEVELS OF ALL RETENTION/DETENTION AREAS MAY VARY AND HEREBY RELEASE THE DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, COMMITTEE MEMBERS, EMPLOYEES, MANAGERS, MANAGEMENT AGENTS, CONTRACTORS, AND SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, LIABILITIES, DAMAGES, COSTS, AND EXPENSES OF WHATEVER NATURE OR KIND (INCLUDING, WITHOUT LIMITATION, LEGAL FEES), RELATED TO, ARISING OUT OF AND/OR RESULTING FROM WATER LEVELS IN THE RETENTION/DETENTION AREAS REGARDLESS OF THE CAUSE THEREOF.

THE RESIDENTIAL ASSOCIATION AND EACH OWNER, BY THE ACCEPTANCE OF A DEED OR TITLE TO A TRACT, AGREE THAT NONE OF THE LISTED PARTIES SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY OR WATER QUALITY OF ANY RETENTION/DETENTION AREAS WITHIN OR AROUND THE PROPERTY. THE DECLARANT AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO ERECT FENCES, GATES, OR WALLS AROUND OR ADJACENT TO ANY RETENTION/DETENTION AREAS WITHIN OR AROUND THE PROPERTY. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE OR RESPONSIBLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY, OR

DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY RETENTION/DETENTION AREAS. ALL PERSONS USING RETENTION/DETENTION AREAS DO SO AT THEIR OWN RISK. THE RESIDENTIAL ASSOCIATION AND ALL OWNERS, BY THE ACCEPTANCE OF A DEED OR TITLE TO A TRACT, OR ANY PORTION THEREOF, AND ALL USERS OF ANY RETENTION/DETENTION AREAS, BY VIRTUE OF USE OF SUCH PROPERTY, SHALL BE DEEMED TO HAVE AGREED TO RELEASE AND HOLD HARMLESS THE LISTED PARTIES FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, LIABILITIES, DAMAGES, COSTS, AND EXPENSES OF WHATEVER NATURE OR KIND (INCLUDING, WITHOUT LIMITATION, LEGAL FEES) RELATED TO, ARISING OUT OF, AND/OR RESULTING FROM ANY AND ALL OF THE FOREGOING IN THIS PARAGRAPH, INCLUDING, WITHOUT LIMITATION, CHANGES IN THE SAFETY OR QUALITY OF WATER IN RETENTION/DETENTION AREAS. ALL PERSONS ARE HEREBY NOTIFIED THAT, FROM TIME TO TIME, WILDLIFE MAY INHABIT OR ENTER INTO RETENTION/DETENTION AREAS WITHIN OR NEARBY THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS, AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY, OR DAMAGE CAUSED BY SUCH WILDLIFE.

3.5 Special Taxing Districts. Prior to Turnover, the Declarant shall have the right, but not the obligation, to dedicate or transfer or cause the dedication or transfer of all or portions of the Common Areas to a special taxing district, or a public agency or authority under such terms as the Declarant deems appropriate in order to create or contract with special taxing districts and Property development districts (or others) for lighting, perimeter walls, entrance features, roads, landscaping, irrigation areas, ponds, surface water management systems, wetlands mitigation areas, parks, recreational or other services, security or communications, or other similar purposes deemed appropriate by the Declarant, including, without limitation, the maintenance and/or operation of any of the foregoing. As hereinafter provided, the Declarant may sign any taxing district petition as attorney-in-fact for each Owner. Each Owner's obligation to pay taxes associated with such district shall be in addition to such Owner's obligation to pay Assessments. Any special taxing district shall be created pursuant to all applicable ordinances of the County and all other applicable governing entities having jurisdiction with respect to same.

3.6 Access Control Systems and Services. The Declarant may provide and/or install access control systems, monitoring systems, or other security/safety systems, including, without limitation, gatehouses, entry and exit gates, camera monitoring systems, perimeter walls/fences, within the Property, including within any Tract and/or within the Common Areas, and contract for the service for same (collectively, "Access Control Systems and Services"). Thereafter, the Association shall have the right, but not the obligation, to contract for any Access Control Systems and Services to the Common Areas as Common Expenses.

THE RESIDENTIAL ASSOCIATIONS AND ALL OWNERS ACKNOWLEDGE THAT ANY ACCESS CONTROL SYSTEMS AND SERVICES WILL NOT BE ABLE TO

PREVENT CRIME. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER THE DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER TO COMMENCE, COMPLETE, CONSTRUCT, INSTALL, OR PROVIDE ANY ACCESS CONTROL SYSTEMS AND SERVICES WITHIN ANY SPECIFIC TIME PERIOD, IF AT ALL.

THE RESIDENTIAL ASSOCIATIONS AND ALL OWNERS, RESIDENTS, TENANTS, GUESTS, EMPLOYEES, AGENTS, AND INVITEES ACKNOWLEDGE THAT THE DECLARANT AND THE ASSOCIATION DO NOT REPRESENT OR WARRANT THAT: (i) ANY ACCESS CONTROL SYSTEMS AND SERVICES RECOMMENDED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ASSOCIATION MAY NOT BE COMPROMISED OR CIRCUMVENTED; OR (ii) THAT ANY ACCESS CONTROL SYSTEMS AND SERVICES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM OR SERVICE IS DESIGNED OR INTENDED.

NEITHER THE DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATION WHATSOEVER AS TO THE SECURITY OF THE PROPERTY OR THE ADEQUACY OR EFFECTIVENESS OF ANY ACCESS CONTROL SYSTEM OR MONITORING SYSTEM OR SERVICE. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY, EVEN IF CAUSED BY THE NEGLIGENCE OF THE DECLARANT AND/OR THE ASSOCIATION.

NEITHER THE DECLARANT NOR THE ASSOCIATION GUARANTEES OR WARRANTS, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY ACCESS CONTROL SYSTEMS AND SERVICES, OR THAT ANY SUCH SYSTEM OR SERVICE WILL PREVENT INTRUSION, THEFT, DAMAGE, INJURY, DEATH, OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT SUCH SYSTEM OR SERVICE IS DESIGNED TO MONITOR SAME. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY OR OF THE HEALTH, SAFETY, OR WELFARE OF ANY OWNER, RESIDENT, TENANT, GUEST, EMPLOYEE, AGENT, OR INVITEE, OF ANY TRACT (OR ANY PORTION THEREOF), OR OF ANY PROPERTY, REAL OR PERSONAL, LOCATED WITHIN THE PROPERTY, OR ANY PORTION THEREOF. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY CASUALTY OR INTRUSION INTO THE PROPERTY OR ANY PORTION THEREOF.

THE RESIDENTIAL ASSOCIATIONS AND EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO A TRACT, 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 USE, SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS, DAMAGES, LOSSES, AND CAUSES OF ACTION AGAINST THE DECLARANT AND THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE DECLARANT AND THE ASSOCIATION HAS BEEN DISCLAIMED. ALL OWNERS, RESIDENTS, TENANTS, GUESTS, EMPLOYEES, AGENTS, AND INVITEES AGREE TO HOLD THE LISTED PARTIES, AND THEIR RESPECTIVE CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, AND ASSIGNS, HARMLESS FROM ANY LOSS OR CLAIM (INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY AND/OR DEATH) ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT.

3.7 Road Drainage. THE RESIDENTIAL ASSOCIATIONS AND EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO A TRACT, HEREBY ACKNOWLEDGE THAT THE ROAD(S) WITHIN THE PROPERTY ARE DESIGNED AS A SECONDARY RESERVOIR FOR STORMWATER AND SURFACE WATER. THEREFORE, THE ROAD(S) MAY FLOOD IN THE EVENT THE PRIMARY RESERVOIR SYSTEM FAILS OR EXCEEDS CAPACITY. THE LISTED PARTIES SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE TO OR LOSS OF ANY TRACT, IMPROVEMENT, OR PERSONAL PROPERTY OF ANY OWNER, RESIDENT, TENANT, GUEST, EMPLOYEE, AGENT, OR INVITEE IN THE EVENT THE ROAD(S) BECOME FLOODED.

3.8 Conveyance. Upon Turnover, all Common Areas, including, without limitation the Limited Common Areas, if not already conveyed to the Association, shall be owned by the Association as if specifically deeded to the Association as follows: the Declarant shall convey to the Association the fee-simple title to the Common Areas, and the Association shall be obligated to accept such conveyance, including responsibility for (i) all real estate taxes and assessments due with respect to the Common Areas from and after the date of recording of this Declaration; (ii) subject to all laws, ordinances, regulations, restrictions, prohibitions, and other requirements imposed by governmental authorities, including, without limitation, all building, zoning, land use, and environmental laws, ordinances, codes, and regulations; (iii) matters which would be disclosed by an accurate survey of the Common Areas; (iv) easements, covenants, conditions, restrictions, reservations, limitations, and other matters of record; and (v) the terms and provisions of this Declaration.

The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance, and administration of the Common Areas. The Association shall, and does hereby, indemnify and hold the Declarant, its managers, directors, officers, members, shareholders, agents, employees, affiliates, successors, and assigns (collectively, the "Declarant Parties") harmless on account thereof. The Association, by its joinder to this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. The Association shall accept any and all transfer of permits from the Declarant, or any other permittee, of any permit required by a governmental agency in connection with the development of the Property, as modified

and/or amended. The Association shall cooperate with the Declarant, or any other permittee of such permits, as modified and/or amended, with any applications, certifications, documents, or consents required to effectuate any such transfer of permits to the Association.

The Association shall also accept the Common Areas and the personal property and Improvements appurtenant thereto in "AS IS" "WHERE IS" condition, with all faults, and without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Common Areas, or any portion thereof, and the personal property and Improvements appurtenant thereto being conveyed. TO THE FULL EXTENT PERMITTED BY LAW (INCLUDING, WITHOUT LIMITATION SECTION 553.835, FLORIDA STATUTES), THE ASSOCIATION, THE RESIDENTIAL ASSOCIATIONS, AND EACH OWNER KNOWINGLY AND VOLUNTARILY RELINQUISHES AND WAIVES, AND THE DECLARANT EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED) AS TO THE PROPERTY, PERSONAL PROPERTY, AND OTHER IMPROVEMENTS ON OR UNDER THE PROPERTY WHETHER ARISING FROM CUSTOM, USAGE, OR TRADE, COURSE OF CONDUCT, COURSE OF DEALING, CASE LAW, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR ANY IMPLIED WARRANTY OF FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. TO THE EXTENT THAT BY LAW OR OTHERWISE ANY OF THE WARRANTIES RELINQUISHED, WAIVED, OR DISCLAIMED CANNOT BE RELINQUISHED, WAIVED, OR DISCLAIMED, IN WHOLE OR IN PART, ALL SECONDARY, INCIDENTAL, AND CONSEQUENTIAL DAMAGES ARE SPECIFICALLY EXCLUDED AND DISCLAIMED (INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM CLAIMS OF PROPERTY DAMAGE, LOSS OF USE, PERSONAL INJURY, OR EMOTIONAL DISTRESS).

The Declarant hereby reserves the right, until the Property Completion Date, to require the Association to reconvey all or a portion of the Common Areas by quitclaim deed in favor of the Declarant in the event that such property is required to be owned by the Declarant for any purpose, including, without limitation, the reconfiguration of any adjacent property by replatting or otherwise. To the extent legally required, each Owner shall be deemed to have granted to the Declarant, and thereafter the Association, an irrevocable power of attorney, coupled with an interest, for the purposes herein expressed.

3.9 Mortgaging the Common Areas by the Declarant. Subject to Section 3.8, the Declarant may mortgage any part or all of the Common Areas to finance construction and development provided the mortgagee recognizes the rights of Owners under this Declaration. The Association, the Residential Associations, and the Owners shall not be personally liable for paying any such mortgage. The Association, the Residential Associations, and the Owners shall not be required to join in or be entitled to consent to such mortgage.

3.10 Operation after Conveyance. Except as to the Association's right to grant easements and other interests as provided in this Declaration and except as to the taking of any Common Areas or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas to a third party without (i) if prior to Turnover, the approval of (a) a majority of the Board and (b) the written consent of the Declarant, or (ii) after Turnover, approval of (a) a majority of the Board and (b) sixty percent (60%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained.

3.11 Assumption of Risk. All persons using the Common Areas do so at their own risk. Without limiting any other provision herein, the Residential Associations and each Owner, resident, tenant, guest, employee, agent, and invitee accept and assume all risk and responsibility for noise, liability, injury, or damage connected with use or occupancy of any portion of the Common Areas, including, without limitation: (i) noise from maintenance equipment; (ii) use of pesticides, herbicides, and fertilizers; (iii) view restrictions and impairment caused by the construction of any structures and/or the maturation of trees and shrubbery; (iv) reduction in privacy caused by the removal or pruning of shrubbery or trees within the Property; and (v) design of any portion of the Property. The Residential Associations and each Owner expressly indemnifies and agrees to hold harmless the Association and its directors, officers, committee members, managers, agents, and employees (collectively, the "Association Parties") and the Declarant Parties, from any and all actions, injuries, deaths, claims, losses, liabilities, damages (whether actual, consequential, incident, or otherwise), judgements, orders, fines, liens, encumbrances, penalties, costs, and expenses of any kind or nature whatsoever, including, without limitation, Legal Fees (collectively, "Losses"), arising from or related to the person's use of the Common Areas. BY THE ACCEPTANCE OF A DEED OR TITLE TO A TRACT, EACH OWNER ACKNOWLEDGES THE COMMON AREAS AND AREAS IN THE VICINITY OF SUCH AREAS MAY CONTAIN WILDLIFE, SUCH AS, BUT NOT LIMITED TO, INSECTS, ALLIGATORS, COYOTES, RACCOONS, SNAKES, DUCKS, DEER, SWINE, TURKEYS, AND FOXES. THE DECLARANT AND THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER, RESIDENT, TENANT, GUEST, EMPLOYEE, AGENT, AND INVITEE IS RESPONSIBLE FOR THEIR OWN SAFETY.

3.12 Obligation to Indemnify. The Residential Associations and each Owner agree to indemnify and hold harmless the Association Parties from and against any and all Losses incurred by or asserted against any of the Association Parties, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of the Common Areas by the Residential Associations, Owners, residents, tenants, guests, employees, agents, or invitees. Should the Residential Associations and/or any Owner bring suit against any of the Association Parties for any claim or matter and fail to obtain judgment therein against such Association Parties, the Residential Associations and/or such Owner, as applicable, shall be liable to such parties for all Losses incurred by the Association Parties in the defense of such suit.

Additionally, the Association, the Residential Associations, and each Owner covenant and agree, jointly and severally, to indemnify, defend, and hold harmless the Declarant Parties from and against any and all Losses incurred by or asserted against any of the Declarant Parties, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of the Common Areas by the Association, the Residential Associations, Owners, residents, tenants, guests, employees, agents, or invitees, or to other property serving the Association, the Residential Associations, and the Owners, and Improvements thereon, or resulting from or arising out of activities or operations of the Association, the Residential Associations, or the Owners within the Property. The costs of fulfilling the Association's indemnification, defense, and hold harmless obligations in this Section 3.12 shall be Common Expenses to the extent such matters are not covered by insurance maintained by the Association. Notwithstanding the foregoing, the indemnification and defense obligations in this Section 3.12 shall not apply to: (i) any damage claim directly asserted by the Association against the Declarant for defects in construction of Improvements constructed by the Declarant on the Common Areas provided such claim does not arise out of or result from any third-party claim, and/or (ii) any gross negligence or willful misconduct by the indemnified parties. In the event any party fails to indemnify another in accordance with this Section 3.12, such party shall fully indemnify the other for its Legal Fees in enforcing the terms of this Section 3.12.

#### **ARTICLE IV**

#### **PROPERTY RIGHTS AND EASEMENTS**

4.1 Owners' Easement of Enjoyment. As long as this Declaration is in effect, each Owner, resident, tenant, guest, employee, agent, and invitee shall have, except as otherwise may be provided in this Declaration (including, without limitation, as to the Limited Common Areas), a permanent and perpetual, non-exclusive easement for ingress and egress over, enjoyment in, and use of the Common Areas in common with all other Owners, residents, tenants, guests, employees, agents, and invitees. This easement shall be appurtenant to, shall pass with title to that Owner's Tract, and shall be subject to the following:

(i) The right of the Declarant, prior to the Property Completion Date, and thereafter, of the Association, at any and all times, and from time to time, to further additionally provide and make the Common Areas available to other individuals, persons, firms, or corporations, as it deems appropriate. The granting of such rights shall not invalidate this Declaration, reduce or abate any Owner's obligations pursuant to this Declaration, or give any Owner the right to avoid any of the covenants, agreements, or obligations to be performed hereunder.

(ii) The right of the Declarant and/or the Association to enter into easement agreements or other use or possession agreements whereby the Owners, the Association, the Residential Association, and/or others may obtain the use, possession of, or other rights regarding certain property, on an exclusive or non-exclusive basis, for certain specified purposes. The Association may agree to maintain and pay the taxes,

insurance, administration, upkeep, repair, and replacement of such property, the expenses of which shall be a part of the Common Expenses. Any such agreement by the Association prior to the Property Completion Date shall require the prior written consent of the Declarant. Thereafter, any such agreement shall require the approval of the majority of the Board, which consent shall not be unreasonably withheld or delayed.

(iii) The right of the Association to reasonably limit the number of guests or invitees of an Owner, resident, or tenant who may use the Common Areas and to prohibit such use of the Common Areas upon failure to abide by the provisions of the Governing Documents.

(iv) The right and duty of the Association to levy Assessments against each Tract for the purpose of operating, maintaining, repairing, and replacing the Common Areas in compliance with the provisions of this Declaration and the restrictions on portions of the Property from time to time recorded by the Declarant and to levy Assessments against a Tract having costs and expenses incurred by the Association which are unique to such Tract in the form of an Individual Assessment.

(v) The right of the Association in accordance with the Governing Documents to borrow money for the purpose of maintaining, repairing, replacing, and improving the Common Areas and, in aid thereof, to mortgage, pledge, or hypothecate the right of assessment and/or any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners in the Common Areas.

(vi) The right of the Association to dedicate, release, alienate, or transfer all or any part of the Common Areas to any public agency, authority, or utility; and to grant any covenant, restriction, or reservation against the Common Areas in favor of any such public agency, authority, or utility subject to the approval required in accordance with Section 3.10 hereof, except for such circumstances where the government is condemning the property through eminent domain.

(vii) The right of the Association, by and through the Board, to grant easements and rights-of-way where necessary or desirable, for utilities, water, and sewer facilities, telecommunication services, and other services over the Common Areas to serve any portion of the Property.

(viii) The right of the Declarant and its officers, directors, managers, partners, employees, agents, licensees, and invitees to the non-exclusive access and use of the Common Areas, and any portion thereof, without charge and without notice, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes or for any other purpose deemed appropriate by the Declarant without interference from the Residential Associations, any Owner, or any other person or entity whatsoever, and to grant (without consent of the Association, the Residential Associations, and/or vote of the Owners) easements and rights-of-way as provided in this Declaration Until the Property Completion Date.

(ix) The easements, restrictions, reservations, conditions, limitations, and rights provided elsewhere in this Declaration and as designated on the Plat.

(x) The right of the Association, the Declarant, and their respective officers, directors, managers, employees, agents, licensees, and invitees to come upon the Property (including, without limitation, a Tract even after the same has been conveyed to an Owner) as may be necessary or convenient for the Association and/or the Declarant to carry on their respective duties, obligations, and responsibilities hereunder, and all other work reasonably inferred therefrom (including, without limitation, the Declarant's development and construction of the Property and Tracts therein).

(xi) The right of the Declarant to access and enter the Common Areas at any time, even after the Property Completion Date, for the purposes of inspection and testing of the Common Areas. The Association, the Residential Associations, and each Owner shall give the Declarant unfettered access, ingress, and egress to the Common Areas so the Declarant and/or its agents can perform all tests and inspections deemed necessary by the Declarant. In the event the Declarant exercises the rights in this Paragraph (xi), it is acknowledged by the Association, the Residential Associations, and all Owners that the Declarant is performing any such rights for its own benefit and not for the benefit of the Association, the Residential Association, or the Owners and further, the Declarant shall have no obligation to inform the Association, the Residential Associations, and/or the Owners of the result of any such inspection or testing. The Declarant shall have the right to make all repairs and replacements deemed necessary by the Declarant. At no time shall the Association, the Residential Associations, or any Owner prevent, prohibit, or interfere with any testing, repair, or replacement deemed necessary by the Declarant relative to any portion of the Common Areas.

(xii) The right of the Association to promulgate, amend, and abolish Rules and Regulations governing the use of the Property and any portion thereof.

(xiii) The right of the Association, in addition to all other remedies available to the Association, to suspend the rights of Owners, residents, tenants, guests, and invitees to use the Common Areas in accordance with Article XII of this Declaration.

4.2 Ingress and Egress Easement. A perpetual and non-exclusive ingress and egress easement is hereby created and reserved by the Declarant for itself, the Association, the Residential Associations, and the Owners, residents, tenants, guests, employees, agents, and invitees, for pedestrian and vehicular traffic over, through, and across all sidewalks, paths, walkways, driveways, passageways, roadways, streets, lanes, and parking lots as the same may exist upon, or be designed as part of, the Common Areas, except as otherwise limited by this Declaration.

4.3 Public Easements. All of the Property shall be subject to a permanent and perpetual easement to provide for governmental services, including, without limitation, fire, police, school sponsored transportation, mail, health, sanitation, emergency services,

and other public service personnel for the purpose of performing their appropriate functions, including, without limitation, ingress and egress over, through, and upon the Property and reasonable rights of access for persons and equipment necessary for such purposes.

4.4 Utilities Easement. A blanket easement upon, across, through, and under the Property is hereby created and reserved by the Declarant for the ingress, egress, installation, service, maintenance, repair, replacement, relocation, expansion, and operation of any and all utilities and other service lines, facilities, and systems (including, without limitation, those for supplying electricity, gas, cable television, internet, wireless nodes, and telephone service, for collecting, treating, and distributing water and for collecting, treating, and disposing of sewage and wastewater) servicing or intended to service any one (1) or more Improvements on the Property. A blanket easement upon, across, through, and under the Property is hereby created for the disposal, through an irrigation system or otherwise, of treated effluent from any sewage and wastewater collection and disposal system servicing or intended to service one (1) or more Improvements. Without limiting the generality of the foregoing, the Declarant or any party providing any such utilities or other service may, by virtue of the easements created by this Section 4.4, install, maintain, repair, and replace on the Property any and all facilities that are necessary or useful for providing the utilities or service, may perform whatever excavations it considers necessary or helpful in doing so, and may perform whatever meter installations and meter reading it considers necessary or helpful in operating the utilities or service. The Declarant is hereby authorized to execute and record whatever instruments it deems necessary or desirable to effect or evidence the easements created by this Section 4.4 and shall be considered and deemed an agent of each Owner for purposes of executing and recording any such instrument with respect to the Tract(s) owned by the Owner.

4.5 Development Easement. In addition to the rights reserved elsewhere herein, the Declarant reserves an easement for itself over, upon, across, through, and under the Property as may be required or convenient in connection with the development of the Property and/or the development of other lands designated by the Declarant, and to promote or otherwise facilitate the development, construction, and sale and/or leasing of Tracts (or any portion thereof), any portion of the Property, and/or any other lands designated by the Declarant. Without limiting the generality of the foregoing, the Declarant specifically reserves the right to use all streets, roads, and rights of way within the Property for vehicular and pedestrian ingress and egress to and from construction sites. The Residential Associations and each Owner acknowledges construction vehicles and trucks may use portions of the Common Areas. The Declarant shall have no liability or obligation to repave, restore, or repair any portion of the Common Areas as a result of the use of the same by construction traffic, and all maintenance and repair of such Common Areas shall be deemed ordinary maintenance of the Association. Without limiting the foregoing, at no time shall the Declarant be obligated to pay any amount to the Association or the Residential Associations on account of the Declarant's use of the Common Areas. The Declarant has the right to use all portions of the Common Areas in connection with its marketing activities, including, without limitation, allowing access by

members of the general public, installing signs and displays, holding promotional parties and outings, and using the Common Areas for every other type of promotional or sales activity that may be employed in the marketing of the Tracts (or any portion thereof). The easements created by this Section 4.5, and the rights reserved herein in favor of the Declarant, shall be construed as broadly as possible and supplement the rights of the Declarant set forth in this Declaration. At no time shall the Declarant incur any expense whatsoever in connection with its use and enjoyment of such rights and easements.

4.6 Easement for Encroachments. If any Improvement upon the Common Areas as originally constructed by the Declarant shall encroach upon any other property or Improvements thereon for any reason, then an easement appurtenant to the encroachment shall exist for so long as the encroachment shall naturally exist. If any building or Improvement upon a Tract shall encroach upon another Tract or upon the Common Areas by reason of original construction by the Declarant, then an easement for such encroachment shall exist so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvement and for any natural water runoff from roof overhangs, eaves, and other protrusions onto an adjacent Tract.

4.7 Drainage Easement. A non-exclusive, blanket easement shall exist in favor of the Declarant, the Association, its members, SJRWMD, the County, the City, and/or any governmental agency having jurisdiction over, across, through, under, and upon the Property in its entirety for drainage, irrigation, and water management purposes and in order to construct, maintain, inspect, record data on, monitor, test, or repair, as necessary, any water management areas, conservation areas, mitigation areas, irrigation systems and facilities thereon and appurtenances thereto. Such drainage easement shall not be removed from its intended use by any Owners or others. No structure, landscaping, or other material or Improvement shall be placed or be permitted to remain which may damage or interfere with the drainage or irrigation of the Property and/or installation or maintenance of utilities or which may obstruct or retard the flow of water through the Property and/or water management areas and facilities or otherwise interfere with any drainage, irrigation, and/or easement provided for in this Section 4.7 or the use rights set forth elsewhere in this Declaration. Any such drainage easement shall not contain permanent Improvements, including, but not limited to, sidewalks, impervious surfaces, patios, air conditioners, structures, utility sheds, poles, fences, irrigation systems, trees, shrubs, hedges, or landscaping other than grass, except for (i) Improvements installed by the Declarant, (ii) initial landscaping of the Stormwater Management System, (iii) as required by the County, the Village, or the SJRWMD Permit, and/or (iv) Improvements approved by the Association. Additionally, a non-exclusive easement is hereby granted to all Owners, the Association, and the Residential Associations over, across, through, under, and upon the Property, including, without limitation, the Tracts, for surface water drainage purposes.

4.8 Association Easement. The Association is hereby granted an easement over, across, through, under, and upon all of the Property for the purposes of: (i) ingress and egress; (ii) performing any obligation the Association is obligated to perform under



this Declaration; and (iii) performing any obligation of the Residential Associations or an Owner for which the Association intends to impose an Individual Assessment, including, without limitation, entering a Tract for the purpose of inspecting, maintaining, repairing, and replacing the Tract and Improvements thereon in the event the Residential Associations or Owner thereof fails to do so. Any entry into a Tract by the Association, its directors, officers, committee members, managers, agents, and employees, in accordance with the Association's rights set forth in this Declaration shall not be deemed a trespass. The foregoing easement shall not include the right to enter any home constructed on a Tract.

4.9 Greenway and Public Recreation Areas. A perpetual and non-exclusive easement is hereby granted to the public and the City for pedestrian and vehicular traffic over, through, and across all sidewalks, paths, walkways, driveways, passageways, roadways, streets, and lanes as the same may exist upon, or be designed as part of, the Common Areas, except as otherwise limited by this Declaration, for access to and from the Greenway and the Public Recreation Area. The Greenway and the Public Recreation Area shall be available to the public for their use and enjoyment for all proper purposes.

4.10 Cross Access Easements. A perpetual and non-exclusive easement is hereby granted to the public for cross access, including vehicular and pedestrian traffic, as indicated on the Plats to promote interconnectivity between properties adjacent to the Property.

4.11 Commercial Tracts Parking Easements. All parking facilities within the Commercial Tracts shall be shared among all uses within the Commercial Tracts. A perpetual and non-exclusive easement is hereby granted to the Owners, tenants, employees, guests, and invitees of the Commercial Tracts for parking and pedestrian and vehicular traffic over, through, and across all sidewalks, paths, walkways, driveways, passageways, roadways, streets, and lanes.

4.12 Assignments and Additional Easements. Until the Property Completion Date, the Declarant reserves the exclusive right to grant, modify, amend, relocate, and terminate, in its sole discretion, easements, permits, and/or licenses for ingress and egress, drainage, utilities, maintenance, telecommunications services, and other purposes over, under, through, upon, and across the Property so long as any said easements do not materially and adversely interfere with the intended use of the Tracts previously conveyed to the Owners. All easements necessary for such purposes are reserved in favor of the Declarant, in perpetuity, for such purposes. Until the Property Completion Date, the Declarant shall have the sole right to any fees of any nature associated therewith, including, without limitation, license or similar fees on account thereof. In furtherance thereof, the Association, the Residential Associations, and the Owners shall, without charge, collect and remit fees associated with any easement, license, or permit, received, if any, to the Declarant. The Association will not grant any easements or licenses to any other entity providing the same services as those granted by the Declarant, nor will it grant any such easement or license prior to the Property Completion Date without the prior written consent of the Declarant, which may be granted

or denied in the Declarant's sole discretion. After the Property Completion Date, the Association shall have the rights of the Declarant only as set forth in this Section 4.12. The Residential Associations and the Owners hereby authorize the Declarant and the Association to execute, on their behalf and without any further authorization, such grants of easement or other instruments as may from time to time be necessary in accordance with the provisions of this Declaration and/or requirements of prevailing law.

4.13 Duration. All easements created herein or pursuant to the provisions hereof shall be perpetual unless stated to the contrary. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

4.14 Non-Interference with Easement Rights. No portion of the Common Areas may be obstructed, encumbered, or used by any Owner, resident, tenant, guest, employee, agent, or invitee for any purpose other than as permitted by the Declarant or the Association. No Owner, resident, tenant, guest, employee, agent, or invitee, nor the Residential Associations, shall place any Improvements, material, or obstacle in, under, or over any easement area which would unreasonably interfere with the rights of the owner of the easement. Any such Improvement, material, or obstacle shall be promptly removed by the offending party at his/her/its sole cost and expense when requested by the owner of the easement, the Declarant, or the Association notwithstanding any lapse of time since such Improvement, material, or other obstacle was placed in or over the easement area. In the event the offending party fails to remove such Improvement, material, or obstacle, then the Declarant or the Association may remove same and the expense of such removal shall be charged to the associated Tract(s) and collected as an Individual Assessment. The Declarant's or the Association's installation of any traffic calming devices shall not be considered an obstruction or unreasonable impediment to any use of the Common Areas, easements, or rights-of-way.

## **ARTICLE V**

### **ANNEXATION TO AND WITHDRAWALS FROM THE PROPERTY**

5.1 Annexation by the Declarant. Prior to the Property Completion Date, the Declarant may, from time to time, without obligation and in its sole discretion, add any real property, including any Improvements thereon, to the Property by recording a Supplemental Declaration to this Declaration in the Official Records of the County. Except for applicable governmental approvals (if any), no consent to such annexation shall be required from any other party, including, without limitation, the Association, the Residential Associations, the Owners, or any Lenders; provided, however, the Association shall join in the execution of any such Supplemental Declaration at the request of the Declarant, but the absence of such joinder shall not affect the validity of the Supplemental Declaration. The Supplemental Declaration shall subject the annexed property to the covenants, conditions, and restrictions contained in this Declaration as though the annexed property were described herein as a portion of the Property. Such Supplemental Declaration may contain additions to, modifications of, or omissions from the covenants, conditions, and restrictions contained in this Declaration as deemed

appropriate by the Declarant and as may be necessary to reflect the different character, if any, of the annexed property. The Declarant may designate any annexed property as Common Areas, Limited Common Areas, or Tracts as set forth in the Supplemental Declaration annexing such property. Except as otherwise provided herein, prior to the Property Completion Date, only the Declarant may add additional lands to the Property. Nothing in this Declaration shall be construed to require the Declarant to add any real property to the Property or to require the Declarant to declare any portion of any properties added to the Property to be Common Areas, Limited Common Areas, or Tracts.

5.2 Annexation by the Association. After the Property Completion Date, and subject to applicable governmental approvals (if any), additional property may be annexed with the approval of (i) a majority of the Board; and (ii) fifty-one percent (51%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained.

5.3 Withdrawal. Prior to the Property Completion Date, any portions of the Property, or any additions thereto, may be withdrawn by the Declarant from the provisions and applicability of this Declaration by recording a Supplemental Declaration to this Declaration in the Official Records of the County. The right of the Declarant to withdraw portions of the Property, or any additions thereto, shall not apply to any Tract that has been conveyed to an Owner unless that right is specifically reserved in the instrument of conveyance or the prior written consent of the Owner is obtained. The withdrawal of any portion of the Property, or any additions thereto, shall not require the consent or joinder of any other party, including, without limitation, the Association, the Residential Associations, the Owners (except as set forth above), or any Lenders; provided, however, the Association shall join in the execution of any such Supplemental Declaration at the request of the Declarant, but the absence of such joinder shall not affect the validity of the Supplemental Declaration. If the Declarant withdraws portions of the Property, or any additions thereto, from the operation of this Declaration, the Declarant may, but is not required to, subject to governmental approvals (if any), create other forms of commercial or residential property ownership or other Improvements of any nature on the property not subjected to or withdrawn from the operation of this Declaration. The Declarant shall not be liable or responsible to any person or entity on account of its decision to do so or to provide, or fail to provide, the amenities and/or facilities which were originally planned to be included in such areas. If so designated by the Declarant, owners or tenants of such other forms of Improvements or upon their creation may share in the use of all or some of the Common Areas and other facilities and/or roadways that remain subject to this Declaration. The expense of the operation of such facilities shall be allocated to the various users thereof, if at all, as determined by Declarant. The Association shall have no right to withdraw land from the Property.

5.4 Effect of Filing Supplemental Declaration. Any Supplemental Declaration filed pursuant to this Article V shall be effective upon recording in the Official Records of the County, unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this

Declaration shall be assigned voting rights in the Association and Assessment liability in accordance with the provisions of the Supplemental Declaration and this Declaration.

## **ARTICLE VI**

### **MAINTENANCE AND IMPROVEMENT OF THE PROPERTY**

#### **6.1 Maintenance by the Association.**

6.1.1 Common Areas. Except as otherwise specifically provided in this Declaration to the contrary, the Association shall at all times maintain, repair, replace, and operate the Common Areas in a continuous and satisfactory manner. The Association shall have the right, but not the obligation, to arrange for periodic inspections of the Common Areas by a licensed contractor and/or engineer. The Association shall determine periodically the parameters of the inspection to be performed, if any. The Association shall also be responsible for the payment of property taxes and governmental assessments levied against the Common Areas. Except as otherwise set forth herein, the fees, costs, and expenses in performing such inspection, maintenance, repair, replacement, and operation shall be Common Expenses. Limited Common Areas shall be maintained, repaired, and replaced as set out elsewhere in this Declaration.

6.1.2 Perimeter Walls/Fences. The Declarant may install perimeter walls or fences upon the Common Areas (the "Perimeter Walls/Fences"). The Association shall at all times have the exclusive right and obligation to maintain, repair, and replace any Perimeter Walls/Fences. Notwithstanding the foregoing, to the extent any Perimeter Walls/Fences is located adjacent to a Tract, the Owner of such Tract shall be responsible for the routine maintenance and cleaning of the interior of any Perimeter Walls/Fences, or portion thereof, adjacent to the Owner's Tract. The Association shall perform any such maintenance, repair, or replacement of the Perimeter Walls/Fences at the Board's discretion and the costs of such maintenance, repairs, or replacement shall be Common Expenses. Failure of the Association to undertake any such maintenance, repair, or replacement of the Perimeter Walls/Fences shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding anything contained in this Section 6.1.2 to the contrary, the Declarant neither commits to, nor shall hereby be obligated to, construct such Perimeter Walls/Fences.

6.1.3 Retention/Detention Area Slopes. Some portions of the Property may contain slopes adjacent to the retention/detention areas ("Retention/Detention Area Slopes"). All Retention/Detention Area Slopes will be regulated and maintained, repaired, and replaced by the Association. The Declarant hereby grants the Association an easement of ingress and egress across all portions of the Property adjacent to retention/detention areas for the purpose of regulating and maintaining, repairing, and replacing such Retention/Detention Area Slopes. Notwithstanding the foregoing, the Association may establish, from time to time, standards for the Retention/Detention Area Slopes maintenance ("Retention/Detention Area Slopes Maintenance Standards") by the Residential Associations and/or Owners who own Tracts adjacent to such areas. Such Retention/Detention Areas Slopes Maintenance Standards may include, without

limitation, requirements respecting compaction and strengthening of banks. The Association shall have the right to inspect such Retention/Detention Area Slopes to ensure that the Residential Associations and/or each Owner has complied with its obligations hereunder and under the Retention/Detention Area Slopes Maintenance Standards. The Residential Association and each Owner hereby grants the Association an easement of ingress and egress across, over, through, and upon the Residential Associations' property and the Owner's Tract to all retention/detention areas for the purpose of insuring compliance with the requirements of this provision and the Retention/Detention Area Slopes Maintenance Standards. For the purposes of this Declaration, each day that the Residential Association and/or an Owner fails to comply with the requirements of this Section 6.1.3 or any Retention/Detention Area Slopes Maintenance Standards shall be deemed a separate and independent violation of this Declaration or any Retention/Detention Area Slopes Maintenance Standards, as applicable.

6.1.4 Drainage Facilities. Drainage facilities, including, without limitation, swales, pipes, and/or pumps, as may be part of the Property, shall be maintained, repaired, replaced, and operated by the Association. In the event drainage facilities are adversely affected by Improvements to any portion of the Property (including, without limitation, landscaping, fences, or other Improvements), the cost to correct, repair, or replace such drainage facilities shall be the responsibility of the Residential Association and/or the Owner of such Tract, as applicable. NOTWITHSTANDING THE FOREGOING, THE ASSOCIATION AND THE DECLARANT SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DRAINAGE ISSUES OF ANY TYPE WHATSOEVER RESULTING FROM ANY IMPROVEMENT TO OR ALTERATION OF THE PROPERTY BY THE RESIDENTIAL ASSOCIATIONS OR ANY OWNER, AND ANY SUCH DRAINAGE ISSUES SHALL BE PROMPTLY REMEDIED, AND THE AREAS AFFECTED THEREBY PROMPTLY RESTORED, BY THE RESIDENTIAL ASSOCIATION OR SUCH OWNER CAUSING SAME.

6.1.5 Irrigation System. The Association shall also maintain and manage an irrigation system throughout the landscaped portions of the Common Areas and within other portions of the Property, as set forth elsewhere in this Declaration. Due to water quality, irrigation systems may cause staining on homes, buildings, fences, walls, or other Improvements or paved areas upon the Property. It is each Owner's responsibility to treat and remove any such staining within an Owner's Tract, and it is the Residential Associations' responsibility to treat and remove any such staining within the Residential Associations' property.

6.1.6 Maintenance of Property Owned by Others. The Association shall, if designated by the Declarant (or by the Board after Turnover), maintain vegetation, landscaping, irrigation systems, community identification/features, infrastructure, and/or other areas or elements designated by the Declarant (or by the Board after Turnover) upon areas that are within or outside of the Property. Such areas may abut, or be proximate to, the Property, and may be owned by, or be dedicated to, others including, but not limited to, a utility, governmental or quasi-governmental entity, or a property

owners' association. These areas may include, for example purposes only and not limited to, parks, swale areas, landscape buffer areas, berm areas or median areas within the right-of-way of public streets, roads, drainage areas, community identification or entrance features, and/or community signage or other identification. The Association shall have the right to enter into new agreements or arrangements from time to time for improvements and facilities serving the Members or to amend such agreements or arrangements if the Board deems the same reasonable and appropriate for the continued use and benefit of any part of the Common Areas. Except as otherwise set forth herein, the fees, costs, and expenses incurred, and to be incurred, by the Association in accordance with this Section 6.1.6 shall be Common Expenses.

6.1.6.1 Saint John's Heritage Parkway. Subject to any terms and conditions as may be set forth in an agreement between the County, City and/or the Florida Department of Transportation and the Association, as may be amended from time to time, the Saint John's Heritage Parkway median and swales along the Property's frontage shall be landscaped and maintained by the County, City or the Florida Department of Transportation, and the costs and expenses therefor shall be the responsibility of the County, City and/or the Florida Department of Transportation

6.1.6.2 Commercial Tracts. The Association shall maintain, repair, and replace all Improvements within Commercial Tracts, up to the perimeter of the buildings. Such maintenance, repair, and replacement obligations shall include, without limitation, all landscaping, irrigation, lighting, site furnishings, sidewalks, and parking areas. The Declarant hereby grants the Association an easement over, across, through, and upon the Commercial Tracts for the purpose of carrying out the obligations set forth in this Section 6.1.6.2.

6.1.6.3 Daycare Tract. The Association shall maintain, repair, and replace all Improvements within the Daycare Tract, up to the perimeter edge of the buildings and fence of the exterior play area. Such maintenance, repair, and replacement obligations shall include, without limitation, all landscaping, irrigation, lighting, site furnishings, sidewalks, and parking areas. The Declarant hereby grants the Association an easement over, across, through, and upon the Daycare Tract for the purpose of carrying out the obligations set forth in this Section 6.1.6.3.

6.1.7 Negligence. The fees, costs, and expenses incurred by the Association for any maintenance, repair, or replacement of any portion of the Common Areas or other areas for which the Association is responsible to maintain occasioned by the negligent or willful acts of the Residential Associations or an Owner, resident, tenant, guest, employee, agent, or invitee, or caused by the failure of the Residential Associations, or an Owner, resident, tenant, guest, employee, agent, or invitee to comply with the Governing Documents shall be borne solely by the Residential Associations or such Owner as an Individual Assessment against all Tracts within the Residential Property or the Owner's Tract for all such fees, costs, and expenses. Further, the Residential Associations or the Owner, as applicable, shall be responsible for all fees, costs, and expenses of maintenance, repair, or replacement of any portion of the drainage

facilities located on or within the Residential Property or the Owner's Tract, as applicable, if such maintenance, repair, or replacement is occasioned by the negligent or willful acts of the Residential Association or an Owner, resident, tenant, guest, employee, agent, or invitee, or caused by the failure of the Residential Associations or an Owner, resident, tenant, guest, or invitee, to comply with the Governing Documents.

6.1.8 Alterations and Improvements. The Association, by and through the Board, may make alterations and Improvements to the Common Areas, any portion thereof and any Improvements thereon, costing, in the aggregate, equal to or less than of One Hundred Thousand Dollars (\$100,000.00). Alterations and Improvements costing, in the aggregate, in excess of One Hundred Thousand Dollars (\$100,000.00) must first be approved by a majority of the Owners present, in person or by proxy, at a meeting of the Members at which a quorum is attained.

6.1.9 Declarant Indemnification. The Association, being the entity responsible for the ownership, operation, maintenance, repair, and replacement of the Common Areas, as set forth in Section 6.1 herein, hereby agrees to indemnify, defend, and hold the Declarant Parties harmless from and against any and all Losses arising out of or in any way resulting from or in any way connected with: (i) any acts or omissions of the Association Parties and their respective heirs, successors, and assigns; (ii) personal injury, loss of life, or damage to property sustained on or about the Common Areas, or other property serving the Association, and Improvements thereon; and/or (iii) activities or operations of the Association, the Residential Associations, or the Owners. The Association's obligation to defend the Declarant Parties shall be triggered upon any allegation or claim being asserted that, in whole or in part, is to be indemnified or defended pursuant to this Section 6.1.9. If any indemnified party is compelled to enforce the Association's obligations in this Section 6.1.9, such indemnified party shall recover any and all Legal Fees incurred, including, without limitation, in prosecuting such enforcement action, in defending the underlying allegations or claims, and in determining or quantifying the eligibility and/or amount of recoverable Legal Fees. The costs of fulfilling the Association's indemnification, defense, and hold harmless obligations in this Section 6.1.9 shall be Common Expenses to the extent such matters are not covered by insurance maintained by the Association. Notwithstanding the foregoing, the indemnification and defense obligations in this Section 6.1.9 shall not apply to: (i) any damage claim directly asserted by the Association against the Declarant for defects in construction of Improvements constructed by the Declarant on the Common Areas provided such claim does not arise out of or result from any third-party claim, and/or (ii) any gross negligence or willful misconduct by the indemnified parties.

6.2 Maintenance by Owners. All Tracts, including, without limitation, all landscaping, driveways, walkways, and any property, Improvements, and appurtenances to Tracts, shall be kept and well maintained, repaired, and replaced in first class, good, safe, clean, neat, and attractive condition consistent with the general appearance of the Property by the Owner of the applicable Tract at such Owner's sole expense. Such maintenance, repair, and replacement obligations shall include, without limitation, the

Limited Common Areas assigned to any Owner by virtue of this Declaration or by way of separate written instrument, except as otherwise specifically set forth in this Declaration.

6.3 Residential Property Maintenance. The Residential Property shall be kept and well maintained, repaired, and replaced in first class, good, safe, clean, neat, and attractive condition consistent with the general appearance of the Property by the Residential Associations and the Owners of Tracts therein as further set forth in the Residential Declarations.

6.4 Right of the Association to Enforce. In addition to all other remedies available to the Association, in the event the Residential Associations or any Owner fails to comply with any of their obligations as set forth in the Governing Documents, as applicable, the Association shall have the right, without obligation, to do all things deemed necessary by the Association to fulfill such obligations on behalf of the Residential Associations or the Owner, as applicable. The costs and expenses incurred by the Association in performance thereof shall be assessable against all Tracts within the Residential Properties or the Owner's Tract, as applicable, as an Individual Assessment. The determination of whether the Residential Associations or an Owner is failing to properly maintain, repair, and replace the Residential Properties, a Tract, or other Improvements for which the Residential Associations or the Owner is responsible shall be determined in the sole discretion of the Board. The Declarant hereby grants the Association an easement over all portions of the Property for the purpose of ensuring compliance with the requirements of this Article VI.

## **ARTICLE VII** **USE RESTRICTIONS**

Except as to the Declarant and any portion of the Property owned by the Declarant, all of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions, the Architectural Guidelines, the Rules and Regulations, and any and all additional rules and regulations which may, from time to time, be adopted by the Declarant, prior to Turnover, and thereafter, by the Board:

7.1 Nuisances. No nuisance, as determined by the Board, nor any use or practice that is the source of unreasonable annoyance to others within the Property or which interferes with the peaceful possession and proper use of the Property, as determined by the Board, is permitted. Nothing shall be done or kept within the Property which may reasonably be expected to increase the rate of insurance maintained by the Association. No loud noises or noxious odors, as determined by the Board, shall be permitted within the Property.

7.2 Lawful Use. No immoral, improper, offensive, unlawful, or obnoxious use shall be made of any portion of the Property, as determined by the Board. All laws, zoning ordinances, and regulations of all governmental entities having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental entities for



maintenance, modification, or repair of a portion of the Property shall be the same as the responsibility for maintenance and repair of the property concerned.

7.3 Animals. No animals of any kind shall be raised, bred, or kept within the Property for commercial or breeding purposes. Except as required by law, no animals of any kind shall be permitted within the Property for any purpose; provided; however, the policies established by the Residential Associations shall govern the presence and conduct of animals within the Residential Property. Each Owner shall be responsible for all the activities of the animals associated with such Owner's Tract. Owners are responsible for the cost of repair or replacement of any Common Areas and other property of the Association or for which the Association is responsible that is damaged by the animals associated with such Owner's Tract. Each Owner hereby agrees to indemnify and hold harmless the Association Parties and the Declarant Parties against any Losses arising from or related to such Owner having any animal or permitting any animal on and within the Property.

7.4 Intentionally Left Blank.

7.5 Vehicle Restrictions and Parking. Vehicles shall only be parked in designated parking areas. No limousine, monster truck, recreational vehicle, golf cart, mini motorcycle, all-terrain vehicle (ATV), boat (or other watercraft), trailer (including, without limitation, boat trailers, house trailers, mobile homes, and trailers of every other type, kind, or description), or camper is permitted to be parked or used at any time within the Property. The term "monster truck" shall be deemed to include pickup trucks modified with large suspension and large tires resulting in a lifted truck body. No vehicles bearing a "for sale" sign or with tarpaulin covers shall be parked anywhere within the Property within the view of others. Vehicles without a valid license plate and current registration are not permitted within the Property. No vehicle shall be used as a domicile or residence, either temporarily or permanently. No Owner, resident, tenant, employee, or guest shall keep any vehicle within the Property which is deemed to be a nuisance by the Board. No vehicle which cannot operate on its own power shall remain within the Property for more than twelve (12) hours. No repair or maintenance of vehicles, except emergency repair, shall be made within the Property. No vehicles shall be stored on blocks. Deliveries shall not occur between the hours of 10:00 PM and 6:00 AM or in accordance with the City's Code of Ordinances, whichever is more restrictive. There shall be no idling of delivery or similar vehicles between the hours of 10:00 PM and 6:00 AM or in accordance with the City's Code of Ordinances, whichever is more restrictive. Overnight storage or parking of delivery vehicles or trucks shall not be permitted on site, except in designated loading and delivery areas. All delivery and loading areas built to accommodate semi-trucks, tractor trailers, moving vans, etc., shall be screened from view. Subject to applicable laws and ordinances, any vehicle parked in violation of this Section 7.5 and/or the Rules and Regulations may be towed by the Association at the sole expense of the owner of such vehicle. Each Owner, by acceptance of title to a Tract, irrevocably grants to the Association and its designated towing service the right to tow vehicles in violation of this Section 7.5 and/or the Rules and Regulations. Neither the Association nor the towing company shall be liable to the Owner or the owner of such vehicle for trespass,

conversion, or otherwise, nor guilty of any criminal act, by reason of such towing or removal, and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. Vehicles and parking shall be subject to such other rules and regulations as may be adopted by the Board from time to time and any additional restrictions, rules, and regulations as may be administered and adopted by the Residential Associations as to vehicles and parking within the Residential Property.

7.6 Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a Tract shall give the Board at least ten (10) business days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. In the event that a purchaser or transferee is other than a natural person, the purchaser or transferee shall, prior to any occupancy of the Tract, designate, in writing signed by an officer, director, or managing member of the entity, one (1) or more persons who are to be the occupants of the Tract, or any portion thereof, and register such persons with the Association. All provisions of the Governing Documents shall apply to both such Owner and the designated occupants.

7.7 Personal Property Storage and Storage Structures. No temporary or permanent utility or storage shed, storage building, tent, shack, or other structure or building shall be permitted within the Property. All personal property of Owners, residents, tenants, guests, employees, agents, and invitees shall be stored upon the Tract such that it is not visible from another Tract or the Common Areas.

7.8 Garbage Containers. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on any portion of the Property, except in clean and sanitary garbage receptacles. Each Owner shall be responsible for properly depositing garbage and trash in appropriate receptacles. Garbage and recycling pickup shall not occur between the hours of 10:00 PM and 5:00 AM or in accordance with the City's Code of Ordinances, whichever is more restrictive.

7.9 Signs. No sign, display, poster, banner, flag, advertisement, notice, or other lettering shall be erected, exhibited, displayed, inscribed, painted, hung, or affixed in or upon any portion of the Property or Improvement thereon or vehicle that is visible from the Common Areas or another Tract without the prior written approval of the ACC.

7.10 Visibility on Corners. Notwithstanding anything to the contrary, no obstruction to visibility at intersections shall be permitted, and such visibility clearances shall be maintained as required by the Board and governmental agencies. No vehicles, objects, fences, walls, hedges, shrubs, plantings, or other Improvements shall be placed or permitted on a corner where such obstruction would create a traffic problem.

7.11 Artificial Vegetation. Except as otherwise permitted by Florida law, no artificial grass, plants, or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any home, building, or other Improvement upon the Property, unless approved by the ACC.

7.12 Laundry. Subject to the provisions of section 163.04, Florida Statutes, to the extent applicable, no rugs, mops, or laundry of any kind, or any other similar type article, shall be shaken, hung, or exposed so as to be visible outside any home, building, or other Improvement upon the Property.

7.13 Use of Waterbodies. Swimming, fishing, boating, and use of personal watercraft (e.g., jet skis) is prohibited within any of the retention/detention areas within the Property. No private docks may be erected within any waterbody within the Property.

7.14 Satellite Dishes and Antennae. Except as may be installed by the Declarant or the Association, or except as approved by the Board in advance and in writing, no antennas, satellite dishes, aerials, or other devices for communication or transmission of current shall be placed on any portion of the Common Areas or any property owned by the Association. Subject to the Federal Telecommunications Act of 1996, as amended from time to time, satellite dishes approved by the ACC to be installed on a Tract or other area in the exclusive control of the Owner shall be no greater than one (1) meter in diameter. In no event, however, shall lines or wires for communication or the transmission of current be constructed, placed, or permitted to be placed within the Common Areas unless the same shall be installed by the Declarant or the Association for the common use of all Owners. Any installation of communication equipment by an Owner shall not relieve such Owner from payment of any portion of Assessments. The ACC may, from time to time, adopt reasonable standards regarding the visibility and location of permissible antennas, satellite dishes, or any other communication equipment to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation.

7.15 Air Conditioning Units. Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are permitted. All exterior air conditioning units, pumps, electric, mechanical, and all other equipment must be screened from view by landscaping or other materials as approved in writing by the ACC, and in any event, no exterior air conditioning units or other equipment shall be placed in the front of any home or building on a Tract. All roof-mounted air conditioning, mechanical equipment, vents, etc., shall be completely screened from view on all sides in a manner consistent with the color, character, and architectural style of the principal structure.

7.16 Utility Equipment. All above ground and wall mounted utility/transformer box, mechanical equipment, valves, etc., shall be located on-site with required screening on a minimum of three (3) sides that provide required screening, while maintaining required three (3) feet clearance and height to meet or exceed equipment being screened. The screen opening shall be away from public view and/or additional shrubs will be required. The screening shall occur in a manner consistent with the color, character, and architectural style of the principal structure and may incorporate landscaping as one element of screening.

7.17 Control of Contractors. Except for direct services which may be offered to the Owners (and then only according to the Rules and Regulations relating thereto as adopted from time to time), no person other than an Association director or officer or the Association's manager shall direct, supervise, or in any manner attempt to assert any control over any contractor of the Association.

7.18 Responsibility for Personal Property and Persons. Each Owner assumes sole responsibility for the health, safety, and welfare of such Owner and the residents, tenants, guests, employees, agents, and invitees of the Owner's Tract, including, without limitation, minors, and the personal property of all of the foregoing. No person shall cause or permit any damage to the Common Areas or interfere with the rights of other Owners hereunder. Neither the Declarant nor the Association shall be responsible for any loss or damage to any personal property brought into, used, placed, or left within or upon the Common Areas. Any person using the Common Areas shall do so at their own risk. By the use of the Common Areas, each Owner, resident, tenant, guest, employee, agent, and invitee agrees to indemnify and hold harmless the Listed Parties from and against all Losses incurred by or asserted against any of the Listed Parties as a result of or in any way related to use of the Common Areas by such persons. Should any Owner, or the an Owner's resident, tenant, guest, employee, agent, or invitee bring suit against any of the Listed Parties for any Losses and fail to obtain judgment therein against the Listed Parties, the Owner, or the Owner's resident, tenant, guest, employee, agent, or invitee, as applicable, shall be liable to the Listed Parties, as applicable, for all Legal Fees incurred by such Listed Parties in the defense of such suit.

7.19 Activities. The Common Areas shall not be used by the Residential Association or the Owners, residents, tenants, guests, or invitees for any society, party, religious, political, charitable, fraternal, civil, fund-raising, or other purposes without the prior written consent of the Board, which consent may be withheld for any reason.

7.20 Prohibited Uses. The Tracts within the Residential Properties shall be used for single-family residential purposes only, as further set forth in the Residential Declaration. As to all other Tracts within the Property, subject to any additional restrictions as may be set forth in any Supplemental Declaration, deed restrictions, or imposed by law, no Tract (or any portion thereof) shall be used for any of the following purposes, in whole or in part:

(i) any bookstore, novelty store, video store, peep show, movie theater or booth, massage parlor, or other business or commercial establishment offering pornographic material, displays, or performances, sometimes referred to as "adult" establishments; any adult bookstore or store selling or exhibiting pornographic materials, including, without limitation, a store displaying for sale or exhibition books, magazines, or other publications containing any combination of photographs, drawings, or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale, or rental video cassettes or other medium capable of projecting, transmitting, or reproducing independently or in conjunction with another device, machine, or equipment, an image or series of images, the content of which has been

rated or advertised generally "X" or unrated by the Motion Pictures Rating Association, or any successor thereto.

(ii) salvage yard or junk yard or used, in whole or in part, as or for warehousing, dumping, or incinerating garbage or refuse;

(iii) gambling for money facility or operation, including, but not limited to, off-track or sports betting parlor, table games (e.g., black-jack poker slot machines, video poker/black-jack/keno machines or similar devices), or bingo hall. Notwithstanding the foregoing, the prohibition shall not apply to governmental sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable gambling activities are incidental to the business operation being conducted by the Owner or tenant, or to activities which might be associated with gambling but where no money changes hands;

(iv) any use which emits a noxious, strong, unusual, or offensive odor, dust, fumes, or vapor which can be smelled outside of any building; provided, however, this provision shall not prohibit the reasonable emanation of cooking odors from any restaurants;

(v) any use which emits noise or sound (not including noise or sound associated with construction activities) which are objectionable due to intermittence, beat, frequency, shrillness, or loudness, creates a hazardous condition; provided, however, this provision shall not prohibit exterior audio speakers situated to localize sound transmission onto the Tract on which they are located to minimize unreasonable interference and impact on any adjacent Tracts or the Common Areas;

(vi) a marijuana dispensary, a marijuana research/laboratory facility, or any business which sells any cannabidiol (CBD) product that can convert to any form of tetrahydrocannabinol (THC), unless approved by the Declarant, in writing, prior to the Property Completion Date, and thereafter, the Board, which approval may be withheld for any reason whatsoever;

(vii) recycling facility or stockyard; or

(viii) fire sale or bankruptcy sale (unless pursuant to a court order).

7.21 Association Personal Property. Personal property of the Association used in connection with the Property shall not be removed from the location in which it is placed or from the Common Areas without the prior written consent of the Board.

7.22 Residential Associations Rules and Regulations. The Residential Associations shall have the authority to promulgate, adopt, amend, and rescind restrictions, rules, and regulations affecting the Residential Properties in accordance with the terms and provisions of its covenants. Such restrictions, rules, and regulations may be more restrictive than the restrictions set forth herein and the Rules and Regulations

but shall not be less restrictive. The restrictions set forth herein and the Rules and Regulations of the Association shall be superior and control over the restrictions, rules, and regulations of the Residential Associations, except in the event the restrictions, rules, and regulations of the Residential Associations are more restrictive than the restrictions set forth herein and the Rules and Regulations. The Owners, residents, tenants, guests, and invitees of the Residential Properties shall additionally abide by the restrictions, rules, and regulations of the Residential Associations.

7.23 Declarant Exemption. The use restrictions and limitations set forth in this Article VII, the Architectural Guidelines, and the Rules and Regulations shall not apply to the Declarant or to any property owned by the Declarant and shall not be applied in a manner that would prohibit or restrict the development or operation of the Property by the Declarant or adversely affect the interests of the Declarant. The Declarant shall specifically be exempt from any rules, restrictions, resolutions, or other actions of the Board or of the Members which interfere in any manner whatsoever with the Declarant's plans for development, construction, sale, lease, or use of the Property and to the Improvements thereon. The Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Article VII in addition to whatever remedies at law to which it might be entitled. Without limiting the foregoing, the Declarant shall have the right to: (i) develop and construct the Property and Improvements thereon and make any additions, alterations, or changes thereto; (ii) maintain sales offices for the sale, re-sale, and/or lease of Tracts (or any portion thereof) and of properties located outside of the Property, general offices, and construction operations within the Property; (iii) place, erect, or construct portable, temporary, or accessory buildings or structures within the Property for sales, construction storage, or other purposes deemed suitable by the Declarant; (iv) temporarily deposit, dump, or accumulate materials, trash, refuse, debris, and rubbish in connection with the development or construction of any portion of the Property; (v) post, display, inscribe, or affix to any portion of the Property, signs and other materials used in developing, constructing, selling, or promoting the sale of any portion of the Property and of properties located outside of the Property; (vi) excavate fill from any retention/detention areas or water bodies within and/or contiguous to the Property by dredge or dragline, store fill within the Property, and remove and/or sell excess fill; (vii) grow or store plants and trees within, or contiguous to, the Property and use and/or sell excess plants and trees; (viii) use construction vehicles in connection with construction, improvement, installation, or repair by the Declarant, or its agents, within the Property; and (ix) undertake all activities which, in the sole opinion of the Declarant, are necessary or convenient for the development and sale of any portion of the Property and of properties located outside of the Property.

## **ARTICLE VIII**

### **INSURANCE**

8.1 Coverages. The Association shall purchase and maintain the following insurance coverages subject to the following provisions:

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

(ii) Liability Insurance. General liability insurance coverage insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance, repair, replacement, and use of the Common Areas and any Improvements thereon, and for any other risks insured against by such policies with such limits deemed appropriate by the Board. Such policies must provide that they may not be cancelled or substantially modified by any party, without at least thirty (30) days' prior written notice to the Declarant (until the Property Completion Date) and the Association.

(iii) Flood Insurance. If the Common Areas are located within an area which has special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Association may maintain insurance coverage in appropriate amounts, available under NFIP, for all buildings and other insurable property within any portion of the Common Areas located within a designated flood hazard area.

(iv) Fidelity Coverage. Adequate fidelity coverage shall be maintained in accordance with the By-Laws.

(v) Directors and Officers Liability Insurance. Adequate Directors' and Officers' liability insurance in such amounts and with such provisions as approved by the Board.

(vi) Additional Insurance. Such other insurance coverage as deemed appropriate by the Board, from time to time, including, without limitation, worker's compensation insurance and insurance for lawsuits related to employment contracts in which the Association is a party, in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Common Areas and any Improvements now or hereafter located thereon or in the best interests of the Association and/or its Officers and Directors. All coverage obtained by the Association shall cover all activities of the Association and all properties maintained by the Association, whether or not Association owns title thereto.

8.2 Cost of Payment of Premiums and Deductibles. Except as otherwise provided herein, the costs of all insurance maintained by the Association, and any other fees or expenses incurred that may be necessary or incidental to carry out the provisions hereof, are Common Expenses.

8.3 Condemnation. In the event the Association receives any award or payment arising from the taking of any Common Areas or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and Improvements thereon to the extent deemed advisable by the Board, and the remaining balance thereof, if any, shall then be distributed pro rata to the Owners and Lenders as their respective interests may appear.

8.4 Declarant. Prior to Turnover, the Declarant shall have the right, at the Association's expense, to provide insurance coverage under its master insurance policy in lieu of any of the foregoing. Until the Property Completion Date, the Declarant shall be named as "additional insured" by endorsement on all policies obtained by the Association. Notwithstanding anything to the contrary, the Declarant Parties shall not be liable to the Residential Associations, any Owner, or any other person should the Association fail for any reason whatsoever to obtain insurance coverage for the Common Areas or should the Residential Associations or any Owner fail for any reason whatsoever to obtain insurance coverage for their Tract and/or Improvements thereon as required by the Residential Declarations, as applicable.

8.5 Insurance Trustee. The Board may, in its sole discretion, appoint itself, a Florida or national bank with trust powers, or such other person or entity, in the Board's sole discretion, as insurance trustee hereunder. If the Board fails or elects not to appoint an insurance trustee, the Association will perform directly all obligations imposed upon the insurance trustee by this Declaration. Fees and expenses of any insurance trustee shall be Common Expenses.

8.6 Association as Agent. The Association is irrevocably appointed agent for the Residential Association and each Owner of any interest relating to the Common Areas to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

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

8.8 Damage to or Destruction of the Common Areas. In the event of damage to or destruction of the Common Areas, or any portion thereof, the Association shall be responsible for repair and reconstruction after casualty. Any repair or reconstruction of Improvements hereunder shall be substantially in accordance with the plans and specifications of the original Improvement, or as the Improvement was last constructed, subject to modification to conform to the then current governmental regulation(s). In the event insurance proceeds are insufficient to effect total repair or reconstruction of the



Common Areas, or any portion thereof, damaged or destroyed by casualty, the Association may raise the necessary funds in excess of insurance proceeds by levying Special Assessments against all Owners.

8.9 Residential Properties. The Residential Associations and each Owner within the Residential Properties shall obtain and maintain insurance upon their respective portion of the Residential Properties in accordance with the Residential Declarations. Upon the request of the Association, the Residential Associations and each Owner within the Residential Properties shall be required to supply the Association with evidence of insurance coverage. The Association, its directors, officers, committee members, agents, and employees, shall not be liable to the Residential Associations or any Owner should the Residential Associations or any Owner within the Residential Properties fail for any reason whatsoever to obtain insurance coverage in accordance with the Residential Declarations. In the event of damage to or destruction of the Residential Properties, or any portion thereof, the Residential Associations and each Owner within the Residential Properties shall be responsible for repair and reconstruction after casualty of their respective portion of the Residential Properties in accordance with the Residential Declarations.

## **ARTICLE IX**

### **ASSESSMENTS AND COLLECTION**

9.1 Covenant to Pay Assessments. In order to fulfill the terms, provisions, covenants, conditions, restrictions, reservations, regulations, burdens, liens, and easements herein contained and to maintain, operate, and preserve the Common Areas for the use and benefit of the Owners, residents, tenants, employees, guests, and invitees, there is hereby imposed upon each Tract and each Owner, the affirmative covenant and obligation to pay to the Association, commencing from and after the first conveyance of a Tract from the Declarant as evidenced by the recordation of a deed in the County's Official Records, all Assessments as set forth herein, which Assessments include, without limitation, General Assessments, Special Assessments, and Individual Assessments. Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title in any manner (whether or not so expressed in the deed), including, without limitation, any purchaser at a judicial sale, shall be deemed to have covenanted and agreed to pay to the Association all Assessments or charges as are fixed, established, and collected from time to time by the Association and that each Tract and the Owners thereof are jointly and severally liable for their portion of Assessments. Any individual or entity, unless otherwise set out herein, acquiring title to a Tract shall be personally liable, jointly and severally, for any unpaid sums due and payable to the Association that are attributed to the Tract, including, without limitation, any unpaid Assessments, late fees, interest, and any Legal Fees with respect to such Tract. Each Owner is jointly and severally liable with the previous owner of the Tract for all unpaid Assessments that came due up to the time of transfer of title.

9.2 Establishment of Lien. Each Assessment, and other charges and fees set forth herein, together with interest thereon, administrative late fees, and costs of

collection, including, without limitation, all Legal Fees, shall be a charge and continuing lien in favor of the Association encumbering the Tract and all personal property located thereon owned by the Owner against whom each such Assessment is made. The lien established by this Section 9.2 shall relate back to the date of recording the Original Declaration among the County's Official Records.

9.3 General Assessments. General Assessments levied by the Association shall be used for, among other things, the purpose of operating and maintaining the Association and the Property, including, without limitation, the Common Expenses. General Assessments shall be established by the adoption of the annual budget as further set forth in the By-Laws and subject to this Section 9.3. The Board may, from time to time, determine when General Assessments will be collected by the Association (i.e., monthly, quarterly, or annually). Unless otherwise established by the Board, General Assessments shall be collected in advance on a monthly basis. The Board shall fix the date of commencement and the amount of General Assessments for each fiscal year of the Association at least thirty (30) days in advance of the commencement of the fiscal year for which the annual budget is adopted. Written notice of General Assessments shall thereupon be sent to every Owner subject thereto at least fifteen (15) days prior to payment of the first installment thereof. In the event no such notice of a change in General Assessments for the upcoming fiscal year is given, the amount payable shall continue to be the same as the amount payable for the previous fiscal year, until changed in the manner provided for herein. The amount of General Assessments (and applicable installments) may be changed at any time by the Board from that originally stipulated or from any other General Assessments that are in the future adopted. The General Assessments for any year shall be levied for the fiscal year (to be reconsidered and amended, as necessary), but the amount of any revised General Assessment to be levied during any period shorter than a full fiscal year shall be in proportion to the number of months (or other appropriate installments) remaining in such fiscal year.

9.3.1 Reserves. The Declarant does not and will not create Reserves. The Board may, but shall have no obligation to, include in the annual budget Reserves, including, without limitation, Reserves for maintenance, repair, and replacement of landscaping. Reserves shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Reserves are established. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Reserves or any portion thereof. Therefore, in the event Reserves are later created at any time, to the maximum extent permitted by law, the Declarant shall not be responsible for the payment of any such Reserves.

9.3.2 Allocation. Except as provided herein with respect to "Vacant Tracts" and "Spec Tracts" (as such terms are hereinafter defined), as further set forth below, General Assessments imposed by the Association shall be imposed against all Tracts in accordance with the assessment allocations attached hereto as Exhibit "E" and incorporated as if fully set forth herein. Subject to the rights of the Declarant pursuant to Section 9.12 below, any Tract owned by the Declarant that does not have constructed

Improvements thereon for which a Certificate of Occupancy has been issued (a "Vacant Tract") and any Tract that has Improvements constructed thereon for which a Certificate of Occupancy has been issued but is owned by the Declarant (a "Spec Tract") shall be assessed at ten percent (10%) of the General Assessment, less Reserves (if any), assessed to such Tract(s) as if they had been owned by Owners. This lesser General Assessment amount reflects that Vacant Tracts and Spec Tracts will not benefit from maintenance and other services provided by the Association. At such time as a Tract is conveyed by the Declarant to an Owner, then the Vacant Tract or Spec Tract so conveyed shall be deemed a fully assessed Tract and shall be responsible for one hundred percent (100%) of General Assessments allocated to such Tract, except as otherwise provided herein. Notwithstanding any other provision to the contrary, Vacant Tracts and Spec Tracts shall not be responsible for Reserves or Individual Assessments and, to the extent permitted by law, Special Assessments, as further set forth below. Assessments shall commence as to each Owner on the day of the conveyance of title of a Tract to such Owner. Each Owner agrees that so long as it does not pay more than the required amount, they shall have no grounds upon which to object to either the method of payment or nonpayment by other Owners or the Declarant of any sums due. Notwithstanding any provision to the contrary in this Declaration, Assessments against any Tract located within the Residential Properties shall be assessed at fifty percent (50%) of the General Assessment, less Reserves (if any), until the earlier of (1) March 30, 2027, or (2) such time as such Tract is conveyed to a third-party purchaser. For purposes of this Section 9.3.2, a 'third-party purchaser' shall be deemed to be the purchaser of a Tract that contains a residential home that has received a final or temporary Certificate of Occupancy, and shall not include any land bank, nor shall 'third-party purchaser' include any individual or entity which purchases a Tract or Tracts within the Residential Properties for purpose of constructing Improvements thereon. At such time as a Tract within the Residential Properties is conveyed to a third-party purchaser, then the Tract so conveyed shall be deemed a fully assessed Tract and shall be responsible for one hundred percent (100%) of General Assessments allocated to such Tract, except as otherwise provided herein.

9.4 Special Assessments. The Association, by and through the Board, shall have the right to levy Special Assessments, from time to time, against all Owners and all Tracts for any of the following purposes: (i) the cost of reconstructing, replacing, monitoring, or improving the Common Areas, or any portion thereof or Improvements thereon; (ii) any casualty loss affecting the Association or the Common Areas, or any portion thereof or Improvements thereon, to the extent such loss exceeds the insurance proceeds, if any, receivable by the Association as a result of such loss; (iii) any judgment against the Association (or against any Director or Officer if and to the extent such Director or Officer is entitled to be indemnified by the Association therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Association as a result of such judgment, or an agreement by the Association (or such Director or Officer to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such Director or Officer) to the extent such settlement exceeds the insurance proceeds, if any, received by the Association as a result of such settlement agreement; (iv) Legal Fees incurred by the Association in connection with litigation

(whether incurred for the preparation, filing, prosecution, or settlement thereof or otherwise), except those Legal Fees incurred by the Association in connection with the collection of Assessments or as may be the subject of an Individual Assessment; and (v) in the event of a deficit in the Association's operating account(s) resulting from inadequate payment of General Assessments or the Association's expenditures exceed the amount(s) budgeted for the then-current fiscal year. Prior to Turnover, Special Assessments may be levied by the Association with the approval of (i) a majority of the entire Board; and (ii) fifty-one percent (51%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained. After Turnover, no vote of the Members shall be required for the levy of Special Assessments, unless such Special Assessment is made for a nonessential, discretionary Improvement. Until the Property Completion Date, no Special Assessments shall be imposed without the written consent of the Declarant. Special Assessments levied hereunder shall be due within the time specified and in the amount specified by the Board in the action levying such Special Assessment. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Special Assessments through the Property Completion Date to the extent permitted by law. If, however, the Declarant is held responsible for payment of any Special Assessment prior to the Property Completion Date, the Developer shall only be responsible for payment of such Special Assessment on Vacant Tracts and Spec Tracts at the applicable rate of General Assessments set forth in Section 9.3.2 above. Special Assessments shall be subject to all of the applicable provisions of this Article IX, including, without limitation, interest charges, administrative late fees, lien filing, and foreclosure procedures.

9.5 Individual Assessments. The Association, by and through the Board, shall have the right to levy Individual Assessments, from time to time, against one (1) or more Tracts or one (1) or more Owners to the exclusion of other Tracts and Owners for any of the following purposes: (i) the costs, fees, and expenses incurred by the Association for the repair or replacement of damage to the Common Areas, or any portion thereof or Improvements thereon, caused by the misuse, negligence, or other action or inaction of the Residential Associations or an Owner, resident, tenant, employee, guest, or invitee; (ii) charges for costs and expenses of the Association which are not Common Expenses but which are attributable to a specific Tract or Tracts and which are designated as a special charge; (iii) "Use Fees" (as such term is hereinafter defined); and (iv) other fines, expenses, and charges incurred against the Residential Association or particular Tracts and/or Owners to the exclusion of others as may be contemplated in this Declaration. Individual Assessments levied hereunder shall be due within the time specified and in the amount specified by the Board in the action levying such Individual Assessment. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Individual Assessments through the Property Completion Date. Individual Assessments shall be subject to all of the applicable provisions of this Article IX, including, without limitation, interest charges, administrative late fees, lien filing, and foreclosure procedures.

9.6 Use Fees. The Association shall have the authority to charge any specific fees, dues, or charges to be paid for any special services, for any special or personal use

of the Common Areas, or to reimburse the Association for the expenses incurred in connection with such service or use ("Use Fees"). Use Fees are assessable against the Tract and the Owner as an Individual Assessment. The Association may establish, from time to time, by resolution, rule, or regulation, or by delegation to an officer or agent, including, a professional management company, Use Fees. The sums established shall be payable by the Owner utilizing the service or facility as determined by the Association.

9.7 Designation of Assessments. The designation of Assessment type and amount shall be made by the Board. Prior to the Property Completion Date, any such designation must be approved in writing by the Declarant. Such designation may be made on the budget prepared by the Board. The designation shall be binding upon all Owners.

9.8 Initial Contribution. The first purchaser of each Tract from the Declarant, at the time of closing of the conveyance from the Declarant to the purchaser, shall pay to the Declarant an initial contribution in the amount of one (1) quarter's General Assessments at the time of closing (the "Initial Contribution"). The funds derived from the Initial Contributions shall be used at the discretion of the Declarant for any purpose, including, without limitation, to offset and lessen the Declarant's funding obligations, support costs, and start-up costs.

9.9 Resale Contribution. For each conveyance of a Tract by an Owner to a purchaser after the Tract has been conveyed by the Declarant, there shall be collected from the purchaser at the time of closing of the conveyance from the Owner to the purchaser a resale contribution in the amount of one (1) quarter's General Assessments at the time of closing payable to the Association (the "Resale Contribution"). The funds derived from the Resale Contributions are income to the Association and shall be used at the sole discretion of Board for any purpose, including, without limitation, future and existing capital improvements, Common Expenses, support costs, and start-up costs. The Resale Contribution shall not be deemed advance payment of Assessments, nor shall Resale Contribution have any effect on future Assessments. The Resale Contribution shall not be applicable to conveyances from the Declarant.

9.10 Collection of Assessments. Assessments levied and imposed in accordance with this Declaration by the Association upon Owners and Tracts within the Residential Properties shall be collected by the Residential Associations, on behalf of all Owners and all Tracts within the Residential Properties. The Residential Associations shall thereafter remit such Assessment payments to the Association. Notwithstanding that Assessments are collected by the Residential Associations, Owners shall not be relieved from any personal liability for Assessments, nor from any lien and collection rights of the Association as set out in this Article IX. The duty of the Residential Associations to pay the Association Assessments on behalf of all Owners and all Tracts within the Residential Properties shall not be deferred or relieved by any non-payment of Assessments by any Owner.

9.11 Condominium Conversion. In the event any residential and/or commercial condominium is constructed within the Property, the condominium association created

therefor shall be responsible for all Assessments due against the condominium property, including, without limitation, as to each Tract and the common elements. Notwithstanding such responsibility, the Association shall have all lien and foreclosure rights against each Tract and each Owner of the condominium in such proportion as their interest in the condominium's common elements.

9.12 Declarant's Funding Obligations. Each Owner acknowledges and agrees that because General Assessments, Special Assessments, and Reserves (if any) are allocated in accordance with this Article IX, it is possible the Association may collect more or less than the amount budgeted for Common Expenses. Prior to Turnover, the Declarant shall have the option, in its sole discretion, to: (i) pay any Common Expenses incurred by the Association that exceed the Assessments received from Owners and other receivables and income of the Association, including, without limitation, the Initial Contributions and Resale Contributions, late fees, and interest charges (the "Deficit"), or (ii) pay General Assessments on Vacant Tracts and Spec Tracts at the applicable rate of General Assessments set forth in Section 9.3.2 above. Notwithstanding any other provision of this Declaration to the contrary, the Declarant shall never be required to (i) pay Assessments if the Declarant has elected to fund the Deficit instead of paying Assessments on Vacant Tracts or Spec Tracts; (ii) pay Special Assessments, Individual Assessments, or Reserves; and/or (iii) fund any deficit caused by Owners who have failed to pay Assessments and/or any other monetary obligation due to the Association. The Declarant shall elect annually whether it will pay General Assessments or fund the Deficit. Notwithstanding the foregoing, the Declarant may at any time give thirty (30) days' prior written notice to the Association changing its funding obligation election. Any of the Declarant's funding obligations to the Association may be satisfied in the form of monetary payment or by "in kind" contributions of services or materials, or by any combination of the foregoing. The Deficit, if any, to be paid by the Declarant pursuant to this Section 9.12 shall be determined by looking at the Declarant control period as a whole, without regard to quarterly, annual, or any other accounting or fiscal periods and without regard to intraperiod allocations. In that regard, in the event it is determined at Turnover that there is a Deficit and the Declarant has previously advanced funds to the Association in excess of the Deficit during the Declarant control period, the Declarant shall be entitled to the immediate repayment from the Association of the amount of funds advanced by the Declarant in excess of the Deficit. After Turnover, the Declarant shall pay General Assessments on Vacant Tracts and Spec Tracts at the applicable rate of General Assessments set forth in Section 9.3.2 above. To the extent not prohibited by law, the Declarant shall not be responsible for any Reserves, Special Assessments, or Individual Assessments, even after Turnover; but, if the Declarant is held responsible for any of the foregoing prior to the Property Completion Date, the Developer shall only be responsible for payment of same at the applicable rate of General Assessments set forth in Section 9.3.2 above. Upon transfer of title of a Tract owned by the Declarant, the Tract shall be assessed in the amount established for Tracts owned by Owners other than the Declarant, prorated as of and commencing with, the month following the date of transfer of title. THE DECLARANT DOES NOT PROVIDE A GUARANTEE OF THE LEVEL OF ASSESSMENTS. AS SUCH, THERE IS NO MAXIMUM GUARANTEED LEVEL OF ASSESSMENTS DUE FROM OWNERS. NOTWITHSTANDING THE PROPERTY

INCLUDES THE RESIDENTIAL PROPERTY, TO THE FULLEST EXTENT ALLOWABLE BY LAW, THE PROVISIONS OF SECTIONS 720.308(2) THROUGH 720.308(6), FLORIDA STATUTES, ARE NOT APPLICABLE TO THE DECLARANT OR THE CALCULATION OF THE DEFICIT OR OTHER AMOUNTS DUE FROM THE DECLARANT.

9.13 Declarant Subsidy of the Association's Budget. Prior to the Property Completion Date and/or based on the number of Tracts owned by Owners, the Declarant may seek to keep Assessments lower than they otherwise may be by subsidizing the Association's budget by making voluntary contributions in amounts determined in the Declarant's sole discretion. The amount of any such voluntary contributions may vary from time to time or may be discontinued and recommenced by the Declarant from time to time. The determination to subsidize the Association's budget, the amount of any such voluntary contribution, the discontinuance and/or recommencement of any such voluntary contributions shall all be made by the Declarant, without obligation and in the Declarant's sole discretion. Each Owner shall be solely responsible to review the Association's budget then in effect to determine if and to what extent the Declarant is making any voluntary contributions to subsidize the budget and thus lower the Assessments payable by the Owners that would otherwise be higher based on the Common Expenses. Any voluntary contribution made by the Declarant may be applied to offset the Deficit remaining at Turnover. Additionally, depending upon the financial needs of the Association, the Declarant may, in its sole discretion, loan money to the Association, from time to time, upon such terms and conditions as determined by the Declarant which shall be paid back to the Declarant pursuant to the terms and conditions thereof.

9.14 Surplus. Any surplus Assessments collected by the Association may be allocated towards the next year's Common Expenses or, in the Board's sole and absolute discretion, to the funding of Reserves, whether or not budgeted. Under no circumstances shall the Association be required to pay surplus Assessments to Owners.

9.15 Estoppel Certificates. No Owner shall sell or convey such Owner's interest in a Tract unless all sums due to the Association have been paid in full and an estoppel certificate shall have been received from the Association by such Owner. The Association shall prepare and maintain a ledger noting Assessments and all other monies due from each Owner. The party requesting the estoppel certificate shall be required to pay the Association a reasonable fee for the preparation and delivery of such estoppel certificate as established, from time to time, by the Board.

9.16 Non-Use. No Owner may be exempt from personal liability for Assessments duly levied by the Association. No Owner may release the Tract owned by such Owner from the liens and charges hereof either by waiver or suspension of the use and enjoyment of the Common Areas and Improvements thereon or by abandonment of such Owner's Tract.

9.17 Payment of Other Obligations. Each Owner shall pay all taxes and obligations relating to its Tract which, if not paid, could become a lien against the Tract

that is superior to the lien for Assessments created by this Declaration. The Association shall have the right, but not the obligation, to cure any default under any mortgage held by a Lender within the time periods provided in the mortgage held by such Lender, but the foregoing shall not impose any obligation on any such Lender to provide notice of any default to the Association. In the event the Association makes such payment on behalf of an Owner, the Association shall, in addition to all other rights reserved herein, be subrogated to all of the rights of the Lender. All amounts advanced on behalf of an Owner pursuant to this Section 9.17 shall be assessable against the Owner and the Tract as an Individual Assessment.

9.18 Subordination of the Lien to Mortgages. The lien for Assessments shall be subordinate to a bona fide first mortgage held by a Lender on any Tract recorded in the County's Official Records prior to the recordation of a claim of lien for unpaid Assessments hereunder. A Lender having a bona fide first mortgage, its successor or assignee, obtaining title to a Tract as a result of the foreclosure of its first mortgage or by deed in lieu of such foreclosure, shall hold title subject to the liability and lien of any Assessment becoming due after such foreclosure or deed in lieu of foreclosure. Further, any such Lender who acquires title to a Tract as the result of the foreclosure of its first mortgage, or by deed in lieu of such foreclosure, shall be liable for any past due Assessments or any other unpaid sums due and payable to the Association that are attributed to the Tract in an amount being the greater of one percent (1%) of the original mortgage debt or the Tract's past due Assessments or any other unpaid sums due and payable to the Association that accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association, so long as such Lender initially named the Association as a defendant in its foreclosure action. Any unpaid Assessments for which such Lender, its successor or assignee, obtaining title is not liable shall be reallocated and assessed to all Owners (including such Lender, its successor or assignee) as a part of the Common Expenses. Any other person or entity acquiring title to the Tract through the foreclosure of the first mortgage (or deed in lieu of such foreclosure) shall owe all sums due on the Tract, including, but not limited to, interest charges, administrative late fees, and Legal Fees. Any sale or transfer pursuant to a foreclosure (or by deed in lieu of foreclosure) shall not relieve the Owner from liability for, nor the Tract from, the lien of any Assessments made thereafter.

9.19 Non-Payment of Assessments. If any Assessment is not paid within ten (10) days (or such other period of time established by the Board from time to time) after the due date, then the Association, by and through the Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

(i) Charge an administrative late fee in an amount not to exceed the greater of Twenty-Five Dollars (\$25.00) or five percent (5%) of the amount of each installment that is paid past the due date.



(ii) Charge interest at the highest rate permitted by law on such Assessment from the date it becomes due until the date it is paid.

(iii) Accelerate Assessments then due for up to the next ensuing twelve (12) month period based upon the then existing amount and frequency of Assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the General Assessments, for all Special Assessments, Individual Assessments, and/or for all other amounts payable to the Association, even if levied after acceleration.

(iv) Suspend the rights to use the Common Areas and/or to vote on any matter on which Owners have the right to vote in accordance with Article XII of this Declaration.

(v) Record a claim of lien against the Tract and file an action in equity to foreclose its lien at any time after the effective date thereof in the name of the Association and in like manner as a foreclosure of a mortgage on real property.

(vi) File an action at law to collect said Assessments, interest charges, administrative late fees, and all costs of collection thereof, including, without limitation, Legal Fees, without waiving any lien rights or rights of foreclosure of the Association.

(vii) Collect any monetary obligation due to the Association from the rents paid by any tenant occupying the Tract if the Owner has leased the Tract in a manner similar to section 720.3085, Florida Statutes. Such reference to Chapter 720, Florida Statutes, shall not in any way subject thereto the Association, this Declaration, the Articles, the By-Laws, or any rules, regulations, standards, guidelines, or resolutions adopted, amended, or rescinded by the Board from time to time to Chapter 720, Florida Statutes.

9.20 Application of Payments. All payments received and applied by the Association on accounts shall be first applied to any interest charges accrued, then to any administrative late fees, then to any costs incurred in collection, including, without limitation, all Legal Fees, and then to the delinquent Assessment. The foregoing allocation of payments shall apply notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment, or any purported accord and satisfaction in any amount less than the total amount due to the Association.

9.21 Exemption. Notwithstanding anything to the contrary herein, governmental entities shall not be responsible for the payment of Assessments. Additionally, the Board shall have the right to exempt any portion of the Property from Assessments, provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes: (i) any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; and (ii) any of the Property exempted from ad valorem taxation by the laws of the State of Florida or exempted from Assessments by other provisions of this Declaration.

9.22 Collection by Declarant. If for any reason the Association shall fail or be unable to levy or collect Assessments, then in such event, the Declarant shall at all times have the right, but not the obligation, to: (i) advance such sums as a loan to the Association to bear interest and to be repaid as hereinafter set forth; and/or (ii) to levy and collect such Assessments by using the remedies available as set forth above, including, but not limited to, recovery of the costs of collection, including, without limitation, Legal Fees. Such remedies shall be deemed assigned to the Declarant for such purposes. If the Declarant advances sums, it shall be entitled to immediate reimbursement, upon written demand, from the Association for such amounts so paid, plus interest thereon at the then-applicable Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection, including, without limitation, Legal Fees.

9.23 Rights to Pay Assessments and Receive Reimbursement. The Association, the Declarant, and any Lender shall have the right, but not the obligation, jointly and severally, and at their sole option, to pay any Assessments or other charges which are in default and which may or have become a lien or charge against any Tract. If so paid, the party paying the same shall be subrogated to the enforcement rights of the Association with regard to the amounts due. If paid by the Declarant and/or a Lender, the Declarant and/or Lender, as applicable, will be entitled to immediate reimbursement, upon written demand, from the Association for such amounts so paid, plus interest thereon at the then-applicable Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection, including, without limitation, Legal Fees.

9.24 Lender's Right. Each Lender may request in writing to the Association that the Association notify such Lender of any default of the Owner of the Tract subject to the Lender's mortgage which default is not cured within thirty (30) days after the Association learns of such default. A failure by the Association to furnish notice to any Lender shall not result in liability of the Association because such notice is given as a courtesy to the Lender and the furnishing of such notice is not an obligation of the Association to the Lender.

## **ARTICLE X**

### **ARCHITECTURAL CONTROL**

10.1 ACC Membership. The ACC shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions relating to the Property. Until the Property Completion Date, the ACC shall be the Declarant and shall not be required to hold meetings to carry out the powers and duties of the ACC. From and after the Property Completion Date, the ACC shall consist of a minimum of three (3) members, who must be Owners, appointed by the Board, and who shall serve at the pleasure of the Board. From and after the Property Completion Date, the Board shall have the right to change the number of members on the ACC, and to appoint, remove, and replace all members of the ACC.

10.2 ACC Authority. The ACC shall have the authority to approve or disapprove all Improvements and alterations and additions thereto throughout the Property conducted by Owners and the Residential Associations. The ACC shall have the right to evaluate all plans and specifications as to harmony of exterior design, landscaping, location of any proposed Improvements, relationship to surrounding structures, topography, and conformity with such other reasonable requirements as shall be adopted by the ACC. The ACC may condition its approval of plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving any plans and specifications submitted by an Owner or the Residential Associations.

10.3 Approval Required. No Improvements of any type or kind whatsoever shall be constructed, installed, erected, placed, removed, planted, painted, altered, modified, replaced, or changed by any Owner on the Commercial Tracts, Daycare Tract, Multi-Family Tracts, or by the Residential Associations or an Owner of a Tract within the Residential Properties on any portion of the Residential Properties visible from outside the Residential Properties, until the plans and specifications showing the nature, kind, shape, height, materials, plans, color scheme, and location of the proposed work have been submitted to and approved in writing by the ACC. The ACC shall not, however, be responsible for reviewing any plans, specifications, or designs as to structural safety or conformance with applicable building codes or other codes and ordinances. The Residential Associations and each Owner is solely responsible for compliance with all applicable building codes and other codes and ordinances of the County, the City, and any other governmental agency having jurisdiction and shall obtain all required building and other permits from all governmental authorities having jurisdiction. Nothing in this Declaration shall be interpreted as an exemption from compliance with all applicable building codes or other codes and ordinances of the County, the City, and any other governmental agency having jurisdiction.

10.4 Architectural Guidelines. Prior to the Property Completion Date, the Declarant, and thereafter, the ACC, shall have the power to promulgate Architectural Guidelines, including, without limitation, establishment of fees as it deems necessary to carry out the provisions and intent of this Article X and standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning, or other local governmental codes. The Architectural Guidelines may also include requirements to be inserted in all contracts relating to construction within the Property, and the Residential Associations and each Owner shall include same therein. The Residential Associations and each Owner, contractor, subcontractor, and their employees shall observe, and comply with, the Architectural Guidelines that now or may hereafter be promulgated by the Declarant or the ACC. The Architectural Guidelines shall be effective from the date of adoption, shall be specifically enforceable by injunction or otherwise in addition to all other available remedies, and shall have the effect of covenants as if specifically set forth herein. The Architectural Guidelines shall not require the Residential Associations or any Owner to alter the Improvements approved by the ACC and previously constructed unless such Improvement is to be altered, changed, or modified by a subsequent request. Proposed architectural plans,

Improvements, and such other similar requests, plans, specifications, and designs submitted by, or on behalf of, the Residential Associations or an Owner and, to the extent the Association has not adopted Architectural Guidelines or other published architectural guidelines and standards, then the standards to be used by the ACC in reviewing any such request shall be in accordance with the location, size, and appearance as already existing in the Property.

10.5 ACC Meetings. The ACC shall meet from time to time as may be necessary to perform its duties hereunder. The ACC may from time to time, by resolution unanimously adopted in writing, designate a 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 ACC, except the granting of variances pursuant to Section 10.8 below. In the absence of such a designation, a majority of the ACC shall constitute a quorum to transact business at any meeting, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ACC.

10.6 ACC Procedure. An Owner desiring to obtain the approval of the ACC shall observe the following:

(i) The Residential Associations or Owner, as applicable, shall submit an application to the ACC with respect to any proposed Improvement or alteration, modification, or change to an Improvement, together with the required application(s) and other fee(s) as established by the ACC, including, without limitation, a security deposit as set forth in Section 10.7 below. The applications shall include such information as may be required by the application form adopted by the ACC. The ACC may also require submission of samples of building materials and colors proposed to be used. At the time of such submissions, the Residential Associations or the Owner, as applicable, shall, if requested, submit to the ACC, such site plans and/or plans and specifications for the proposed Improvement or alteration, modification, or change to an Improvement prepared and stamped by a registered Florida architect or designer, showing all existing and proposed Improvements and the times scheduled for completion, all as reasonably specified by the ACC.

(ii) In the event the information submitted to the ACC is, in the ACC's opinion, incomplete or insufficient in any manner, the ACC may request and require the submission of additional or supplemental information. The Residential Associations or Owner, as applicable, shall, within fifteen (15) days thereafter, comply with the request. The ACC shall not review any application submitted for approval until all plans and specifications and all other information as may be required by the ACC has been properly submitted to the ACC.

(iii) No later than thirty (30) days after receipt of all information required by the ACC for final review, the ACC shall approve or deny the application in writing. The ACC shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in the ACC's sole discretion, for aesthetic or any other reasons or to impose qualifications and conditions thereon. In approving or disapproving such plans

and specifications, the ACC shall consider the suitability of the proposed Improvements, the materials of which the Improvements will be built, the site upon which the Improvements are proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the ACC fails to respond within said thirty (30) day period, the plans and specifications shall be deemed disapproved by the ACC.

(iv) In the event that the ACC disapproves any plans and specifications, the Residential Associations or Owner, as applicable, may request a rehearing by the ACC for additional review of the disapproved plans and specifications. The meeting shall take place no later than thirty (30) days after written request for such meeting is received by the ACC, unless the Residential Associations or Owner, as applicable, waives this time requirement in writing. The ACC shall make a final written decision no later than thirty (30) days after such meeting. In the event the ACC fails to provide such written decision within said thirty (30) days, the plans and specifications shall be deemed disapproved.

(v) Upon final disapproval (even if the members of the Board and the ACC are the same), the Residential Associations or Owner, as applicable, may appeal the decision of the ACC to the Board within thirty (30) days of the ACC's written review and final disapproval. Review by the Board shall take place no later than thirty (30) days subsequent to the receipt by the Board of request therefor by the Residential Associations or Owner, as applicable. If the Board fails to hold such a meeting within thirty (30) days after receipt of request for such meeting, then the plans and specifications shall be deemed disapproved. The Board shall make a final decision no later than sixty (60) days after such meeting. In the event the Board fails to provide such written decision within said sixty (60) days after such meeting, such plans and specifications shall be deemed disapproved. The decision of the ACC, or, if appealed, the Board, shall be final and binding upon the Residential Associations or Owner, as applicable, and their heirs, legal representatives, successors, and assigns.

10.7 Security Deposit. The Residential Associations or Owner, as applicable, desiring to construct, install, erect, alter, or modify Improvements may be required by the ACC, in its sole and absolute discretion, depending upon the Improvements being requested and the manner of installation of such Improvements, to provide to the ACC, at the time of submission of plans and specifications for review and approval by the ACC, a security deposit to: (i) cover all or any part of the costs of incidental damage caused to the Common Areas, an adjacent Tract, or any other property (whether real or personal) by virtue of such work, and (ii) to pay for the review and inspection fees if and to the extent not paid by the Residential Associations or Owner, as applicable. The security deposit shall initially be One Thousand Dollars (\$1,000.00) and may be changed by the ACC from time to time without need to amend this Declaration. The Association shall not be obligated to place the security deposit in an interest-bearing account.

10.7.1 The Residential Associations or Owner, as applicable, shall be entitled to the return of the security deposit upon: (i) providing written notice to the ACC that the construction, installation, erection, alteration, or modification of Improvements

covered by the security deposit has been completed in accordance with the plans and specifications approved by the ACC; (ii) the ACC's inspection of such Improvements confirming completion; provided, however, should any incidental damage be caused to the Common Areas by virtue of such work, the security deposit shall not be returned to the Residential Associations or Owner, as applicable, until such damages have been repaired; and (iii) the payment of all review and inspection fees by the Residential Associations or Owner, as applicable. In the event the Residential Associations or Owner, as applicable, has not repaired damages to the Common Areas to the satisfaction of the ACC, the Association shall have the right, without obligation, after five (5) days' notice to the Residential Associations or offending Owner, as applicable, to repair such incidental damage and to use so much of the security deposit held by the Association to reimburse itself for the costs of such work. Further, the Residential Associations or the offending Owner, as applicable, hereby agrees to indemnify and reimburse the Association for all reasonable costs expended by the Association that exceed the security deposit, including, without limitation, Legal Fees, incurred in connection therewith. All amounts incurred or paid by the Association to repair damages caused by and not repaired by the Residential Associations or an Owner as set forth in this Section 10.7 shall, in addition to the other rights of the Association, be subject to an Individual Assessment levied by the Association against all Tracts within the Residential Properties or such Owner, as applicable, which Individual Assessment shall be collectible in the same manner as other Assessments as set forth in this Declaration.

10.7.2 Should any incidental damage be caused to an adjacent Tract by virtue of such work, the Owner of the adjacent Tract (the "Adjacent Tract Owner") may, at such Adjacent Tract Owner's sole option: (a) remedy such damage and submit to the Association a receipt, invoice, or statement therefor for reimbursement from the Residential Associations' or the offending Owner's security deposit, as applicable; or (b) allow the Residential Associations or the offending Owner, as applicable, at their sole cost and expense, to repair such incidental damage to the Adjacent Tract Owner's Tract, and upon receipt by the Association of written notice from the Adjacent Tract Owner that such incidental damage has been repaired, the Residential Associations or the offending Owner, as applicable, shall be entitled to a return of the balance of the security deposit being held by the Association, if any.

10.7.3 The Association's return of the security deposit does not and shall not be construed to constitute a determination by members and representatives of the ACC, the Declarant, and/or the Association of the structural safety, approval or integrity of any Improvements, conformance with building or other codes or standards, the proper issuance of governmental permits and approvals for any Improvements, or compliance with this Declaration.

10.7.4 The ACC, the Declarant, and the Association shall not be liable or responsible to anyone for any damages, losses, or expenses resulting from the Association's holding of the security deposit or disbursement thereof. In the event of any disagreement relating to the security deposit held by the Association or the disbursement thereof, the Association shall be entitled (but not obligated) to refuse to disburse the

security deposit (or any portion thereof) as long as such disagreement may continue, and the Association shall not become liable in any way for such refusal. The Association shall have the right at any time, after a dispute has arisen, to pay the security deposit (or any portion thereof) held by it into any court of competent jurisdiction for payment to the appropriate party, whereupon the Association's obligations hereunder shall terminate, and the Association shall be automatically released of any and all obligations.

10.8 Variances. The ACC shall have the power to grant variances from any requirements set forth in this Declaration or from the Architectural Guidelines, on a case-by-case basis, provided that the variance sought is reasonable and results from a hardship upon the Residential Association or Owner, as applicable. The granting of a variance shall not nullify or otherwise affect the right to require strict compliance with the requirements set forth in this Declaration or in the Architectural Guidelines on any other occasion, nor shall it affect in any way the Residential Associations' or Owner's obligation to comply with all governmental laws and regulations affecting the Residential Properties or the Owner's Tract, including, but not limited to, zoning ordinances, easements, setback lines, or requirements imposed by any governmental or municipal authority.

10.9 Construction Activities. Work regarding all Improvements by the Residential Associations and Owners shall be completed within the time period set forth in the application as approved by the ACC. The Residential Associations and each Owner, as applicable, shall deliver to the ACC, if requested, copies of all construction and building permits as and when received by the Residential Associations or Owner, as applicable. Each construction site shall be maintained in a neat and orderly condition throughout construction. Construction activities shall be performed on a diligent, workmanlike, and continuous basis. Roadways, easements, swales, Common Areas, and other such areas in the Property shall be kept clear of construction vehicles and construction materials and debris at all times. All refuse and debris shall be removed or deposited in a dumpster on a daily basis. No materials shall be deposited or permitted to be deposited in any Common Areas or other Tracts or be placed anywhere outside of the Tract upon which the construction is taking place. No hazardous waste or toxic materials shall be stored, handled, and used, including, without limitation, gasoline and petroleum products, except in compliance with all applicable federal, state, and local statutes, regulations, and ordinances, and shall not be deposited in any manner on, in, or within the construction site or adjacent property. All construction activities shall comply with the Architectural Guidelines. There shall be provided to the ACC, if requested, a list (name, address, telephone number, and identity of contact person), of all contractors, subcontractors, materialmen, and suppliers and changes to the list as they occur working within the Property. Contractors, subcontractors, and their employees shall utilize those roadways and entrances into the Property as are designated by the ACC for construction activities. The ACC shall have the right to require that contractors, subcontractors, and their employees check in at the designated construction entrances and to refuse entrance to persons and parties whose names are not registered with the ACC.

10.10 Inspection. There is specifically reserved to the Association and the ACC and to any agent or member of either of them, the right of entry and inspection upon any

portion of the Property at any time, within reasonable daytime hours, and without notice for the purpose of determining whether there exists any violation of the terms of any approval or the terms of this Declaration or the Architectural Guidelines. Upon the completion of any work approved by the ACC, the applicant shall give the ACC written notice of such completion. Within forty-five (45) days of receipt of the written notice of completion, the ACC, or its authorized representative, may inspect the work. If the ACC finds the work was not done in substantial compliance with the approved plans, it shall notify the Residential Associations or Owner, as applicable, in writing of the noncompliance specifying the particulars of the noncompliance. Within thirty (30) days of such noncompliance notice, the Residential Associations or Owner, as applicable, shall remedy the noncompliance to the satisfaction of the ACC. If the Residential Associations or Owner, as applicable, fails to comply, the ACC shall have the right, without obligation, to enter the Residential Properties and the Tract and remove the noncompliant Improvements or remedy the noncompliance, at the ACC's sole option. All costs, expenses, and fees incurred by the ACC in removing the noncompliant Improvements or remedying the noncompliance, including, without limitation, Legal Fees, shall be taken from the security deposit (if any) and/or shall be assessable against all Tracts within the Residential Properties or such Owner, as applicable, as an Individual Assessment.

10.11 Violation. Without limitation of any other remedies available to the Association, if work is performed in violation of this Article X, the Residential Associations or Owner, as applicable, shall, upon demand of the Association or the ACC, cause such Improvements to be removed and/or restored to its preexisting condition until approval is obtained or in order to comply with the plans and specifications originally approved by the ACC. In the event the Residential Associations or Owner, as applicable, fails to comply with such demand within the time specified therein, the Association shall have the right, without obligation, to enter the Residential Properties and Tract and remove the noncompliant Improvements, restore the noncompliant Improvements to their preexisting condition, and/or remedy the noncompliance, at the Association's sole option. All costs, expenses, and fees incurred by the Association in removing the noncompliant Improvements, restoring the noncompliant Improvements to their preexisting condition, and/or remedying the noncompliance, including, without limitation, Legal Fees, shall be taken from the security deposit (if any) and/or shall be assessable against all Tracts within the Residential Properties or such Owner, as applicable, as an Individual Assessment. Additionally, the Residential Associations and each Owner is responsible for ensuring compliance with all terms and conditions of these provisions and of the Architectural Guidelines by all of their contractors, subcontractors, and their employees. In the event of any violation of any such terms or conditions by any of the foregoing, the ACC shall have, in addition to all other remedies available to the ACC, the right to prohibit the violating contractor, subcontractor, and/or employee from entering the Property and/or performing any further services within the Property.

10.12 Exemption. Notwithstanding anything to the contrary contained in the Governing Documents, Improvements of any kind made on behalf of or by the Declarant, its contractors, subcontractors, employees, agents, and assigns, within the Property shall not be subject to the Governing Documents or review and approval by the ACC, the



Association, the Residential Association, or the Owners. Further, the Architectural Guidelines shall not be applicable to any property owned by the Declarant, including, without limitation, Vacant Tracts and Spec Tracts.

10.13 No Waiver of Future Approvals. The approval of the ACC of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by the Residential Associations, the same Owner or another Owner. Similarly, the denial by the ACC of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to approve or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by the Residential Associations, the same Owner, or another Owner.

10.14 Exculpation. By submitting a request for review and approval by the ACC, the Residential Associations and each Owner, individually and on behalf of their heirs, legal representatives, successors, and assigns, shall be deemed to have and does automatically agree to indemnify, defend, and hold harmless the ACC and its members and representatives, the Association Parties, and the Declarant Parties from and against any and all Losses arising from, relating to, or in any way connected with the Improvements or alteration to Improvements for which such request was submitted and/or the security deposit therefor. The ACC and its members and representatives, the Association Parties, and the Declarant Parties shall not be liable for any cost or damages incurred by the Residential Associations, any Owner, or any other party whatsoever, due to any mistakes in judgment, negligence, or any action of the ACC or its members or representatives, the Association Parties, or the Declarant Parties in connection with the approval or disapproval of plans and specifications. The Residential Associations and each Owner agree that they shall not bring any action or suit against the Declarant Parties, the Association Parties, or the ACC or its members or representatives in order to recover any damages caused by the actions of the Declarant Parties, the Association Parties, or the ACC or its members or representatives in connection with the provisions of this Article X. The Association does hereby indemnify, defend, and hold the Declarant Parties and the ACC and its members and representatives, harmless from all Losses of all nature resulting by virtue of the acts of the Residential Associations, the Owners, the Association Parties, the ACC or its members or representatives. The Declarant Parties, the Association Parties, the ACC and its members and representatives, and any person acting on behalf of any of them, shall not be liable for the safety, soundness, workmanship, materials, or usefulness for any purpose of any Improvements or alteration to any Improvements proposed by plans or specifications and shall not be responsible for any defects in any plans or specifications or the failure of same to comply with applicable laws or code nor for any defects in any Improvements or alteration to any Improvements constructed pursuant thereto. The Residential Associations and each Owner submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

## **ARTICLE XI** **AMENDMENTS**

11.1 Declarant Amendment. Prior to Turnover, this Declaration may be amended only by an instrument in writing signed by the Declarant and joined by the Association, except as expressly set forth herein.

11.2 Membership Amendment. After Turnover, this Declaration may be amended by the affirmative vote of two-thirds (2/3<sup>rd</sup>s) of all of the Members, except as expressly set forth herein. Such approval of a proposed amendment may be obtained by written consent in lieu of a membership meeting pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

11.3 Scrivener's Errors. Amendments to this Declaration for correction of scrivener's errors or other nonmaterial changes may be made by the Board after Turnover without the consent of the Members.

11.4 Compliance with Governmental and Lender Requirements. Notwithstanding any provision of this Declaration to the contrary, prior to Turnover, the Declarant shall have the right to amend this Declaration, from time to time, to make such changes, modifications, and additions herein and hereto as may be requested or required by any Lender, SJRWMD, or any other governmental agency or body as a condition to, or in connection with such agency's or body's regulatory requirements or agreement to make, purchase, accept, insure, guaranty, or otherwise approve loans secured by mortgages on Tracts. No approval or joinder of the Association, the Residential Associations, the Owners, or any other party shall be required or necessary to such amendment. After Turnover, but subject to Section 11.5 below, the Board shall have the right to amend this Declaration, from time to time, to make such changes, modifications, and additions therein and thereto as may be requested or required by any Lender, SJRWMD, or any other governmental agency or body as a condition to, or in connection with such agency's or body's regulatory requirements or agreement to make, purchase, accept, insure, guaranty, or otherwise approve loans secured by mortgages on Tracts. No approval or joinder of the Association, the Residential Associations, the Owners, or any other party shall be required or necessary to any such amendments by the Board. Any such amendments by the Board shall only require the approval of a majority of the entire Board.

11.5 General Restrictions on Amendments. No amendment to this Declaration shall abridge, prejudice, amend, alter, or otherwise affect the rights of the Declarant without the written joinder and consent of the Declarant thereto which may be withheld for any reason whatsoever. Any attempt to amend contrary to this prohibition shall be void ab initio and of no force or effect whatsoever. No amendment shall alter the provisions of this Declaration benefiting Lenders without the prior approval of the Lender(s) enjoying the benefit of such provisions. Any proposed amendment to this Declaration which would affect the Stormwater Management System, affect the operation and maintenance of the Stormwater Management System, or water management portions of the Common Areas shall be submitted to SJRWMD for review and approval prior to finalization of the

amendment. SJRWMD shall determine if the proposed amendment will require modification of the SJRWMD Permit. If a permit modification is necessary, SJRWMD will so advise the permittee. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to this Declaration, then the prior written consent of such entity or agency must also be obtained. No amendment that withdraws property from the terms of this Declaration shall be recorded unless approved in writing by the City Attorney's office. Nothing contained herein shall create an obligation on the part of the City Attorney's Office to approve any amendment.

11.6 Recording. Amendments to this Declaration adopted pursuant to this Article XI shall be recorded among the Official Records of the County.

11.7 No Vested Rights. Each Owner, by acceptance of a deed to a Tract, irrevocably waives any claim that such Owner has any vested rights pursuant to case law or statute with respect to this Declaration or any of the other Governing Documents. It is expressly intended that the Declarant and the Association have the broad right to amend this Declaration and the other Governing Documents, except as expressly set forth herein.

## **ARTICLE XII** **ENFORCEMENT**

12.1 Enforcement. The Residential Associations and all Owners, residents, tenants, guests, employees, and invitees shall be governed by and shall comply with the Governing Documents, all of which may be enforced by the Declarant until the Property Completion Date, the Association, the Residential Associations, any Owner, and any Lender in any action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. In the event the Declarant and/or the Association engages the services of an attorney to seek enforcement of any of the provisions of the Governing Documents, the Declarant and the Association shall be entitled to reimbursement of their Legal Fees incurred to bring about compliance, regardless of whether litigation is necessary or commenced for the enforcement. The prevailing party in any such litigation shall be entitled to reimbursement of all costs thereof including, but not limited to, Legal Fees, from the non-prevailing party. The Legal Fees incurred by the Declarant and/or the Association to bring about compliance and/or to obtain a judgment should litigation be necessary shall be levied as an Individual Assessment and collectible in the same fashion as any other Assessment as provided in this Declaration.

12.2 Default by Owners. No default by the Residential Associations or any Owner in the performance of the covenants and promises contained in the Governing Documents shall be construed or considered to be (i) a breach by the Declarant or the Association of any of their promises or covenants in the Governing Documents; (ii) an actual, implied, or constructive dispossession of another Owner from the Common Areas; or (iii) an excuse,

justification, waiver, or variance of the covenants and promises contained in the Governing Documents.

**12.3 Voting Right Suspension.** If an Owner is more than ninety (90) days delinquent in the payment of any monetary obligation due to the Association, the Board may suspend the voting rights of the Owner for such nonpayment. A voting rights suspension shall be approved by the Board at a properly noticed Board meeting. Once approved by the Board, the Board shall notify the Owner of the voting rights suspension in writing. A voting interest which has been suspended may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action pursuant to the Governing Documents. The voting rights suspension shall end upon full payment of all monetary obligations then due to the Association. Notwithstanding the foregoing, no voting right suspension shall be imposed against the Declarant through and until the Property Completion Date.

**12.4 Use Rights Suspension for Nonpayment.** If an Owner is more than ninety (90) days delinquent in the payment of any monetary obligation due to the Association, the Board may suspend the rights of the Owner, the Owner's residents, tenants, guests, employees, and invitees, to use Common Areas for such nonpayment. A use rights suspension due to nonpayment shall be approved by the Board at a properly noticed Board meeting. Once approved by the Board, the Board shall notify the Owner of the use rights suspension due to nonpayment in writing. The suspension of the right of an Owner, the Owner's residents, tenants, guests, employees, and invitees, to use the Common Areas shall not apply to that portion of the Common Areas used to provide vehicular and pedestrian access or utility services to such Owner's Tract. Notwithstanding the foregoing, no use right suspension for nonpayment shall be imposed against the Declarant through and until the Property Completion Date.

**12.5 Use Rights Suspension and Fines.** The Board may suspend, for a reasonable period of time, the rights of any Owner, the Owner's residents, tenants, guests, employees, invitees, and agents to use the Common Areas and/or may levy a reasonable fine, in such amount as determined by the Board in its sole discretion, which may exceed One Hundred Dollars and No Cents (\$100.00) per violation, against any Owner, the Owner's residents, tenants, guests, employees, invitees, and agents for any violation of the Governing Documents. Each day of a continuing violation shall be deemed a separate violation, and the fine shall continue to accrue per day per violation, which may exceed One Thousand Dollars and No Cents (\$1,000.00) in the aggregate, until the violation(s) is brought into compliance. Fines shall be assessable against the Owner and the Tract as an Individual Assessment and collectible in the same manner as all other Assessments, including, without limitation, the filing of a claim of lien and foreclosure. The rights of an Owner, the Owner's residents, tenants, guests, employees, invitees, and agents, to use the Common Areas may be suspended and/or a fine may be levied against such Owner, the Owner's residents, tenants, guests, employees, invitees, and agents, by the Board at a properly noticed meeting of the Board. Once approved by the Board, the

Board shall notify the Owner of the use rights suspension and/or fine in writing. However, as to Owners and Tracts within the Residential Properties, the suspension and/or fine may not be imposed until the individual sought to be suspended and/or fined has had a hearing before a compliance committee (the "Compliance Committee"), which shall take place not sooner than fourteen (14) days from the date the notice of the hearing is provided to the violating individual. The notice must include a description of the alleged violation; the specific action required to cure such violation, if applicable; and the date and location of the hearing. The Compliance Committee shall consist of other Owners appointed by the Board, who are not Directors, Officers, or employees of the Association, or the spouse, parent, child, brother, or sister of a Director, Officer, or employee of the Association. Only if the Compliance Committee, by majority vote, approves the proposed suspension and/or fine at such hearing can the suspension and/or fine be imposed. After the hearing, the Compliance Committee shall provide written notice to the Owner and to the Owner's residents, tenants, guests, employees, invitees, and agents, if applicable, of the Compliance Committee's findings related to the violation, including any applicable fines or suspensions that the Compliance Committee approved or rejected, and how the violation may be cured, if applicable. The foregoing provisions requiring the Compliance Committee's hearing and approval of a suspension and/or fine levied by the Board shall apply only to the Residential Properties and shall not apply to any other portion of the Property. A fine is effective upon providing written notice to the violating individual of the fine or such earlier date as set out in the written notice which fine shall not commence earlier than the date of the Board's levy of the fine. The use rights suspension is effective upon providing written notice to the violating individual of the use rights suspension. The suspension of the right of an Owner, the Owner's residents, tenants, guests, employees, invitees, and agents, to use the Common Areas shall not apply to that portion of the Common Areas used to provide vehicular and pedestrian access or utility services to such Owner's Tract. Notwithstanding the foregoing, no use right suspension or fine shall be imposed against the Declarant through and until the Property Completion Date.

12.6 No Waiver. The failure to enforce any right, provision, covenant, or condition in the Governing Documents, shall not constitute a waiver of the right to enforce such right, provision, covenant, or condition in the future.

12.7 Rights Cumulative. All rights, remedies, and privileges granted to the Declarant, the Association, and the ACC pursuant to the Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude any of them from pursuing such additional remedies, rights, or privileges as may be granted or as it might have by law.

12.8 Certain Litigation. After Turnover, excluding Assessment foreclosure(s), the Association must obtain the affirmative approval of a majority of the total voting interests of the Association prior to commencing litigation against any party in the name of the Association involving amounts in controversy in excess of One Hundred Thousand Dollars (\$100,000.00).

**ARTICLE XIII**  
**ADDITIONAL RIGHTS OF DECLARANT**

13.1 Construction and Sales Offices. The Declarant shall have the perpetual right to take such action reasonably necessary to transact any business necessary to consummate the development of the Property and sales, re-sales, leases, or encumbrances of Tracts and/or other properties owned by the Declarant or others outside of the Property. This right shall include, without limitation, the right to maintain sales/leasing offices and parking associated therewith, have signs on any portion of the Property, have employees in the offices without the payment of rent or any other fee, and have use of the Common Areas to show Tracts to prospective purchasers or lessors of Tracts or other properties owned by the Declarant outside of the Property. The sales/leasing office, signs, and all items pertaining to development and sales/leases shall remain the property of the Declarant shall not be considered a part of the Common Areas. The Declarant further reserves the right to make repairs to the Common Areas and to carry on construction activity for the benefit of the Property. The Declarant shall have all of the foregoing rights without charge or expense and without notice to the Association, the Residential Associations, or the Owners. The rights reserved hereunder shall extend beyond Turnover. The Residential Associations and each Owner acknowledges and agrees that any sales interference by the Residential Associations or any Owner, or any Owner's resident, tenant, guest, employee, agent, or invitee shall be deemed a nuisance and therefore detrimental to: (i) the quiet enjoyment of the Property by others, (ii) the value of the Tracts, and (iii) the Declarant's and/or any of the Declarant's affiliates' ability to conduct their business.

THE RESIDENTIAL ASSOCIATIONS AND ALL OWNERS, RESIDENTS, TENANTS, GUESTS, EMPLOYEES, AGENTS, AND INVITEES OF THE PROPERTY ARE HEREBY PLACED ON NOTICE THAT THE DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, AND OTHER DESIGNEES MAY BE, FROM TIME TO TIME, CONDUCTING EXCAVATION, CONSTRUCTION, AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE PROPERTY. BY THE ACCEPTANCE OF A DEED, TITLE, OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE, OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTY, THE RESIDENTIAL ASSOCIATIONS AND EACH OWNER, RESIDENT, TENANT, GUEST, EMPLOYEE, AGENT, AND INVITEE, FOR THEMSELVES AND EACH OF THEIR RESPECTIVE HEIRS, LEGAL REPRESENTATIVES, AND ASSIGNS, AUTOMATICALLY ACKNOWLEDGES, STIPULATES, AND AGREES AS FOLLOWS: (i) THAT NONE OF THE DECLARANT'S ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION, TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO THE PROPERTY WHERE THE ACTIVITIES ARE BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS); (iii) THAT THE RESIDENTIAL

ASSOCIATIONS, OWNER, RESIDENT, TENANT, GUEST, EMPLOYEE, AGENT, AND INVITEE IS AT RISK OF SUFFERING INJURY TO BOTH THEIR PERSON AND/OR PROPERTY AS A RESULT OF ENTRY UPON ANY PROPERTY WITHIN OR IN PROXIMITY TO THE PROPERTY WHERE THE ACTIVITIES ARE BEING CONDUCTED, AND THE RESIDENTIAL ASSOCIATIONS AND EACH OWNER, RESIDENT, TENANT, GUEST, EMPLOYEE, AGENT, AND INVITEE EXPRESSLY ASSUMES FULL RESPONSIBILITY FOR THE RISK OF BODILY INJURY, DEATH, OR PROPERTY DAMAGE SUFFERED AS A RESULT OF THE CONSTRUCTION AND OTHER ACTIVITIES; (iv) THAT THE RESIDENTIAL ASSOCIATIONS AND EACH OWNER, RESIDENT, TENANT, GUEST, EMPLOYEE, AGENT, AND INVITEE HEREBY RELEASES, WAIVES, DISCHARGES, AND HOLDS HARMLESS THE DECLARANT PARTIES, AND THEIR CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, AND ASSIGNS, AND ANY SUBSEQUENT DECLARANT PARTIES, FROM ALL LOSSES, CLAIMS, COSTS, LIABILITIES, DAMAGES, INCLUDING COMPENSATORY, CONSEQUENTIAL, PUNITIVE, OR OTHERWISE, AND INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE OR BODILY INJURY OR DEATH, WHETHER CAUSED BY NEGLIGENCE OR AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH THE CONSTRUCTION AND OTHER ACTIVITIES; (v) ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (vi) THAT THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO THE DECLARANT TO SELL, CONVEY, LEASE, AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE PROPERTY.

NO PERSON OR ENTITY SHALL INTERFERE WITH THE COMPLETION AND SALE OF TRACTS. WITHOUT LIMITING THE FOREGOING, THE RESIDENTIAL ASSOCIATIONS AND EACH OWNER, BY ACCEPTANCE OF A TITLE TO A TRACT, AGREES THAT ACTIONS OF THE RESIDENTIAL ASSOCIATIONS, OWNERS, RESIDENTS, TENANTS, GUESTS, EMPLOYEES, AGENTS, AND INVITEES MAY IMPACT THE VALUE OF TRACTS. THEREFORE, THE RESIDENTIAL ASSOCIATIONS AND EACH OWNER IS BENEFITED BY THE FOLLOWING RESTRICTIONS: PICKETING AND POSTING OF NEGATIVE SIGNS IS STRICTLY PROHIBITED IN ORDER TO PRESERVE THE VALUE OF THE TRACTS IN THE PROPERTY AND THE ATMOSPHERE THEREOF.

13.2 Modification. The development and marketing of the Property will continue as deemed appropriate in the Declarant's sole discretion, and nothing in the Governing Documents, or otherwise, shall be construed to limit or restrict such development and marketing. It may be necessary or convenient for the development of the Property to, as an example and not a limitation, modify the boundary lines of the Common Areas; change the zoning of any portion of the Property now existing or hereafter changed and/or to make such uses of all or any part of the Property as shall be permitted by applicable zoning regulations as they may exist from time to time; grant easements, dedications, agreements, licenses, restrictions, reservations, covenants, rights-of-way, and to take such other actions which the Declarant, or its agents, affiliates, or assignees, may deem necessary or appropriate. The Association, the Residential Associations, and the Owners

shall, at the request of the Declarant, execute and deliver any and all documents and instruments which Declarant deems necessary or convenient, in its sole and absolute discretion, to accomplish the same.

**13.3 Property Approvals.** The Declarant hereby has, shall have, and hereby reserves the right to enter upon the Property in order for the Declarant to final-out and/or close-out any and all approvals, permits, orders, conditions, and/or requirements that have been issued or imposed by any governmental entity in connection with the development and construction of the Property and all Improvements therein (collectively, the "Property Approvals"), and for the Declarant to comply and adhere to the same. Without limiting the generality of the foregoing, in exercising any such rights, the Declarant shall have the right to remove and/or relocate any and all items (including, without limitation, landscape materials, fences, and/or other Improvements) that may be required to be removed and/or relocated to final-out and/or close-out any and all Property Approvals without compensation to the Association, the Residential Associations, or the Owners. The Association is and shall be responsible for complying, and causing all Common Areas to comply, with the Property Approvals including, without limitation, those Property Approvals that may be in the Declarant's name and not yet transferred to the Association. All fees, costs, and expenses of complying with the Property Approvals shall be deemed Common Expenses of the Association. In the event the Declarant is unable to: (i) final-out and/or close-out any and all such Property Approvals as a result of Association's failure to timely and/or properly perform any of its operation, maintenance, and/or repair obligations pursuant to this Declaration and/or any other applicable governmental laws, regulations, codes, approvals, and/or rules; or (ii) obtain a return of any bond or surety posted by the Declarant in connection with the development and construction of the Property, then the Declarant shall have the immediate right, but not the obligation, in its sole discretion, to (a) commence an enforcement action against the Association, including, without limitation, monetary penalties and injunctive relief, to compel the Association to maintain such portions of the Property as required by this Declaration and/or the Property Approvals, as applicable; or (b) take any and all actions necessary, at the Association's sole cost and expense, to comply with and adhere to any such Property Approvals. The Association hereby agrees to indemnify and reimburse the Declarant (within ten (10) days of receipt of a written invoice from the Declarant) for all costs and expenses incurred by the Declarant in the event the Declarant takes actions in accordance with this Section 13.3. The rights granted to the Declarant hereunder shall survive Turnover and continue for such period of time as is necessary for the Declarant to fully comply with all Property Approvals.

**13.4 Right to Approve Sales Materials.** All sales, leasing, promotional, and advertising materials for any sale or lease of property within the Property prior to the Property Completion Date by any party shall be subject to the prior written approval of the Declarant. The Declarant shall deliver notice of the Declarant's approval or disapproval of all such materials and documents within thirty (30) days of receipt of such materials and documents, and, if disapproved, set forth the specific changes requested. If the Declarant fails to do so within such thirty (30) day period, the Declarant shall be deemed to have waived any objections to such materials and documents and to have approved



the foregoing. Upon disapproval, the foregoing procedure shall be repeated until approval is obtained or deemed to be obtained.

13.5 Promotional Events. Prior to the Property Completion Date, the Declarant, its agents, affiliates, or assignees, shall have the right, at any time, to hold marketing, special, and/or promotional events within the Property without any charge for use. The Declarant, its agents, affiliates, or assignees, shall have the right to market the Property in advertisements and other media by making reference to the Property, including, but not limited to, pictures or drawings of the Property and any and all Improvements within the Property.

13.6 Trademarks. All logos, trademarks, and designs used in connection with the Property are the property of the Declarant. No person or entity shall use the name of the Property, its logo, or any derivative of such name or logo in any printed or promotional material without the Declarant's prior written approval. The Association shall have no right to use the foregoing prior to the Property Completion Date, except with the express written permission of the Declarant. After the Property Completion Date, such right shall automatically pass from the Declarant to the Association. Notwithstanding the foregoing, Owners may use the name of the Property in printed or promotional materials where such term is used solely to specify that particular property is located within the Property.

13.7 Refund of Taxes and Other Charges. Unless otherwise provided herein, the Association agrees that any deposits, taxes, fees, or other charges paid by the Declarant to any governmental authority, utility company, or any other entity which at a later date are refunded in whole or in part, shall be returned to the Declarant in the event such refund is received by the Association. In the event the Association fails or refuses to return any such deposits, taxes, fees, or other charges to the Declarant within ten (10) days of receipt, the Declarant, without limitation of other available remedy, shall be issued a credit in the same amount of any such deposits, taxes, fees, or other charges against its financial obligations in favor of the Association.

13.8 Additional Covenants. The Declarant may record additional covenants, conditions, restrictions, and easements applicable to portions of the Property, and may form sub-associations, condominium associations, or cooperatives governing such property. No person or entity shall record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without the Declarant's prior review and prior written consent. Evidence of the Declarant's prior written consent shall be obtained in the form of a joinder executed by the Declarant and recorded with such instrument. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect whatsoever unless subsequently approved by written consent signed by the Declarant and recorded in the County's Official Records.

13.9 Declarant as Attorney-In-Fact. The Residential Associations and each Owner, by reason of having acquired ownership of a Tract, whether by purchase, gift, operation of law, or otherwise, and each resident and tenant of a Tract, by reason of

occupancy, is hereby declared to have acknowledged and agreed to: (i) automatic consent to any rezoning; replatting; creation of one (1) or more special taxing districts; amendment, modification, and/or termination of the Title Documents (if any); covenant in lieu of unity of title; change, addition, or deletion made in, on, or to the Property by the Declarant (collectively, the "Modifications"); and (ii) have waived any right to object to or comment on any matter regarding the Modifications, including, without limitation, the form or substance of any Modification. In respect thereto, the Residential Associations and each Owner, resident, and tenant of a Tract hereby designates the Declarant to act as agent and attorney in fact on behalf of the Residential Associations and such Owner, resident, and tenant to consent to any such Modification. If requested by the Declarant, the Residential Associations and each Owner shall evidence consent to a Modification in writing (provided, however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). Further, the Residential Associations and each Owner, by reason of having acquired ownership of a Tract, hereby agrees to execute, at the request of the Declarant, any document and/or consent which may be required by any government agency to allow the Declarant and/or its affiliates to complete the plan of development of the Property, as such plan may be hereafter amended, and the Residential Associations and each Owner hereby further appoints the Declarant as the Residential Associations' and such Owner's agent and attorney-in-fact to execute, on behalf and in the name of the Residential Associations and each such Owner, any and all of such documents and/or consents. This power of attorney is coupled with an interest and is therefore irrevocable.

13.10 Affirmative Obligation of the Association. In the event the Association believes that the Declarant has failed in any respect to meet the Declarant's obligations under this Declaration or under law or the Common Areas are defective in any respect, the Association shall give written notice to the Declarant detailing the alleged failure or defect. The Association agrees that once the Association has given written notice to the Declarant pursuant to this Section 13.10, the Association shall be obligated to permit the Declarant and its agents to perform inspections of the Common Areas and to perform all tests and make all repairs/replacements deemed necessary by the Declarant to respond to such notice at all reasonable times, including, without limitation, during normal business hours. The rights reserved in this Section 13.10 include the right of the Declarant to repair or address, in the Declarant's sole option and at the Declarant's expense, any aspect of the Common Areas deemed defective by the Declarant during its inspections of the Common Areas.

13.11 Duration of Rights. The rights and privileges of the Declarant as set forth in this Article XIII are in addition to, and are in no way a limit on, any other rights or privileges of the Declarant. The rights of the Declarant set forth in this Declaration shall, unless specifically provided to the contrary herein, extend for a period of time ending upon the earlier of: (i) the Property Completion Date; or (ii) a relinquishment by the Declarant in an amendment to this Declaration. The Association, the Residential Associations, or any Owner or group of Owners, shall not record any document that, in any way, affects, limits, or restricts the rights of the Declarant or conflict with the provisions of the Governing Documents.

13.12 Amendment and Assignment. This Article XIII may not be suspended, superseded, or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by the Declarant. All or any part of the rights, exemptions, powers, and reservations of the Declarant herein contained may be conveyed or assigned, in whole or in part, to other persons or entities by an instrument in writing duly executed, acknowledged and, at Declarant's option, recorded in the County's Official Records.

## **ARTICLE XIV**

### **STORMWATER MANAGEMENT SYSTEM**

14.1 Maintenance. The Association shall be responsible for the maintenance, repair, replacement, management, and operation of the Stormwater Management System throughout the Property in accordance with the SJRWMD Permit as part of the Common Expenses. Maintenance of the Stormwater Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance, or other stormwater management capabilities as permitted by SJRWMD. Additionally, the Association shall provide fulltime maintenance staff for the perpetual operation and maintenance of the underground exfiltration system which may be satisfied by retaining a licensed community association management company with fulltime maintenance personnel. Any repair or reconstruction of the Stormwater Management System shall be as permitted, or if modified, as approved by SJRWMD. In the event the Association fails to properly maintain or repair the Stormwater Management System, the County shall have the right, but not the obligation, to maintain or repair the Stormwater Management System and obtain reimbursement from the Association which shall be Common Expenses.

14.2 No Construction. Except as permitted by the SJRWMD Permit, no construction activities may be conducted relative to any portion of the Stormwater Management System without the prior written consent of SJRWMD. Prohibited activities include, but are not limited to: (i) digging or excavation; (ii) depositing fill, debris, or any other material or item; (iii) constructing or altering any water control structure; or (iv) any other construction to modify the Stormwater Management System. No vegetation in retention/detention areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from SJRWMD. Nothing in this Article XIV shall be construed to allow any person to construct any new water management facility, or to alter the Stormwater Management System or any portion thereof, without first obtaining the necessary permits from all governmental agencies having jurisdiction, including SJRWMD, the Association, and the Declarant. Construction and maintenance activities which are consistent with the design and permit conditions approved by SJRWMD in the SFWMD Permit may be conducted without specific written approval from SJRWMD.

14.3 Access. The Association may enter any portion of the Property and perform any maintenance, repair, replacement, alteration, modification, or improvement deemed necessary to properly provide, maintain, or restore the Stormwater Management System. No Owner, or other person or entity, including, without limitation, the Residential

Associations, shall unreasonably deny or prevent access to water management areas for maintenance, repair, replacement, alteration, modification, or improvement purposes by the Declarant, the Association, or any appropriate governmental agency that may reasonably require access. Nonexclusive easements therefor are hereby specifically reserved and created.

14.4 Retention/Detention Areas. No portion of the Property shall be increased in size by filling in any retention/detention area that it abuts. No person shall fill, dike, rip-rap, block, divert, or change the established retention/detention areas that have been or may be created without the prior written consent of the Declarant, prior to Turnover, and thereafter, the Association. No person other than the Declarant, the Association, the Residential Associations, and the Owners may draw water for irrigation or other purposes from any retention/detention areas, nor is any boating, wading, or swimming in such retention/detention areas allowed. Owners shall not remove native vegetation (including, without limitation, cattails) that becomes established within retention/detention areas abutting their Tracts, and the Residential Associations shall not remove native vegetation (including, without limitation, cattails) that becomes established within retention/detention areas abutting the Residential Properties. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp.

14.5 Maintenance upon Termination. In the event of termination, dissolution, or final liquidation of the Association, the portions of the Common Areas containing the Stormwater Management System shall be conveyed to an appropriate agency of local government; and if local government declines to accept the conveyance, then such portions of the Common Areas shall be dedicated to a similar not for profit corporation. Notwithstanding the foregoing, the Residential Associations and all Owners shall be jointly and severally responsible for the operation and maintenance of the Stormwater Management System in accordance with the requirements of the SJRWMD Permit, unless and until an alternate entity assumes responsibility as set forth in the SKJRWMD Permit.

14.6 Owner's Obligations. The Residential Associations and each Owner at the time of the construction of an Improvement shall comply with the construction plans for the Stormwater Management System approved and on file with SJRWMD. No Owner nor the Residential Associations may construct or maintain any Improvement or undertake or perform any activity in the buffer areas or drainage easements described in the SJRWMD Permit and the Plats, unless prior approval is received from the Association and SJRWMD.

14.7 Turnover of Stormwater Management System. At Turnover, the Declarant shall deliver to the Association the maintenance plan for the Stormwater Management System, if required by the SJRWMD Permit, accompanied by an engineer's certification that the Stormwater Management System is functioning in accordance with all approved plans and permits. To the extent any such engineer's report indicates any corrective action is required, the Declarant shall be required to diligently undertake such corrective

action at the Declarant's expense and post a cash bond with the Association for the estimated costs of such corrective action.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

15.1 Commercial Association. Notwithstanding any reference to Chapter 720, Florida Statutes, or any section thereof, herein or in any other Governing Documents, the Association is not intended, is not, and shall not be deemed a "homeowners' association" subject to Chapter 720, Florida Statutes. The Association is organized under the Florida Not For Profit Corporation Act and not under Chapter 720, Florida Statutes. Such reference to Chapter 720, Florida Statutes, or any section thereof, shall not in any way subject the Association or the Governing Documents to Chapter 720, Florida Statutes, or any section thereof.

15.2 Delegation. The Association may delegate all or a portion of its obligations hereunder to a licensed manager or professional management company selected by the Board, from time to time. The Association specifically shall have the right to pay for management services on any basis approved by the Board (including, without limitation, bonuses or special fee arrangements for meeting financial or other goals) as Common Expenses.

15.3 Binding Effect. Subject to the Declarant's right to amend this Declaration prior to Turnover and the Association's right to amend this Declaration after Turnover, the covenants, conditions, and restrictions of this Declaration shall run with and bind the land and shall be binding upon and inure to the benefit of and be enforceable by the Declarant, the Association, the Residential Associations, and the Owners, and their respective legal representatives, heirs, successors, and assigns. However, the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary.

15.4 Compliance with Provisions. The Residential Associations and all present and future Owners, residents, tenants, guests, employees, agents, and invitees shall be subject to and shall comply with the provisions of the Governing Documents. The acceptance of title to or interest in a Tract, the occupancy or leasing of a Tract (or any portion thereof), or use of the Common Areas shall constitute an adoption, consent, and ratification by the Residential Associations and such Owners, residents, tenants, guests, employees, agents, and invitees of the provisions of the Governing Documents, whether or not any reference to the Governing Documents is contained in any instrument by which such person acquired title to or an interest in any portion of the Property, in any occupancy agreement, or in any lease agreement. The Declarant shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than the Declarant.

15.5 Interpretation. The provisions of the Governing Documents shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and

maintenance of the Property. Article, section, and paragraph captions, headings, and titles inserted throughout the Governing Documents are intended as a matter of convenience only and in no way shall such captions, headings, or titles define, limit, or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of the Governing Documents. Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

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

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

15.8 Notices. Any notice or other communication required or permitted to be given to any person, firm, or entity under the provisions of the Governing Documents shall be deemed to have been properly sent when: (i) mailed, postage prepaid, or electronically transmitted to each Owner at the mailing address or electronic mailing address or facsimile number of the person whose name appears as the Owner on the records of the Association at the time of such notice and, in the absence of any specific mailing address, at the address of the Tract owned by such Owner; (ii) mailed, postage prepaid, or electronically transmitted to the Residential Association at the Residential Associations' mailing address as reflected in the records of the Florida Department of State, Division of Corporations or the electronic mailing address or facsimile number of the person whose name appears as contact for the Residential Associations on the records of the Association at the time of such notice; (iii) mailed, by certified mail, return receipt requested, to the Association at the Association's mailing address as reflected in the

records of the Florida Department of State, Division of Corporations, or such other address as the Association shall hereinafter notify the Declarant and the Owners of in writing; and (iv) mailed, by certified mail, return receipt requested, to the Declarant at 2300 Glades Road, Suite 202E, Boca Raton, Florida 33431, or such other address as the Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in the Declarant's address being deemed notice to the Residential Associations and the Owners.

15.9 Florida Statutes. The Governing Documents are governed by the laws of the State of Florida. Whenever the Governing Documents refer to the Florida Statutes, it shall be deemed to refer to the Florida Statutes as they exist and are effective on the date this Declaration is recorded in the County's Official Records.

15.10 Venue. Venue for any action, proceeding, or litigation arising out of or concerning the Governing Documents shall be brought and heard in a court located in the County to the exclusion of all other venues and the Residential Associations, Owners, residents, tenants, guests, employees, agents, and invitees hereby expressly waive their rights to venue elsewhere.

15.11 Jury Waiver. THE RESIDENTIAL ASSOCIATIONS AND EACH OWNER, RESIDENT, TENANT, GUEST, EMPLOYEE, AGENT, AND INVITEE HEREBY KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO ENFORCE, DEFEND, OR INTERPRET ANY RIGHT OR REMEDIES UNDER, OR ARISING IN CONNECTION WITH AND/OR RELATING TO, WITHOUT LIMITATION, THE GOVERNING DOCUMENTS, USE OF THE PROPERTY, COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, OR VALIDATION, PROTECTION, OR ENFORCEMENT ACTION OR OMISSION OF ANY PARTY.

15.12 No Representations or Warranties NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY ANY OF THE DECLARANT PARTIES IN CONNECTION WITH ANY PORTION OF THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, LEASE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES, OR REGULATION THEREOF, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION.

15.13 Reliance. BEFORE ACCEPTING TITLE TO OR INTEREST IN A TRACT, EACH OWNER HAS THE RIGHT TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THE GOVERNING DOCUMENTS. BY ACCEPTANCE OF TITLE TO OR INTEREST IN A TRACT, EACH OWNER ACKNOWLEDGES HE/SHE/IT HAS SOUGHT AND RECEIVED SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. THE DECLARANT IS RELYING ON EACH OWNER CONFIRMING IN ADVANCE OF ACQUIRING A TRACT THAT THE GOVERNING DOCUMENTS ARE VALID, FAIR, AND ENFORCEABLE. SUCH

RELIANCE IS DETRIMENTAL TO THE DECLARANT. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXIST PROHIBITING EACH OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THIS DECLARATION IS INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR THE DECLARANT TO SUBJECT THE PROPERTY TO THE GOVERNING DOCUMENTS, EACH OWNER DOES HEREBY RELEASE, WAIVE, COVENANT NOT TO SUE, ACQUIT, SATISFY, AND FOREVER DISCHARGE THE DECLARANT PARTIES FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES, AND DEMANDS WHATSOEVER, IN LAW OR IN EQUITY, WHICH AN OWNER MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR, OR ASSIGN OF THE OWNER HEREAFTER CAN, SHALL, OR MAY HAVE AGAINST THE DECLARANT PARTIES FOR, UPON, OR BY REASON OF ANY MATTER, CAUSE, OR THING WHATSOEVER RESPECTING THE GOVERNING DOCUMENTS. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

15.14 Official Records to Lenders. The Association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the Property or the Association. The Association or its authorized agent may charge a reasonable fee, in such amount as determined in the Board's sole discretion, to the prospective purchaser or lienholder or the current Owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, plus the reasonable cost of photocopying and any attorneys' fees incurred by the Association in connection with the response.

15.15 Notice to Lender. Upon written request by a Lender, identifying the name and address of the Lender and the name and address of the applicable Owner, the Lender shall be entitled to timely written notice of: (i) any condemnation loss or casualty loss which affects a material portion of the Tract to the extent the Association is notified of the same; (ii) any delinquency in the payment of Assessments owed by an Owner subject to a first mortgage held by the Lender which remains uncured for a period of sixty (60) days; (iii) any lapse, cancellation, or material modification of any insurance policy or fidelity coverage maintained by the Association; and (iv) any proposed action that specifically requires the consent of the Lender. In the event the Association fails to provide the Lender with written notice of any of the foregoing, the Declarant and the Association shall not be liable for such failure.

15.16 Consent and Release for Use of Likeness. Each Owner, by obtaining title to a Tract, and each resident and tenant of a Tract, by occupancy of a Tract (or any portion thereof), and each guest, employee, agent, and invitee of an Owner, resident, or tenant, by use of any portion of the Property and/or participation in or attendance at any event of the Association or the Declarant, is hereby deemed to have consented and agreed to the following: (i) the taking and use, including, without limitation, in marketing materials and/or media publications, of photographs and/or videos of such persons during any use of any portion of the Property and/or during any participation in any and all activities sponsored,



promoted, or arranged by or through the Declarant and/or the Association, whether or not such activities take place on the Property or elsewhere; and (ii) waiver of any and all rights to inspect, approve, or receive compensation for the taking and use of such person's photographs and/or videos and the use of such person's likeness in any marketing materials, media publications, or other advertising.

15.17 Duration. All of the covenants, conditions, restrictions, and provisions of this Declaration shall run with and bind the Property for a term of fifty (50) years from the date of recording this Declaration among the Official Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless an instrument executed by at least eighty percent (80%) of the total voting interests of the Association and by all mortgagees having a first mortgage encumbering any Tract has been recorded among the Official Records of the County agreeing to terminate this Declaration.

**[SIGNATURE PAGES FOLLOW]**

**LOTIS WELLINGTON, LLC**

**IN WITNESS WHEREOF, JKM ACQUISITIONS, LLC**, a Florida limited liability company, as Declarant, has caused this instrument to be signed on this \_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

**JKM ACQUISITIONS, LLC**,  
a Florida limited liability company

By: \_\_\_\_\_  
Adam P. Freedman, its Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_  
\_\_\_\_\_

**STATE OF FLORIDA                    )**  
**COUNTY OF PALM BEACH        )**

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2025, by Adam P. Freedman, as Manager for **JKM ACQUISITIONS, LLC**, Florida limited liability company, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

My Commission Expires:

**CONSENT AND JOINDER OF  
LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION, INC.**

**IN WITNESS WHEREOF**, the undersigned, **LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, hereby agrees, acknowledges, understands, accepts, and consents to the **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LOTIS PALM BAY** (the "Declaration"), and has caused this instrument to be signed on this \_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

**STATE OF FLORIDA            )**  
**COUNTY OF PALM BEACH    )**

**LOTIS PALM BAY 1 HOMEOWNER'S  
ASSOCIATION, INC.,**  
a Florida not for profit corporation

By: \_\_\_\_\_  
James S. Gielda, its President

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2025, by James S. Gielda as President for **LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

**CONSENT AND JOINDER OF  
LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.**

**IN WITNESS WHEREOF**, the undersigned, **LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, hereby agrees, acknowledges, understands, accepts, and consents to the **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LOTIS PALM BAY** (the "Declaration"), and has caused this instrument to be signed on this \_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

**STATE OF FLORIDA            )**  
**COUNTY OF PALM BEACH    )**

**LOTIS PALM BAY 2 HOMEOWNER'S  
ASSOCIATION, INC.,**  
a Florida not for profit corporation

By: \_\_\_\_\_  
James S. Gielda, its President

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2025, by James S. Gielda as President for **LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

**CONSENT AND JOINDER OF  
LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION, INC.**

IN WITNESS WHEREOF, the undersigned, **LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, hereby agrees, acknowledges, understands, accepts, and consents to the **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LOTIS PALM BAY** (the "Declaration"), and has caused this instrument to be signed on this \_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

**LOTIS PALM BAY 3 HOMEOWNER'S  
ASSOCIATION, INC.**,  
a Florida not for profit corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
James S. Gielda, its President

Post Office Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**STATE OF FLORIDA            )**  
**COUNTY OF PALM BEACH    )**

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2025, by James S. Gielda as President for **LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

TBD

**EXHIBIT “B”**

**SJRWMD PERMIT**

**EXHIBIT "C"**

**ARTICLES OF INCORPORATION OF  
LOTIS PALM BAY PROPERTY OWNER'S ASSOCIATION, INC.**



**ARTICLES OF INCORPORATION OF  
LOTIS PALM BAY PROPERTY OWNER’S ASSOCIATION, INC.**

In order to form a not for profit corporation under and in accordance with the provisions of Chapter 617, Florida Statutes, the undersigned hereby incorporates this not for profit corporation for the purposes and with the powers hereinafter set forth, and to that end, the undersigned by these Articles of Incorporation, certifies as follows:

**ARTICLE I  
DEFINITIONS**

All initially capitalized terms used herein shall have the same meaning as set out in the Declaration of Covenants, Conditions, and Restrictions for Lotis Palm Bay, as amended from time to time (the “Declaration”), to which these Articles of Incorporation of Lotis Palm Bay Property Owner’s Association, Inc. are attached as Exhibit “C”, as amended from time to time (these “Articles”), unless an alternative definition is provided herein.

**ARTICLE II  
NAME AND ADDRESS**

The name of the corporation is **LOTIS PALM BAY PROPERTY OWNER’S ASSOCIATION, INC.** (the “Association”). The principal address and mailing address of the Association shall be 2300 Glades Road, Suite 202E, Boca Raton, Florida 33431, or such other principal address or mailing address and may be designated, from time to time, by the Board.

**ARTICLE III  
OBJECTS AND PURPOSES**

The objects and purposes for which the Association is formed are those as authorized by the Governing Documents, including, without limitation, the operation, maintenance, and control of the Common Areas and all Improvements thereon, including, without limitation, the Stormwater Management System, to conduct and transact generally the business of a not for profit corporation, and to do all things and exercise all powers and perform all functions that a not for profit corporation is authorized or empowered to do, exercise, or perform under and by virtue of the Florida Not For Profit Corporation Act. The Association is not intended, is not, and shall not be deemed a “homeowners’ association” subject to Chapter 720, Florida Statutes. The Association is organized under Chapter 617, Florida Statutes, and not under Chapter 720, Florida Statutes.

## **ARTICLE IV**

### **POWERS**

Without limitation, the powers of the Association shall include and be governed by the following provisions:

4.1 Common Law and Statutory Powers. The Association shall have all common-law and statutory powers of a not for profit corporation under the laws of Florida which are not in conflict with the Declaration, these Articles, and the By-Laws, including those powers under and pursuant to the Florida Not For Profit Corporation Act. In the event of any conflict between these Articles and the By-Laws, these Articles shall control; and in the event of any conflict between these Articles and the Declaration, the Declaration shall control.

4.2 Necessary Powers. The Association shall also have those powers reasonably necessary to fulfill the purposes for which the Association is formed, which powers shall include, but not be limited to, the following:

(a) To make Assessments for the operation, management, maintenance, repair, replacement, improvement, and reconstruction after casualty of the Common Areas pursuant to the Declaration; and to collect Assessments, including, without limitation, by lien filing and foreclosure procedures.

(b) To purchase equipment, supplies, material, and other personal property as may be required in the maintenance, repair, replacement, improvement, operation, and management of the Common Areas pursuant to the Declaration.

(c) To buy, accept, own, operate, lease, sell, trade, and mortgage both real and personal property as may be necessary or convenient in the administration of the Association.

(d) To acquire and pay for insurance on the Common Areas, as set forth in the Declaration, for the protection of the Association and the Common Areas and to acquire and pay for Directors and Officers liability insurance to protect the Directors and Officers of the Association.

(e) To make, amend, alter, rescind, and promulgate reasonable rules and regulations for the use and appearance of the Property for the benefit, health, safety, and welfare of the Members.

(f) To provide for management, maintenance, repair, replacement, improvement, and operation of the Common Areas pursuant to the Declaration and to delegate to a management entity or management agent those powers and duties which are not specifically required by these Articles to be retained by the Board. All contracts and agreements to be entered into by the Association for the management, maintenance, repair, replacement, improvement, and operation of the Common Areas shall be separate

and apart from any contract or agreement for similar services to be provided to the Residential Property or for the benefit of the Residential Association and its members.

(g) To employ and dismiss vendors, contractors, attorneys, accountants, engineers, architects, and other professionals and personnel to perform the services required for proper operation of the Property and the Association.

(h) To negotiate, enter into, amend, and terminate contracts and agreements, including, without limitation, with governmental authorities.

(i) To use and expend the monies collected by the Association to effectuate its purposes and powers, including, but not limited to, the payment of utilities and all taxes and assessments made by public bodies which may be levied upon the Common Areas.

(j) To select depositories for the Association funds and to determine the manner of receiving, depositing, and disbursing corporate funds.

(k) To enforce by legal means the provisions of the Governing Documents.

(l) To possess, enjoy, and exercise all powers necessary to implement, enforce, and carry into effect the powers above described, including the power to acquire, hold, convey, and deal in real and personal property.

(m) To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of the purposes and powers of the Association under the Governing Documents.

## **ARTICLE V**

### **MEMBERS**

5.1 Membership. Except as set forth herein, every person or entity who is a record owner of a fee or undivided fee interest in any Tract shall automatically be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member. No Member may assign, hypothecate, or transfer in any manner membership in the Association except as an appurtenance to the Tract. Any Member of the Association who conveys or loses title to a Tract by sale, gift, bequest, judicial decree, or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Tract and shall lose all rights and privileges of membership resulting from ownership of such Tract.

5.2 Voting Rights. The Association shall have two (2) classes of voting membership:

5.2.1 Class A. Except as set forth herein, Class A Members shall be all Members, with the exception of the Declarant while the Declarant is a Class B Member. Each of the three (3) Residential Associations shall each be entitled to one (1) vote per Tract (lot) within the respective Residential Association, which votes shall not be divisible and shall be cast by the voting member for the Residential Property in the manner provided by the By-Laws; the North Multi-Family Tract and the South Multi-Family Tract shall each be entitled to one (1) vote per multi-family unit within the respective Tract, which votes shall not be divisible and shall be cast in the manner provided by the By-Laws; and the Commercial Tracts shall be entitled to one (1) vote for each one thousand (1,000) square feet of gross building area constructed on the respective Tract, which votes shall not be divisible and shall be cast in the manner as provided by the By-Laws. No Member shall be entitled to a vote for increments of square footage less than one thousand (1,000), except that each Member shall be entitled to at least one (1) vote.

5.2.2 Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to one thousand (2,000) votes per Declarant, totaling two thousand (2,000) votes. Class B membership shall cease and be converted to Class A membership upon Turnover.

## **ARTICLE VI**

### **TERM**

The term for which the Association is to exist shall be perpetual. In the event of dissolution of the Association, other than incident to a merger or consolidation, the Common Areas, including, without limitation, the Stormwater Management System, shall be conveyed to a local government body acceptable to SJRWMD. In the event the local government body does not accept such conveyance, the Common Areas, including, without limitation, the Stormwater Management System, shall be conveyed to a non-profit organization with similar purposes. Any Member may petition the local Circuit Court for the appointment of a receiver to manage the affairs of the dissolved Association and to manage the Property and Improvements thereon, in the place and stead of the Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and the Property. Further, the Property shall continue to be subject to the provisions of the Declaration, including, without limitation, Assessments levied in accordance with the Declaration. Each Owner shall continue to be personally obligated to the successors or assigns of the Association for Assessments to the extent that Assessments are required to enable the successors or assigns of the Association to properly maintain, operate, and preserve the Common Areas as then-existing and as then-continues to be used for the common use and enjoyment of the Owners.

## **ARTICLE VII**

### **INITIAL SUBSCRIBER**

The name and address of the initial subscriber to these Articles is as follows:

JKM Acquisitions, LLC

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

**ARTICLE VIII**  
**BOARD OF DIRECTORS**

The property, business, and affairs of the Association shall be managed by the Board, which shall consist of three (3) Directors until Turnover. Upon Turnover, the Board shall consist of seven (7) Directors, including one (1) Director from and representing the Lotis Palm Bay 1 Homeowner's Association, Inc; (1) Director from and representing the Lotis Palm Bay 2 Homeowner's Association, Inc; one (1) Director from and representing the Lotis Palm Bay 3 Homeowner's Association, Inc; one (1) Director from and representing the North Multi-Family Tract; one (1) Director from and representing the South Multi-Family Tract; and two (2) Directors from and representing the Commercial Tracts. Except for Directors appointed by the Declarant, Directors shall be Members of the Association or shall be the authorized representative, officer, or employee of corporate Members of the Association. The Directors shall be elected in the manner set forth in the By-Laws. The following are the names and addresses of the persons appointed to act as Directors until their successors are elected and qualified:

James S. Gielda

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

Adam P. Freedman

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

Jeff Johnson

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

**ARTICLE IX**  
**OFFICERS**

The affairs of the Association shall be managed by a President, a Vice President, a Secretary, and a Treasurer, and such other Officers as the Board may from time to time designate in the Board's sole discretion, the powers and duties of which shall be designated by the Board as the Board deems necessary in its sole discretion, all of whom shall serve at the pleasure of the Board. Upon Turnover, all Officers must be Members of the Association. The names and addresses of the current Officers of the Association, who shall hold office until their successors are duly elected in the manner set forth in the By-Laws are as follows:

PRESIDENT

James S. Gielda

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

VICE PRESENT	Adam P. Freedman	2300 Glades Road, Suite 202E Boca Raton, Florida 33431
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SECRETARY/ TREASURER	Jeff Johnson	2300 Glades Road, Suite 202E Boca Raton, Florida 33431
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## **ARTICLE X**

### **INDEMNIFICATION**

Each and every Director, Officer, and member of any duly authorized committee of the Association shall be indemnified by the Association against all costs, expenses, and liabilities, including attorney and paralegal fees, costs, and expenses at all trial and appellate levels and post judgment proceedings, reasonably incurred by or imposed upon him/her in connection with any negotiation, proceeding, arbitration, litigation, or settlement in which he/she becomes involved by reason of his/her being or having been a Director, Officer or committee member of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director, Officer, or committee member of the Association at the time such fees, costs, or expenses are incurred. Notwithstanding the above, in the event of a settlement in connection with any of the foregoing, the indemnification provisions provided in this Article X shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the fees, costs, and expenses of such settlement as being in the best interest of the Association. In the event a Director, Officer, or committee member of the Association admits that he/she is guilty of or is adjudged guilty of willful misconduct or gross negligence in the performance of his/her duties, the indemnification provisions of this Article X shall not apply. The foregoing right of indemnification provided in this Article X shall be in addition to and not exclusive of any and all rights of indemnification to which a Director, Officer, or committee member of the Association may be entitled under statute or common law.

Upon the resignation of a Director who has been designated, appointed, or elected by the Declarant, or the resignation of an Officer or committee member who was elected or appointed by the Declarant-controlled Board, the Association and the Members shall remise, release, acquit, and forever discharge such Director, Officer, and committee member of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, claims, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages (except to the extent and such damages are covered by insurance), judgments, executions, claims, and demands whatsoever, in law or in equity, which the Association or the Members, their successors, assigns, heirs, and personal representatives, had, now have, or will have against such Director, Officer, or committee member by reason of having been a Director, Officer, or committee member. Notwithstanding, the foregoing shall not apply in the event of a criminal act where such Director, Officer, or committee member pled guilty or nolo contendere or was adjudicated guilty.

## **ARTICLE XI**

## **BY-LAWS**

The By-Laws may be altered, amended, or rescinded in the manner set forth in the By-Laws; provided, however, that at no time shall the By-Laws conflict with these Articles or the Declaration. Any attempt to amend contrary to these prohibitions shall be of no force or effect.

## **ARTICLE XII AMENDMENTS**

12.1 Declarant Amendment. Prior to Turnover, these Articles may be amended only by an instrument in writing signed by the Declarant and joined by the Association, except as expressly set forth herein.

12.2 Membership Amendment. After Turnover, these Articles may be amended by the affirmative vote of two-thirds (2/3<sup>rds</sup>) of all of the Members. The approval of the Members of a proposed amendment may be obtained by written consent in lieu of a membership meeting pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

12.3 Proviso. No amendment to these Articles shall conflict with the terms of the Declaration or the By-Laws. No amendment to these Articles shall be adopted which shall abridge, prejudice, amend, or alter the rights of the Declarant, as determined in the sole discretion of the Declarant, without the prior written consent of the Declarant. Any attempt to amend contrary to this prohibition shall be of no force or effect whatsoever.

12.4 Filing and Recording. Amendments to these Articles adopted pursuant to this Article XII shall be recorded among the Official Records of the County and filed in the Office of the Secretary of State of the State of Florida.

## **ARTICLE XIII REGISTERED AGENT**

The name and address of the registered agent of the Association who shall serve until his/her successor is properly appointed by the Board shall be PG Law, PL, 5030 Champion Boulevard, Suite G11-281, Boca Raton, Florida 33496. The Association shall have the right to designate subsequent registered agents without amending these Articles.

**[SIGNATURE PAGE FOLLOWS]**

11



**ACCEPTANCE BY REGISTERED AGENT**

Having been named to accept service of process for **LOTIS PALM BAY PROPERTY OWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, at the place designated in these Articles of Incorporation of Palm Bay Property Owner's Association, Inc., the undersigned hereby agrees to act in this capacity and further agrees to comply with the provisions of all statutes relative to the proper and complete discharge of his duties.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

PG LAW, PL

By: \_\_\_\_\_  
Stephen J. Grave De Peralta, Manager  
(Registered Agent)



**EXHIBIT “D”**

**BY-LAWS OF  
LOTIS PALM BAY PROPERTY OWNER’S ASSOCIATION, INC.**

**BY-LAWS OF  
LOTIS PALM BAY PROPERTY OWNER'S ASSOCIATION, INC.**

**ARTICLE I  
IDENTIFICATION**

These are the Amended and Restated By-Laws of **LOTIS PALM BAY PROPERTY OWNER'S ASSOCIATION, INC.** (the "Association"). The Association is a not for profit corporation organized pursuant to and under Chapter 617, Florida Statutes, for the purpose, among other things, of administering, managing, operating, and maintaining the commercial property known as "**LOTIS PALM BAY**" located in Brevard County, Florida. The Association is not intended, is not, and shall not be deemed a "homeowners' association" subject to Chapter 720, Florida Statutes. The Association is organized under Chapter 617, Florida Statutes, and not under Chapter 720, Florida Statutes. If utilized by the Association, the seal of the Association shall bear the name of the Association; the word "Florida"; the words "Corporation Not for Profit."

**ARTICLE II  
DEFINITIONS**

All initially capitalized terms used herein shall have the same meaning as set out in the Declaration of Covenants, Conditions, and Restrictions for Lotis Palm Bay, as may be amended from time to time (the "Declaration"), to which these Amended and Restated By-Laws of Palm Bay Property Owner's Association, Inc. are attached as Exhibit "D", as may be amended from time to time (the "By-Laws"), unless an alternative definition is provided herein.

**ARTICLE III  
MEMBERSHIP AND MEMBERSHIP MEETINGS**

3.1 Membership. The qualification for membership, the manner of admission to the membership, the voting rights of such membership, and the termination of such membership shall be as set forth in the Articles.

3.2 Annual Meeting. The annual meeting of the Members shall be held at the office of the Association, or at such other place in the County as the Board may determine, at least once each calendar year on such date and at such time as designated by the Board, for the purpose of announcing Directors appointed or electing Directors in the manner set forth in Section 4.4 of these By-Laws and transacting any other business authorized to be transacted by the Members. Such annual meeting shall not take place later than thirteen (13) months from the date of the preceding annual meeting.

3.3 Special Meetings. Special meetings of the Members shall be held whenever called by the President, the Vice President, or by a majority of the Board and must be called by such Officers upon receipt of a written request from at least ten percent (10%)

of the voting interests of the Members. The business conducted at a special meeting of the Members shall be limited to that stated in the notice of the meeting.

3.4 Notice. Written notice of all membership meetings shall state the date, time, and location of the meeting being called and shall provide an agenda for which the meeting is called as hereinafter set forth. The notice shall be mailed, delivered, or electronically transmitted to each Member at such mailing address, electronic mailing address, or facsimile number of the Member as appears in the official records of the Association and shall be conspicuously posted on the Common Areas at least fourteen (14) days prior to the date set for such meeting, except in the event of an emergency. Proof of mailing, delivering, or electronic transmission of notice shall be given by affidavit of the person who mailed, delivered, or electronically transmitted such notice.

3.4.1. Waiver. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the official records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The attendance of any Member (or person authorized to vote for such Member) shall constitute such Member's waiver of notice of such meeting, except when the attendance of the Member (or person authorized to vote for such Member) is for the express purpose of objecting at the time the meeting is called to order to the transaction of business because the meeting is not lawfully called.

3.4.2 Electronic Transmission. Members desiring to receive notice by electronic transmission shall provide written consent to the Association to receive notice(s) by electronic transmission and shall provide their email address to which the notice(s) shall be sent. Once a Member provides their written consent to receive electronic notice(s), such authority shall apply to all other communications from the Association. The email address provided by the Member shall be accessible to any other Member who makes a lawful request to inspect the official records of the Association.

3.5 Presiding Officer. At meetings of the Members, the President or the President's designee, including, without limitation, the Association's manager or legal counsel, shall preside, or in the President's absence, the Vice President or the Vice President's designee, including, without limitation, the Association's manager or legal counsel, shall preside.

3.6 Order of Business. The order of business at the annual meeting of the Members and, as far as practical, at all other meetings of the Members, shall be as follows:

- (a) Call to order.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading and disposal of any unapproved minutes.
- (d) Report of Officers.
- (e) Report of committees.
- (f) Announcement/Election of Directors.

- (g) Unfinished business.
- (h) New business.
- (i) Adjournment.

3.7 Quorum and Decisions. A quorum at meetings of the Members shall consist of Members present, in person or by proxy, owning Tracts to which thirty percent (30%) of the votes of the entire membership are appurtenant. The acts approved by a majority of the votes present, in person or by proxy, at a meeting at which a quorum is present shall constitute the acts of the Members, except when approval by a greater number of Members is required. Unless otherwise prohibited, votes may be cast in person, by limited proxy, or by written consent in lieu of a meeting of the Members pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

3.8 Adjourned Meetings. If any membership meeting cannot be organized because a quorum has not been attained, either a majority of the voting interests of the Members who are present, whether in person or by proxy, or the chairperson of the meeting acting alone, may adjourn the meeting, from time to time, to a date, time, and location certain until a quorum is present. Any business which might have been transacted at a meeting of the Members as originally called may be transacted at any adjourned meeting thereof. Notice of the date and time of the continued meeting and place for reconvening the meeting shall be given to the Members in the manner prescribed for meetings of the Members.

3.9 Minutes. Minutes of all meetings of the Members shall be maintained in written form or in another form that can be converted into written form within a reasonable time and shall be available for inspection by the Members, after such minutes have been approved, at all reasonable times.

3.10 Proxies. A vote cast by proxy shall only be cast by limited proxy; however, general proxies may be used in order to achieve a quorum of the Members. To be valid, a proxy must (i) be in writing; (ii) state the date on which the proxy was given; (iii) state the date, time, and location of the meeting for which it was given; (iv) be signed by the Member giving the proxy or by the person designated in a voting certificate signed by the Member as the person authorized to cast the vote(s) attributable to such Tract; and (v) be filed with the Secretary before or at the appointed time of the meeting. Limited proxies shall additionally provide the Member's vote(s) for such specific items as are being voted upon by the Members at the meeting for which the limited proxy is given. A proxy shall be valid only for the particular meeting designated thereon, and as the meeting may lawfully be adjourned and reconvened from time to time, and shall automatically expire ninety (90) days after the date of the meeting for which it was originally given. If the proxy form so provides, the proxyholder may appoint, in writing, a substitute to act in the proxyholder's place. The proxyholder, or substitute proxyholder, must personally attend the meeting for which such proxy is given in order for such proxy to be valid. A proxy is revocable at any time by the Member who executed it, or any other record title owner of the Tract, unless a designated voting certificate is filed with the Association and, if so, then only by the designated voter.

3.11 Voting Member. All voting certificates issued pursuant to this Section 3.11 shall be filed with the Secretary of the Association prior to the meeting at which said vote is to be cast. In the event any such voting certificate is not filed with the Association as required below, the vote to which such Tract is entitled shall not be considered in determining whether a quorum is present, or for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed. A voting certificate shall be valid until revoked by the Members to the voting certificate, until superseded by a subsequent voting certificate, or until a transfer of title to the Tract to which the voting certificate pertains.

3.11.1 Tract Owned by One (1) Person. A Member who is the only fee simple title holder to a Tract shall cast the vote for such Tract, and no voting certificate shall be required.

3.11.2 Tract Owned by More than One (1) Person. If a Tract is owned by more than one (1) person, a voting certificate designating either Owner as the Member entitled to cast the vote for their Tract and signed by all Owners of the Tract is not required but is permitted. If such voting certificate is not provided, then any Owner may cast the vote for their Tract; however, only one (1) vote is permitted. If more than one (1) Owner votes, then all of their votes are not counted.

3.11.3 Tract Owned by an Entity. If a Tract is owned by a corporation, partnership, limited liability company, estate, trust, or other similar entity, the person of such corporation, partnership, limited liability company, estate, trust, or other similar entity entitled to cast the vote for such Tract shall be designated in a voting certificate signed by an appropriate officer or principal of the corporation, partnership, limited liability company, estate, trust, or other entity.

3.11.4 The Residential Property. The Presidents of the Residential Associations shall be deemed the Member entitled to cast the votes allocated to the Residential Properties, and the manner in which such votes are to be cast shall be determined by vote of the membership of the Residential Associations obtained in accordance with the governing documents of the Residential Associations. Unless otherwise provided to the Association in writing, the persons named Presidents of the Residential Associations as set out in the records maintained by the Florida Department of State, Division of Corporations shall be presumed to be the Presidents of the Residential Associations, and no voting certificate shall be required.

3.11.5 Tract Under Condominium Form of Ownership. In the event the any Tract shall be converted to the condominium form of ownership, the President of the condominium association formed therefor shall be deemed the Member entitled to cast the votes allocated to the unit owners within the condominium. Unless otherwise provided to the Association in writing, the person named President of the condominium association as set out in the records maintained by the Florida Department of State, Division of

Corporations shall be presumed to be the President of the condominium association, and no voting certificate shall be required.

3.12 Member Attendance and Participation. Members have the right to attend all meetings of the Members. No other residents and no tenants, guests, or invitees are permitted to attend any meeting of the Members unless otherwise specifically approved in writing by the Board. Members in attendance at a meeting of the Members shall be entitled to speak for a maximum of three (3) minutes only as to the designated agenda items prior to a vote on such designated agenda items. All Member statements must be made in a respectful and businesslike manner. In the event a Member conducts himself/herself in a manner detrimental to the carrying on of a meeting, as decided by the presiding officer of the meeting in his/her absolute discretion, the Member may be expelled from the meeting by any reasonable means which may be necessary to accomplish such an expulsion. The Board may adopt such other written reasonable rules governing the frequency, duration, and other manner of Member statements as it deems appropriate. Any Member may tape record or videotape meetings of the Members; provided, however, the equipment utilized does not produce distracting sound or light emissions and subject to any rules and regulations which may be adopted by the Board regarding placement, assemblage of audio and video equipment, prior notice to record the meeting, and distraction resulting from moving about during recording of the meeting.

3.13 Electronic Meeting. Notwithstanding anything set forth to the contrary, any Members' meeting may, at the discretion of the Board, be held on an electronic platform, such as, and for example purposes only, Zoom. In accordance with section 617.0721(3), Florida Statutes, subject to such guidelines and procedures as the Board may adopt, Members who are not physically present at a meeting may, by means of remote communication, participate in the meeting and be deemed to be present in person and vote at the meeting if the Association implements reasonable means to (i) verify that each person deemed present and authorized to vote by means of remote communication is a Member; and (ii) provide such Members with a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Members. Votes of Members taken by means of remote communication must be recorded in the minutes of such meeting to be maintained by the Association among its official records.

## **ARTICLE IV** **DIRECTORS**

4.1 Business Affairs. The business and affairs of the Association shall be managed by the Board. The Board shall consist of three (3) Directors until Turnover. Upon Turnover, the Board shall consist of seven (7) Directors, including one (1) Director from and representing the Lotis Palm Bay 1 Homeowner's Association, Inc; (1) Director from and representing the Lotis Palm Bay 2 Homeowner's Association, Inc; one (1) Director from and representing the Lotis Palm Bay 3 Homeowner's Association, Inc; one (1) Director from and representing the North Multi-Family Tract; one (1) Director from and representing the South Multi-Family Tract; and two (2) Directors from and representing the Commercial Tracts. Except for Directors appointed by the Declarant, Directors shall



be Members of the Association or shall be the authorized representative, officer, or employee of corporate Members of the Association. The Board shall exclusively exercise all of the powers of the Association, unless otherwise specifically delegated to the Members.

4.2 Term. The term of each Director's service shall be one (1) year commencing with the date of election until his/her successor is duly appointed or elected or until he/she resigns or is removed in the manner provided herein.

4.3 Declarant Appointment. Notwithstanding anything to the contrary contained herein, prior to Turnover, the Declarant shall have the right to appoint Directors by written notice to such effect or by an announcement reflected in the minutes of the annual meeting of the Members.

4.4 Member Appointment and Election. Upon Turnover, the Directors shall be appointed by the Owner(s) of the respective Tracts, such that the Board of Directors of the Lotis Palm Bay 1 Homeowner's Association, Inc, or as otherwise stated within the Lotis Palm Bay 1 Homeowner's Association, Inc. documents, shall appoint the one (1) Director from and representing the Lotis Palm Bay 1 Homeowner's Association, Inc; the Board of Directors of the Lotis Palm Bay 2 Homeowner's Association, Inc, or as otherwise stated within the Lotis Palm Bay 2 Homeowner's Association, Inc. documents, shall appoint the one (1) Director from and representing the Lotis Palm Bay 2 Homeowner's Association, Inc; the Board of Directors of the Lotis Palm Bay 3 Homeowner's Association, Inc, or as otherwise stated within the Lotis Palm Bay 3 Homeowner's Association, Inc. documents, shall appoint the one (1) Director from and representing the Lotis Palm Bay 3 Homeowner's Association, Inc; the Owner(s) of the North Multi-Family Tract shall appoint the one (1) Director from and representing the North Multi-Family Tract; the Owner(s) of the South Multi-Family Tract shall appoint the one (1) Director from and representing the South Multi-Family Tract; and the Owner(s) of the Commercial Tracts shall appoint the two (2) Directors from and representing the Commercial Tracts. The Directors so appointed shall be announced at the meeting of the Members at which Turnover occurs and at each subsequent annual meeting of the Members.

4.4.1 Notice of Appointment. At least sixty (60) days before a scheduled annual meeting of the Members, the Association shall mail, deliver, or electronically transmit to each of the three (3) Residential Associations, the Owner(s) of the North Multi-Family Tract; the Owner(s) of the South Multi-Family Tract, and the Owner(s) of the Commercial Tracts, a written notice of the date of the annual meeting of the Members and requesting that such Owners and the Residential Associations provide written notice to the Association of their respective Director appointments no later than forty (40) days prior to the scheduled annual meeting of the Members. In the event the Owners within a particular Tract or Tracts cannot agree as to the Director appointments for their respective Tract or Tracts, the notice of appointment for such Tract or Tracts shall provide the names of those who shall be candidates for election to the Board for that particular Tract or Tracts by the membership of such Tract or Tracts at the annual meeting of the Members. For example and clarification purposes only, in the event the Owners of the Commercial Tracts cannot

agree as to who shall serve as the Director representing the Commercial Tracts, the notice of appointment shall include the names of those Members of the Commercial Tracts who shall be candidates for election by the Members of the Commercial Tracts at the annual meeting of the Members. No nominations shall be permitted past such date, and no nominations shall be permitted from the floor of the meeting at which the election is being conducted.

**4.4.2 Candidacy of Members.** A Member who is delinquent in the payment of any monetary obligation to the Association on the last day on which the notice of appointment may be provided to the Association may not seek appointment or election to the Board. Additionally, a Member who has been convicted of any felony in the State of Florida or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in the State of Florida, is not eligible for the Board unless such felon's civil rights have been restored for at least five (5) years as of the date on which such Member seeks appointment or election to the Board. The validity of any action by the Board is not affected if it is later determined that a Director was ineligible for candidacy or Board membership at the time of such Director's appointment or election to the Board.

**4.4.3 Notice of Annual Meeting.** In the event an election is to be held at an annual meeting of the Members for a particular Tract or Tracts, the notice of the annual meeting of the Members provided in accordance with Section 3.4 of these By-Laws shall include together with such notice to the Members within such particular Tract or Tracts a limited proxy containing the names of those candidates from such Tract or Tracts in accordance with Section 4.4.5 below, a designated voter certificate in accordance with Section 3.11 above, and any information sheet(s) provided by candidates, if any, subject to the provisions of Section 4.4.4 below. For example and clarification purposes only, in the event an election is to be held at an annual meeting of the Members for the Commercial Tracts, the Members within the Commercial Tracts shall receive, in addition to the notice of the annual meeting of the Members, a limited proxy containing the names of the candidates from the Commercial Tracts, a designated voter certificate, and any information sheet(s) provided by the candidates from the Commercial Tracts.

**4.4.4 Candidate Information Sheet.** A candidate may make timely written request upon the Association to include the information sheet of the requesting candidate together with the notice of the annual meeting of the Members at which an election is to be held among the Members within such candidate's Tract or Tracts. Such information sheet shall be no larger than a single side of an eight and one-half inches by eleven inches (8½" by 11") sheet of paper and shall be provided to the Association by the candidate at least thirty-five (35) days prior to the election. The information sheet may describe the candidate's educational background, employment experience, and/or any other qualifications the candidate deems relevant to his/her service on the Board. The Association shall not be liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of a sheet of paper and may do so in black and white.

4.4.5 Ballots. The election shall be conducted by written ballot and limited proxy only. Elections shall be decided by a plurality of votes cast. The ballot, as set forth in the written ballot and limited proxy (the "Ballot"), shall indicate in alphabetical order by surname, each and every Member of the respective Tract or Tracts who is a candidate for the Board, unless such Member has, prior to the mailing of the notice of the annual meeting, withdrawn his/her candidacy in writing to the Association. No Ballot shall indicate which candidates are incumbents on the Board. No write-in candidates shall be permitted. A Ballot shall not be deemed cast until delivered to the office of the Association or to the presiding officer at an annual meeting of the Members. Upon closing of balloting at an annual meeting of the Members, no Ballot may be rescinded or changed. At the annual meeting of the Members at which the election is held, the Association shall have available blank written ballots for each slate as may be applicable for distribution at the annual meeting of the Members.

4.4.6 Conduct of the Election. There shall be no quorum requirement; however, at least twenty percent (20%) of the eligible voters from the respective Tract or Tracts must cast a Ballot in order to have a valid election. At the annual meeting, written ballots shall be deposited into a ballot box and collected by an "Election Committee." Upon closing of balloting, no further Ballots shall be cast. The Election Committee shall be appointed by the presiding officer during the annual meeting of the Members immediately prior to the collection of Ballots, and the members of the Election Committee shall not be the candidates, Directors, Officers, or the spouses of the candidates, Directors, or Officers. The Ballots shall be tallied in the presence of the Members in attendance at the annual meeting of the Members. All Ballots, whether disregarded or not, shall be retained with the official records of the Association. Once the Ballots have been tallied, those candidates who have been elected to the Board shall be immediately announced.

4.4.7 Election by Acclimation. Unless there are more candidates for an election within the respective Tract or Tracts than there are available positions on the Board, an election is not required. In such event, the candidates will be seated on the day of the annual meeting of the Members.

4.5 Compensation. Directors shall not receive or be entitled to any compensation for services as a Director, unless approved by the Members. Notwithstanding the foregoing, nothing herein contained shall be construed to preclude a Director from serving the Association in any other capacity and receiving compensation therefor, subject to the disclosure and approval requirements of the Florida Not For Profit Corporation Act regarding conflicts of interest. Further, Directors appointed by the Declarant may be compensated by the Declarant as part of their regular employee pay.

4.6 Organizational Meeting. The organizational meeting of the newly-elected Board shall be held immediately after the annual meeting of the Members. If the majority of the Directors elected shall not be present at that time, or if the Directors shall fail to elect Officers, the organizational meeting shall then be held within ten (10) days after the annual meeting of the Members at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further notice to or by the Board of the

organizational meeting shall be necessary. The singular instance in which the Board may vote by secret ballot shall be for the election of Officers, but such vote shall take place in front of the Members.

4.7 Recall of Directors. Any Director may be removed from office at any time, with or without cause, by the affirmative vote of a majority of the entire membership in accordance with the Florida Not For Profit Corporations Act. Notice for such special meeting of the Members shall not be electronically transmitted. If less than a majority of the Board is removed, the vacancy shall be filled by a Member of the same Tract or Tracts represented by the outgoing Director by the affirmative vote of a majority of the remaining Directors. If a majority or more of the Board is removed, the vacancies shall be filled by the Members voting in favor of the recall by appointment or election conducted in the same manner as set forth in Section 4.4 above. If removal is at a meeting, any vacancies shall be filled by the Members at the meeting. If the recall occurred by agreement in writing or by written ballot, Members may vote for replacement Directors in the same instrument. This Section 4.7 shall not apply to any Director appointed by the Declarant.

4.8 Resignation of Directors. Directors shall have the absolute right to resign at any time by providing written notice of such resignation to the Board, delivered to the President or the Secretary. Such written notice of resignation shall be effective upon receipt, unless a later date is provided in the written notice of resignation, then upon such later date the resignation shall become effective.

4.9 Vacancies. Except as to vacancies created by recall, vacancies on the Board occurring between annual meetings of the Members shall be filled by a Member of the same Tract or Tracts represented by the outgoing Director by the remaining Directors, even if the remaining Directors constitute less than a quorum, or by the sole remaining Director. A Director elected or appointed pursuant to Section 4.7 above and this Section 4.9 shall have all of the rights, privileges, duties, and obligations as a Director appointed or elected in the manner set forth in Section 4.4 above and shall serve for the unexpired term of the vacancy being filled. A vacancy occurring on the Board due to the resignation or disqualification of a Declarant-appointed Director shall be filled by the Declarant for so long as the Declarant may have a Director on the Board.

4.10 Board Meetings. Meetings of the Board may be held at such date, time, and location within the County as the Board may designate. Meetings of the Board may be called by the President and must be called by the Secretary at the written request of a majority of the Directors.

4.11 Notice. Notice of Board meetings shall be conspicuously posted within the Common Areas at least forty-eight (48) hours before such meeting, except in the event of an emergency. All notices shall provide the date, time, and location of the Board meeting being called. A notice for a Board meeting at which an Assessment may be levied shall include a statement that Assessments will be considered and the nature of the Assessments. Notice of any meeting at which Special Assessments will be considered or at which amendments to rules regarding Tract use will be considered must be mailed,

delivered, or electronically transmitted to the Members and conspicuously posted within the Common Areas at least fourteen (14) days prior to the Board meeting. Proof of mailing, delivering, or electronic transmission of such fourteen (14) day notice shall be given by affidavit of the person who mailed, delivered, or electronically transmitted such notice. The provisions set forth in Section 3.4.1 above, regarding waiver, and Section 3.4.2 above, regarding electronic transmission, shall apply hereto.

4.12 Order of Business. The order of business at Board meetings, as far as practical, shall be as follows:

- (a) Proof of due notice of meeting.
- (b) Reading and disposal of unapproved minutes.
- (c) Report of Officers.
- (d) Report of committees.
- (e) Election of Officers.
- (f) Unfinished business.
- (g) New business.
- (h) Adjournment.

4.13 Presiding Officer. At meetings of the Board, the President shall preside, or in the President's absence, the Vice President shall preside, or in the absence of both, the Directors present shall designate one of their number to preside at such meeting.

4.14 Quorum and Decisions. A quorum of the Board shall consist of a majority of the entire Board. All actions or resolutions approved by a majority of those Directors present at a meeting at which a quorum is present shall constitute the acts of the Board, except when approval by a greater number of Directors is required. Directors may not vote by proxy or secret ballot; provided, however, that secret ballots may be used for the election of Officers. Unless otherwise prohibited, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting by unanimous written consent in lieu of a meeting of the Board pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

4.15 Adjourned Meetings. If at any meeting of the Board there is less than a quorum present, the majority of those Directors present may adjourn the meeting, from time to time, until a quorum is present. At any adjourned meeting, any business which might have been transacted at the meeting of the Board as originally called may be transacted without further notice. If for any reason a new date must be fixed for reconvening the meeting after adjournment, notice of the meeting and place for reconvening the meeting shall be given in the manner prescribed for meetings of the Board.

4.16 Member Attendance and Participation. Except as to meetings between the Board and the Association's attorney to discuss proposed or pending litigation or Board meetings held for the purpose of discussing personnel matters, Members have the right to attend all meetings of the Board. No other residents and no tenants or guests are

permitted to attend any meeting of the Board unless otherwise specifically approved by the Board. Members in attendance at a Board meeting shall be entitled to speak for a maximum of three (3) minutes only as to the designated agenda items prior to the Board's vote on such designated agenda items and in such manner as determined by the Board. All Member statements must be made in a respectful and businesslike manner and must be directed to the Board. In the event a Member conducts himself/herself in a manner detrimental to the carrying on of a meeting, the Board may, at the sole and unfettered discretion of the meeting chairperson, expel such Member from the meeting by any reasonable means which may be necessary to accomplish such an expulsion. The Board may adopt such other written reasonable rules governing the frequency, duration, and other manner of Member statements as it deems appropriate. Any Member may tape record or videotape meetings of the Board; provided, however, the equipment utilized does not produce distracting sound or light emissions and subject to any rules and regulations which may be adopted by the Board regarding placement, assemblage of audio and video equipment, prior notice to record the meeting, and distraction resulting from moving about during recording of the meeting.

4.17 Electronic Meeting. Notwithstanding anything set forth to the contrary, any meeting of the Board may, at the discretion of the Board, be held on an electronic platform, such as, and for example purposes only, Zoom. Subject to such guidelines and procedures as the Board may adopt, Members may remotely attend and participate in Board meetings held on an electronic platform. The Association must implement reasonable means to provide Members who are not physically present with a reasonable opportunity to participate in the Board meeting by means of remote communication.

4.18 Minutes. Minutes of all Board meetings shall be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each Director present at a Board meeting shall be recorded in the minutes. Minutes shall be available for inspection by the Members, after such minutes have been approved, at all reasonable times.

4.19 Committees. The Board may, by resolution duly adopted, create one (1) or more committees and appoint persons to such committees and delegate to such committees such powers and responsibilities as the Board may deem advisable, subject to any limitations on the Board's right to delegate authority as may exist under general corporate law. Such committees shall consist of at least three (3) Members. The committee(s) shall have such name(s) as may be determined from time to time by the Board, and said committee(s) shall keep regular minutes of their proceedings and report the same to the Board as required. The provisions applicable to Board meetings, including, without limitation, notice provisions and Member attendance and participation provisions, shall be applicable to the meetings of any committee only when a final decision regarding the expenditure of Association funds will be made and for meetings of the ACC.

## **ARTICLE V** **OFFICERS**

5.1 The Officers. The Officers of the Association shall be a President, a Vice President, a Treasurer, a Secretary, and such other Officers and assistant Officers as may be designated by the Board from time to time in the Board's sole discretion, the powers and duties of which shall be designated by the Board as the Board deems necessary, in its sole discretion, to manage the affairs of the Association. All Officers shall serve at the pleasure of the Board. Except for Officers appointed by the Declarant, Officers shall be Members or shall be the authorized representative, officer, or employee of corporate Members. An individual Officer may hold more than one (1) office; however, the individual serving as the President shall not also fill any other office.

5.2 Election of Officers. Officers shall be elected from time to time by the affirmative vote of a majority of the Directors present at any Board meeting at which a quorum is present.

5.3 Removal and Resignation of Officers. Any Officer may be removed at any time by the affirmative vote of a majority of the Board present at any Board meeting at which a quorum is present. Without limitation of other lawful remedy, Section 4.7 of these By-Laws regarding the resignation of Directors shall also apply to Officers.

5.4 Compensation. Officers shall not directly receive any compensation from the Association for the performance of his/her duties as an Officer. Notwithstanding the foregoing, nothing herein contained shall be construed to preclude an Officer from serving the Association in any other capacity and receiving compensation therefor, subject to the disclosure and approval requirements of the Florida Not For Profit Corporation Act regarding conflicts of interest. Further, Officers appointed by the Declarant-controlled Board may be compensated by the Declarant as part of their regular employee pay.

5.5 Duties of Officers. The Officers shall perform the duties of such offices customarily performed by officers of like corporations, including, but not limited, to the following:

5.5.1 President. The President shall be a member of the Board and the chief executive officer of the Association. The President shall have all of the powers and duties which are usually vested in the office of a president, including, but not limited to, the responsibility to serve as presiding officer of all meetings, as further set forth in these By-Laws. The President shall ensure that all orders and resolutions of the Board are carried out and shall sign all notes, checks, leases, and all other written instruments upon approval of the Board. The President shall set the agenda for all meetings of the Board and all meetings of the Members in consultation with the Officers and Directors.

5.5.2 Vice President. The Vice President shall be a member of the Board and shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board.

5.5.3 Secretary. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times. The Secretary shall have custody of the seal of the Association and shall affix the same to instruments requiring a seal, when duly approved and signed by the Board. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of secretary and as may be required by the Board or the President.

5.5.4 Treasurer. The Treasurer shall have custody of all of the property of the Association, including funds, securities, and evidences of indebtedness. The Treasurer shall keep the Assessment rolls and accounts of the members, keep the books and accounting records of the Association in accordance with good accounting practices, make provision for collection of Assessments, and all other duties incident to the office of treasurer and as may be required by the Board or the President.

## **ARTICLE VI**

### **FISCAL MANAGEMENT**

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year, beginning January 1<sup>st</sup> and ending December 31<sup>st</sup> of each year; provided, however, the Board is expressly authorized to adopt a different fiscal year at such time as the Board deems advisable.

6.2 Budget. The initial budget prepared by the Declarant is adopted as the budget for the period of operation until adoption of the first annual budget by the Board. THE INITIAL BUDGET OF THE ASSOCIATION IS PROJECTED (NOT BASED ON HISTORICAL OPERATING FIGURES). THEREFORE, IT IS POSSIBLE THAT ACTUAL ASSESSMENTS MAY BE LESS OR GREATER THAN PROJECTED. Thereafter, all annual budgets shall be prepared and adopted by the Board. The Board shall prepare and adopt an annual budget reflecting, among other things, the estimated revenues and expenses for the forthcoming fiscal year and the estimated surplus or deficit for the end of the current fiscal year. After the budget has been adopted by the Board, a copy of the adopted budget shall be mailed, delivered, or electronically transmitted to each Member at the Member's last known address, electronic mailing address, or facsimile number as shown on the books and records of the Association. In lieu of mailing, delivering, or electronically transmitting a copy of the adopted budget, the Association shall mail, deliver, or electronically transmit to each Member at the Member's last known address, electronic mailing address, or facsimile number as shown on the books and records of the Association written notice that a copy of the adopted budget is available upon request at no charge to the Member.

6.3 Budget Deficiency. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Common Expenses not included in the budget or which exceed budgeted amounts, and no Board shall be required to engage in deficit spending. Recognizing that it is extremely difficult to adopt a budget for each fiscal year that exactly coincides with the actual expenses during the year, should there exist any



deficiency which results from there being greater Common Expenses than income from Assessments, then such deficits shall be carried into the next year's budget as a deficiency or shall be the subject of a Special Assessment to be levied by the Board in accordance with the Declaration.

6.4 Financial Report. Within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year which must include a balance sheet as of the end of the fiscal year and a statement of operations for that year. Upon written request of a Member, the Association shall provide the Member with a copy of the Association's latest annual financial report.

6.5 Depositories. The depository of the Association shall be such bank(s) or other financial institution(s) as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Board. In the absence of such determination by the Board, such checks shall be signed by the Treasurer, and countersigned by the President or the Vice President.

6.6 Fidelity Coverage. The Association shall maintain insurance or a fidelity bond for all "persons who control or disburse funds of the Association." The fidelity coverage must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this Section 6.6, the term "persons who control or disburse funds of the Association" includes, but is not limited to, persons authorized to sign checks on behalf of the Association, and the President, the Vice President, the Secretary, and the Treasurer. The Association shall bear the cost of any such fidelity coverage. If annually approved by a majority of the voting interests present at a properly called meeting of the Association, the Association may waive the requirement of obtaining fidelity coverage for all persons who control or disburse funds of the Association.

## **ARTICLE VII**

### **RULES AND REGULATIONS**

The Board may, at a properly noticed meeting of the Board, adopt reasonable rules and regulations for the operation and use of the Property, or amend or rescind any such existing rules and regulations; provided, however, that such rules and regulations shall not be inconsistent with any of the terms or provisions of any of the Declaration, the Articles, or these By-Laws. Copies of any rules and regulations as promulgated, amended, or rescinded by the Board shall be mailed, delivered, or electronically transmitted to all Members at the last known address, electronic mailing address, or facsimile number of the Members as shown on the books and records of the Association and shall become effective upon such mailing, delivery, or electronic transmission.

## **ARTICLE VIII**

### **PARLIAMENTARY RULES**

Robert's Rules of Order (latest edition) shall govern the conduct of meetings of the Board and meetings of the Members when not in conflict with the Governing Documents or the Florida Not For Profit Corporation Act.

## **ARTICLE IX** **AMENDMENTS**

9.1 Declarant Amendment. Prior to Turnover, these By-Laws may be amended only by an instrument in writing signed by the Declarant and joined by the Association, except as expressly set forth herein.

9.2 Membership Amendment. After Turnover, these By-Laws may be amended by the affirmative vote of two-thirds (2/3<sup>rds</sup>) of the Members. Such approval of a proposed amendment may be obtained by written consent in lieu of a membership meeting pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

9.3 Proviso. No amendment to these By-Laws shall conflict with the terms of the Declaration or the Articles. No amendment to these By-Laws shall be adopted which shall abridge, prejudice, amend, or alter the rights of the Declarant, as determined in the sole discretion of the Declarant, without the prior written consent of the Declarant. Any attempt to amend contrary to this prohibition shall be of no force or effect whatsoever.

9.4 Recording. Amendments to these By-Laws adopted pursuant to this Article IX shall be recorded among the Official Records of the County.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, these Amended and Restated By-Laws of Lotis Palm Bay Property Owner's Association, Inc. were executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

**STATE OF FLORIDA                    )**  
  **) ss:**  
**COUNTY OF PALM BEACH        )**

The foregoing Amended and Restated By-Laws of Lotis Wellington Property Owner's Association, Inc. were acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by James A. Gielda as President for **LOTIS PALM BAY PROPERTY OWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

**ASSOCIATION**

**LOTIS PALM BAY PROPERTY  
OWNERS' ASSOCIATION, INC.,**  
A Florida not for profit corporation

By: \_\_\_\_\_  
James S. Gielda, its President

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

My Commission Expires:

**JOINDER TO AMENDED AND RESTATED BY-LAWS OF  
LOTIS PALM BAY PROPERTY OWNER'S ASSOCIATION, INC.**

**JKM ACQUISITIONS, LLC**, a Florida limited liability company, does hereby join in the **BY-LAWS OF LOTIS PALM BAY PROPERTY OWNER'S ASSOCIATION, INC.** to which this Joinder is attached on \_\_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

**JKM ACQUISITIONS, LLC**,  
a Florida limited liability company

By: \_\_\_\_\_  
Adam P. Freedman, its Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

**STATE OF FLORIDA**            )  
  ) **ss:**  
**COUNTY OF PALM BEACH**    )

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2025, by Adam P. Freedman, as Manager for **JKM ACQUISITIONS, LLC**, a Florida limited liability company, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

My Commission Expires:

**EXHIBIT “E”**

**ASSESSMENT ALLOCATIONS**

**TBD**

DRAFT

Prepared by and return to:

Stephen Grace de Peralta, Esq.  
PG Law  
5030 Champion Blvd.  
Suite G11-281  
Boca Raton, FL 33496

SPACE ABOVE THIS LINE FOR PROCESSING DATA

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
LOTIS PALM BAY 1 HOMEOWNERS ASSOCIATION**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LOTIS PALM BAY 1 HOMEOWNERS ASSOCIATION** (this “Declaration”, as such term is hereinafter further defined) is made this \_\_\_\_ day of \_\_\_\_\_, 2025 by **JKM ACQUISITIONS, LLC**, a Florida limited liability company (the “Declarant”, as such term is hereinafter further defined), and is joined by **LOTIS PALM BAY 1 HOMEOWNER’S ASSOCIATION, INC.**, a Florida not for profit corporation (the “Association”), in acknowledgement of its duties, responsibilities, and obligations hereunder.

**WHEREAS**, the Declarant is the record title owner of the real property located in Palm Beach County, Florida, more particularly described on Exhibit “A” attached hereto and incorporated as if fully set forth herein, as may be supplemented from time to time (the “Property”, as such term is hereinafter further defined), and desires to develop a planned community to be known as “**LOTIS PALM BAY 1 HOMEOWNERS**” (the “Community”) on the Property; and

**WHEREAS**, in order to preserve and enhance the values and amenities of the Community, the Declarant declares, commits, and subjects the Property and the “Improvements” (as such term is hereinafter defined) now or hereafter constructed thereon to certain land use covenants, restrictions, reservations, regulations, burdens, liens, and easements, and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance, and enforcement; and

**WHEREAS**, this Declaration is a covenant running with all of the land comprising the Property, and each present and future owner of interests therein and their heirs, successors, and assigns are hereby subject to this Declaration.

**NOW THEREFORE**, in consideration of the promises and covenants contained in this Declaration, the Declarant hereby declares that every portion of the Property is to be owned, held, transferred, sold, conveyed, leased, mortgaged, improved, used, and occupied subject to the covenants, conditions, restrictions, easements, reservations, rules, regulations, charges, and liens hereinafter set forth.

## **ARTICLE I**

### **DEFINITIONS**

In addition to the terms defined elsewhere in this Declaration, all initially capitalized terms herein shall have the following meanings:

1.1 "ACC" shall mean the Association's Architectural Control Committee established pursuant to Article XII hereof.

1.2 "Architectural Guidelines" shall mean such standards of maintenance, repair, replacement, reconstruction, refurbishment, addition, alteration, improvement, or other activity, if any, established pursuant to Section 12.4 hereof.

1.3 "Articles" shall mean the Articles of Incorporation of Lotis Palm Bay 1 Homeowner's Association, Inc., attached hereto and incorporated as if fully set forth herein as Exhibit "B", as may be amended from time to time.

1.4 "Assessments" shall mean any assessments made in accordance with this Declaration and as further set forth in Article XI hereof, whether "General Assessment(s)", "Individual Assessment(s)", "Special Assessment(s)" (as such terms are hereinafter defined), or any combination thereof, and any and all other assessments and monetary fines and charges which are or may be levied by the Association in accordance with the "Governing Documents" (as such term is hereinafter defined).

1.5 "Board" shall mean the Board of Directors of the Association.

1.6 "By-Laws" shall mean the By-Laws of Lotis Palm Bay 1 Homeowner's Association, Inc., attached hereto and incorporated as if fully set forth herein as Exhibit "D", as amended from time to time.

1.7 "Common Areas" shall mean all real property interests and Improvements within the Property designated as Common Areas from time to time by the Declarant, by the "Plat" (as such term is hereinafter defined), or by recorded amendment to this Declaration and which is not included in any "Lot" (as such term is hereinafter defined) and is provided for, owned, leased by, or dedicated to, the common use and enjoyment of the "Owners" (as such term is hereinafter defined) within the Community. The Common Areas may include, without limitation, the Access Control System, the "Recreational Facilities" (as such term is hereinafter defined), the "Stormwater Management System" (as such term is hereinafter defined), private roadways, entrance features, buffer or landscaped areas, open space areas, internal buffers, perimeter buffers, perimeter walls and fences, easement areas owned by others, private rights-of-way, irrigation facilities, sidewalks, street lights, and commonly used utility facilities. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DEFINITION OF "COMMON AREAS" AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND, OBLIGATE, OR LIMIT THE DECLARANT TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET

FORTH IN SUCH DESCRIPTION, THE CONSTRUCTION OR SUPPLYING OF ANY SUCH ITEM BEING IN THE DECLARANT'S SOLE DISCRETION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY, IF ANY, AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED BY THE ASSOCIATION, EXCEPT AFTER CONSTRUCTION OF SUCH ITEM AND CONVEYANCE OF ANY SUCH ITEM TO THE ASSOCIATION.

1.8 "Common Expenses" shall mean all actual and estimated costs and expenses of the Association, including without limitation, the following: (i) all costs and expenses of ownership, maintenance, repair, replacement, reconstruction, operation, and administration of the Common Areas, any portion thereof and Improvements thereon, and all other property owned by the Association; (ii) all amounts payable by the Association under the terms of this Declaration; (iii) all costs and expenses of Community lighting, including, without limitation, up-lighting and entrance lighting; (iv) all amounts payable in connection with any private street lighting agreement between the Association and a utility provider; (v) all costs and expenses of utilities providing services for the Common Areas or to the Lots on a bulk basis (if any), such as water, gas, electricity, telephone, cable television, internet, sanitation, sewer, and any type of utility or any other type of service charge which is not separately billed to an Owner; (vi) all amounts payable to a "Telecommunications Provider" for "Telecommunications Services" (as such terms are hereinafter defined) furnished to all Owners; (vii) all taxes, assessments, and tax liens which may be assessed or levied at any and all times against the Common Areas or against any and all personal property or Improvements thereon; (viii) all costs and expenses for the maintenance, operation, management, repair, and replacement of the irrigation system throughout the Property; (ix) the premiums on policies of insurance including, but not limited to, liability and casualty insurance for the Common Areas, fidelity bonding, and liability insurance for the directors and officers of the Association; (x) salaries, management fees, professional fees, and associated costs for all employees, management firms and agents, and professionals hired or retained by the Association; (xi) all amounts payable in connection with Association sponsored social events; (xii) all costs and expenses relating to the discharge of the Association's powers and duties; (xiii) all costs and expenses as determined to be part of the Common Expenses by the Board; and (xiv) all other costs and expenses incurred and lawfully imposed by the Association.

1.8.1 Any expenses which are required by this Declaration to be the matter of Individual Assessment or Special Assessment (unless levied against all Owners) shall not be deemed to be Common Expenses. The Common Expenses with respect to the Common Areas are payable by each Owner to the Association notwithstanding the fact that the Declarant may not have as yet conveyed title to the Common Areas to the Association.

1.8.2 Notwithstanding anything to the contrary herein, Common Expenses shall not include "Reserves" (as such term is hereinafter defined). Prior to "Turnover" (as such term is hereinafter defined), use of the term "reserves" or "Reserves" in any budget shall not be construed to mean the Declarant created "Statutory Reserves" (as such term is hereinafter defined) in accordance with the requirements of the "Homeowners'



Association Act” (as such term is hereinafter defined). Pursuant to the requirements of the Homeowners’ Association Act, the Association may, if it so determines by a vote of the Owners, include Statutory Reserves in the Association’s annual budget, and the Board may establish “Non-Statutory Reserves” (as such term is hereinafter defined). However, through the “Community Completion Date” (as such term is hereinafter defined), no such vote to establish Statutory Reserves nor Board establishment of Non-Statutory Reserves shall be effective against the Declarant.

1.9 “Community Completion Date” shall mean the date upon which each and every “Home” (as such term is hereinafter defined) within the Community, as ultimately planned and as fully developed, have been conveyed by the Declarant to Owners.

1.10 “County” shall mean Brevard County, Florida.

1.11 “Declarant” shall mean LOTIS ACQUISITIONS, LLC, a Florida limited liability company, and any successor or assignee who has or takes title to any portion of the Property for development and/or sale and who is designated as Declarant in a written instrument which is signed by the Declarant and recorded among the Official Records of the County or which succeeds to such rights by merger or consolidation. The Declarant shall have the right to assign all or a portion of any rights granted to the Declarant in this Declaration. The Declarant shall also have the right to assign all or a portion of any obligations of the Declarant in this Declaration. In the event of a partial assignment of some, but not all, Declarant rights and/or obligations, the assignee shall not be deemed the Declarant, but may exercise only those rights, or shall be responsible for only those obligations, of the Declarant assigned to such assignee. Additionally, any partial assignee that does not assume all of the obligations of Declarant shall not be deemed the Declarant.

1.12 “Declaration” shall mean this Declaration, together with all amendments, supplements, and modifications hereto.

1.13 “Florida Not For Profit Corporation Act” shall mean Chapter 617 of the Florida Statutes as it exists through the date of recording this Declaration.

1.14 “General Assessment(s)” shall mean and refer to Assessments levied to fund the Common Expenses of the Association as further set forth in Section 11.4 hereof.

1.15 “Governing Documents” shall mean this Declaration, the Articles, the By-Laws, the Architectural Guidelines, the “Rules and Regulations” (as such term is hereinafter defined), and any applicable “Supplemental Declaration” (as such term is hereinafter defined), all as amended from time to time.

1.16 “Home” shall mean a residential dwelling and appurtenances thereto constructed on a Lot within the Community designed and intended for use and occupancy as a single-family residence. A Home shall be deemed created and have perpetual existence upon the issuance of a final or temporary Certificate of Occupancy for such

residence; provided, however, the subsequent loss of such Certificate of Occupancy (e.g., by casualty or remodeling) shall not affect the status of a Home, or the obligation of an Owner to pay Assessments with respect to such Home. Upon completion of construction of a Home on a Lot as evidenced by issuance of a Certificate of Occupancy, the Lot and Improvements thereon, or other property appurtenant to the Home may collectively be referred to as a Home.

1.17 "Homeowners' Association Act" shall mean Chapter 720 of the Florida Statutes as it exists through the date of recording this Declaration.

1.18 "Improvement" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within the Property, including, but not limited to, buildings, walkways, recreation areas and facilities, parking areas, berms, fountains, sprinkler systems, gatehouse, streets, drives, roads, driveways, fences, underground footers and other foundation supports, stairs, roofs, landscaping, trees, hedges, plantings, flower pots, poles, swings, gym sets and play structures, swimming pools, spas, covered patios, screen enclosures, jogging, bicycling and walking paths, basketball backboards and hoops, signs, site and perimeter walls, gazebos, benches, mailboxes, street lights, and signs. The foregoing list of Improvements is for example purposes only and shall not create any obligation of the Declarant to construct or fund construction of same.

1.19 "Individual Assessment(s)" shall mean Assessments levied against one (1) or more Lots and/or one (1) or more Owners for such matters as set forth in this Declaration and/or as related to a specific level of service provided by the Association to a Lot and/or Owner in accordance with section 720.308, Florida Statutes, and as further set forth in Section 11.6 hereof.

1.20 "Legal Fees" shall mean all fees for attorney and paralegal services and all costs and expenses and court costs through and including all trial and appellate levels and post judgment proceedings incurred in connection with: (i) enforcement of the Governing Documents, whether or not mediation, arbitration and/or litigation is actually begun; (ii) negotiation and preparation for mediation, arbitration, and/or litigation, whether or not an action is actually begun; (iii) collection of past due Assessments including, but not limited to, preparation of notices and liens; and (iv) litigation regarding the entitlement to Legal Fees, including, without limitation, determining or quantifying the amount of Legal Fees due. Additionally, and without limitation of the foregoing, Legal Fees shall include any and all costs that are taxable pursuant to any applicable statute, rule, or guideline (including, but not limited to, the Statewide Uniform Guidelines for Taxation of Costs), as well as costs not taxable thereunder, including, without limitation, the following: (i) costs of investigation; (ii) costs of copying documents and other materials, whether for discovery, filing with the court, internal review, or any other purpose; (iii) costs for electronic discovery; (iv) Westlaw, Lexis Nexis, or other electronic research service charges; (v) telephone charges; (vi) mailing, commercial delivery service, and courier charges; (vii) travel expenses, whether for investigation, depositions, hearings, trial, or any other purpose; (viii) information technology support charges; (ix) any and all

consultant or expert witness fees, whether or not such fees are incurred in connection with a court-ordered report or testimony at a deposition, hearing, or trial; (x) court reported and transcript fees, whether for deposition, trial, or an evidentiary or non-evidentiary hearing; (xi) mediator fees; and (xii) any other reasonable cost incurred in connection with the dispute.

1.21 "Lender" shall mean (i) the institutional and licensed holder of a first mortgage encumbering a Home or (ii) the Declarant and its affiliates, to the extent the Declarant or its affiliates finances the purchase of a Home initially or by assignment of an existing mortgage.

1.22 "Lot" shall mean any platted parcel of land shown on the Plat upon which a Home is permitted to be constructed, together with the Improvements thereon or other property appurtenant to the Lot. Upon completion of construction of a Home on a Lot as evidenced by issuance of a Certificate of Occupancy, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot.

1.23 "Master Association" shall mean Lotis Palm Bay Master Association, Inc., a Florida not for profit corporation.

1.24 "Master Declaration" shall mean the Declaration of Covenants, Conditions, and Restrictions for Lotis Palm Bay, recorded in the Official Records of Brevard County in Official Records Book \_\_\_\_\_, Page \_\_\_, together with all exhibits thereto, all as amended and supplemented from time to time.

1.25 "Master Governing Documents" shall mean the Master Declaration, the Articles of Incorporation and By-Laws of the Master Association, and the Master Association's Architectural Guidelines and Rules and Regulations, all as amended and supplemented from time to time.

1.26 "Member(s)" shall mean any person(s) or entity(ies) that is an Owner as evidenced by a deed or other title instrument in the name of such person(s) or entity(ies) recorded in the Official Records of the County.

1.27 "Non-Residential Property" shall mean that portion of the property subject to the Master Declaration, less and except the Property, which is intended for commercial, medial, rental apartments, and institutional development and use.

1.28 "Owner(s)" shall mean the record title owner(s) (whether one (1) or more persons or entities) of fee simple interest to any Lot but excluding those having such interest merely as security for the performance of an obligation and excluding purchasers under executory contracts of sale. The term "Owner" shall not include the Declarant, even

after Turnover, unless the Declarant, in a writing addressed to the Association, elects otherwise.

1.29 "Plat" shall mean the plat of Lotis Palm Bay, recorded in the Official Records of the County in Plat Book \_\_\_\_, Page \_\_\_\_, and any replat of any portion thereof and any amendment thereto as may be recorded in the Official Records of the County from time to time, unless such replatted property is not intended to remain subjected to this Declaration. This definition shall be automatically amended to include the plat of any additional property added or removed to this Declaration and any replat of any portion thereof as may be recorded in the Official Records of the County from time to time.

1.30 "Property" shall mean the property described in Exhibit "A" hereto (including all Improvements thereon), and as may be applicable, such additions thereto as may hereafter be brought within the jurisdiction of this Declaration and such withdrawals therefrom as may be removed from the jurisdiction of this Declaration by Supplemental Declaration.

1.31 "Reserves" shall mean any reserve accounts for capital expenditures and/or deferred maintenance created in accordance with section 720.303(6)(d), Florida Statutes, and subject to the provisions of section 720.303(6), Florida Statutes ("Statutory Reserves"), and reserve accounts for capital expenditures and/or deferred maintenance established at the discretion of the Board which are not subject to the provisions of section 720.303(6) ("Non-Statutory Reserves"), or any combination thereof.

1.32 "Rules and Regulations" shall mean the rules and regulations governing the Community as adopted by the Board from time to time. The Rules and Regulations may be incorporated in the Architectural Guidelines or may be adopted separately by the Board.

1.33 "Special Assessment(s)" shall mean Assessments levied against one (1) or more Lots or one (1) or more Owners for such matters as set forth in this Declaration as further set forth in Section 11.5 hereof.

1.34 "Single-Family Lot" means any Lot upon which a detached, single-family Home is constructed.

1.35 "SJRWMD" shall mean the St. Johns River Water Management District.

1.36 "SJRWMD Permit" shall mean the Individual Environmental Resource Permit No. \_\_\_\_\_ issued by SJRWMD to the Master Association regarding the Property and the Non-Residential Property, a copy of which is attached hereto and incorporated as if fully set forth herein as Exhibit "C". Copies of the SJRWMD Permit and any future permit actions of SJRWMD shall be maintained by the Secretary of the Association for the benefit of the Association.

1.37 “Stormwater Management System” means a system that is designed and constructed or implemented to control discharges that are necessary by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, over-drainage, environmental degradation, and water pollution otherwise affecting the quantity and quality of discharges from the system, as applicable.

1.38 “Supplemental Declaration” shall mean and refer to an instrument filed in the Official Records of the County pursuant to Article VI hereof which subjects additional property to this Declaration, withdraws property from this Declaration, designates neighborhoods, creates additional classes of members, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The Declarant may, by Supplemental Declaration, create additional classes of membership, with such rights, privileges, and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

1.39 “Telecommunications Provider” shall mean any party contracting with the Association to provide Owners with one (1) or more Telecommunications Services. With respect to any particular Telecommunications Services, there may be one (1) or more Telecommunications Providers.

1.40 “Telecommunications Services” shall mean delivered entertainment services, if provided, or none at all; all services that are typically, and in the future, identified as telecommunication services; cable television services; and data transmission services. Without limiting the foregoing, such Telecommunications Services may include the development, promotion, marketing, advertisement, provision, distribution, maintenance, transmission, and servicing of any of the foregoing services. The term Telecommunications Services is to be construed as broadly as possible.

1.41 “Title Documents” shall mean, if any, certain land use and title documents recorded in the County’s Official Records to which all or a part of the Property may be subject, and upon the Community Completion Date, the Association shall assume all of the obligations of the Declarant under the Title Documents, unless otherwise provided by the Declarant by amendment to this Declaration and in the sole and absolute discretion of Declarant.

1.42 “Townhome Lot” means any Lot upon which an attached, single-family Home is constructed.

1.43 “Turnover” shall mean the transfer of operation of the Association by the Declarant to the Owners, such that the Owners are entitled to elect a majority of the Board, which occurs upon the earliest of the following events in accordance with section 720.307, Florida Statutes: (i) three (3) months after the conveyance of ninety percent (90%) of all of the Lots to Owners; (ii) the Declarant voluntarily relinquishes control of the Association in a writing delivered to the Association; (iii) upon the Declarant abandoning

or deserting its responsibility to maintain and complete the amenities or infrastructure as set forth in this Declaration as evidenced by a court order; (iv) upon the Declarant filing a petition seeking protection under Chapter 7 of the Federal Bankruptcy Code; (v) upon the Declarant losing title to the Property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of Declarant rights and responsibilities first arising after the date of such assignment; or (vi) upon a receiver for the Declarant being appointed by a circuit court and not being discharged within thirty (30) days after such appointment, unless the court determines within thirty (30) days after such appointment that transfer of control would be detrimental to the Association or its Members.

## **ARTICLE II**

### **DESCRIPTION OF THE COMMUNITY**

2.1 General Plan of Development. The Property is part of the mixed-use development, containing residential, commercial, rental apartments, and institutional uses, known as "LOTIS PALM BAY". The Property, constituting the single-family residential use of the mixed-use development, comprises the Community to encompass approximately three hundred seventy-seven (377) Single-Family Lots and Common Areas, and, in addition, lands which the Declarant may add or remove, but shall in no way be obligated to add or remove, by one (1) or more Supplemental Declarations. The Declarant makes no representations concerning development both within and outside the boundaries of the Community, including, but not limited to, the number, design, boundaries, configuration, and arrangements, prices of Lots and Homes and buildings in all other proposed forms of ownership and/or other Improvements on the Property or adjacent to or near the Property, including, but not limited to, the size, location, configuration, elevations, design, building materials, height, view, airspace, number of Lots or Homes, number of buildings, location of easements, parking and landscaped areas, and services and amenities offered. The Declarant hereby reserves the right to modify its general plan of development of the Community (including, without limitation, the right to modify the site plan of the Community and the right to supplement, change, or reduce the number of Homes, Lots, and/or Recreational Facilities (if any) to be constructed within the Community) and/or the right to add land to the Property or to withdraw land from the Property, all in the Declarant's sole and absolute discretion. Therefore, in the event the Declarant modifies its general plan of development of the Community, adds land to the Property and/or withdraws land from the Property, the number of Lots, the layout of Lots and/or the size of Lots within the Community may change and the Assessments required to be paid pursuant to this Declaration may increase or decrease, as applicable. Further, the Declarant hereby reserves the right to modify, amend, or revise the Plat or any replat thereof, from time to time, and the right to record, modify, amend, or revise, from time to time, one (1) or more additional plats or replats thereof, setting forth such information as the Declarant may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of Lots, Homes, Common Areas, additional property, roads, sidewalks, utility systems, drainage

systems, and easements. The Declarant's general plan of development further contemplates that such Homes shall be whatever types of structures the Declarant may choose which are in conformance with this Declaration. THE DECLARANT MAY PRESENT TO THE PUBLIC OR TO OWNERS RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER DOCUMENTS RESPECTING THE COMMUNITY. SUCH RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER DOCUMENTS ARE NOT A GUARANTEE OF HOW THE COMMUNITY WILL APPEAR UPON COMPLETION, AND THE DECLARANT RESERVES THE RIGHT TO CHANGE ANY AND ALL OF THE FOREGOING AT ANY TIME AS THE DECLARANT DEEMS NECESSARY IN ITS SOLE AND ABSOLUTE DISCRETION.

2.2 Absence of Obligation. The planning process for the Community is an ever-evolving one and must remain flexible in order to be responsible to and accommodate the needs of the Community. Subject to the Title Documents (if any), the Declarant may and has the right to develop the Community and adjacent property owned by the Declarant into residences, comprised of homes, villas, coach homes, townhomes, patio homes, single-family homes, estate homes, multi-family homes, condominiums, rental apartments, and other forms of residential dwellings, and/or Improvements for any form of commercial, institutional, or other non-residential uses. The existence at any point in time of walls, landscape screens, or berms is not a guaranty or promise that such items will remain or form part of the Community as finally developed. Additionally, the Declarant expressly reserves the right as to the Property to (i) commence construction and development of the Property if and when the Declarant desires; (ii) develop the Property, and each portion thereof, upon such timetable as the Declarant, without obligation and in its sole discretion, chooses; and (iii) modify the general plan of development of the Property (including, without limitation, the right to modify the site plan of the Community and the right to change the Recreational Facilities (if any) and the number of Homes to be constructed within the Community) in such manner as the Declarant, in its sole and absolute discretion, chooses. Nothing contained herein shall be construed as obligating the Declarant to construct the Community according to the present general plan of development or as obligating the Declarant to declare any additional property to be Property hereunder.

2.3 Model Homes. The Declarant hereby reserves the right to construct and operate model homes within the Community. The model homes may contain models for the Community or other communities being developed by the Declarant or affiliate(s) of the Declarant, as the Declarant and/or any of the Declarant's affiliates may so determine, in their sole discretion. The model homes may also contain parking, landscaping, and fencing, including, without limitation, across roadways and sidewalks, as the Declarant may determine in its sole discretion. In the event the Declarant and/or any of the Declarant's affiliates constructs model homes in the Community, such model homes may be used for such period of time that the Declarant and/or any of the Declarant's affiliates determine to be necessary in its or their sole discretion including, without limitation, after Turnover. Each Owner, by acceptance of a deed or title to a Lot, acknowledges and agrees that: (i) the Declarant and/or any of the Declarant's affiliates have a right to

construct and/or operate model homes even after Turnover; (ii) the Declarant, its affiliates, guests, invitees, and prospective purchasers, have an easement over the Community for ingress and egress to and from each and every model home and to use and show the model homes to prospective purchasers in the Community or other communities being developed by the Declarant and/or any of the Declarant's affiliates, for so long as such model homes exist; and (iii) the Owners, tenants, residents, guests, and invitees shall not interfere in any manner whatsoever in the sales process by the Declarant and/or any of the Declarant's affiliates, including, without limitation, the carrying of signs, the posting of signs on Lots or Homes (which the Declarant has the right to do in its unfettered discretion), or other types of demonstrations in or around the Community or any public right-of-way adjacent to the Property. Each Owner acknowledges and agrees that any sales interference by an Owner, tenant, resident, guest, or invitee shall be deemed a nuisance and therefore detrimental to: (i) the quiet enjoyment of the Community by other residents, (ii) the value of the Homes within the Community, and (iii) the Declarant's and/or any of the Declarant's affiliates' ability to conduct their business.

### **ARTICLE III** **COMMON AREAS**

3.1 Common Areas. The Declarant anticipates it will construct certain facilities and Improvements as part of the Common Areas to include whatever facilities and Improvements the Declarant considers in its sole judgment to be appropriate to the Community, as well as any changes thereto. By way of example, and not limitation, the facilities and Improvements may include, without creating any obligation to provide same: private streets, roads, rights-of-way, and sidewalks; streets, roads, and rights-of-way dedicated to the public; the Stormwater Management System; water collection, treatment, and distribution facilities; sewage collection facilities and related wastewater treatment and disposal facilities (including, but not limited to, an irrigation system utilizing treated effluent from the Stormwater Management System); mailbox facilities; and utility and maintenance buildings. The description of the Common Areas on the Plat is subject to change and the notes on a Plat are not a guarantee of what Improvements and facilities will be constructed as Common Areas. Site plans, the Plat, and renderings used by the Declarant in its marketing efforts may illustrate the types of Improvements and facilities that may be constructed as Common Areas but such site plans, the Plat, and renderings are not a guarantee of what Improvements will actually be constructed. Each Owner should not rely on the Plat or any site plans or renderings used for illustration purposes as this Declaration governs the rights and obligations of the Declarant and Owners with respect to the Common Areas. The Owners shall have no right in or to any Common Areas referred to in this Declaration unless and until same are actually constructed, completed, and conveyed to the Association. Prior to the Community Completion Date, the Declarant reserves the absolute right to add to, delete from, or modify any of the Common Areas at its discretion without notice and to dedicate and/or transfer any portion of the Common Areas for various public purposes, or to make any portions of the Property part of the Common Areas. SALES BROCHURES, SITE PLANS, AND MARKETING MATERIALS ARE CURRENT CONCEPTUAL REPRESENTATIONS AS TO WHAT IMPROVEMENTS, IF ANY, WILL BE INCLUDED WITHIN THE COMMON AREAS. THE



DECLARANT SPECIFICALLY RESERVES THE RIGHT TO CHANGE THE LAYOUT, COMPOSITION, AND DESIGN OF ANY AND ALL COMMON AREAS, AT ANY TIME, WITHOUT NOTICE AND AT ITS SOLE AND UNFETTERED DISCRETION.

3.2 Recreational Facilities. Certain of the Common Areas may be intended for recreational activities (collectively, the "Recreational Facilities"). The Declarant shall be the sole judge of the composition of any Common Area Improvements constructed by the Declarant, including, without limitation, the Recreational Facilities. Prior to the Community Completion Date, the Declarant reserves the absolute right to construct additional Improvements on the Common Areas within the Community, from time to time, in its sole discretion, and to remove, add to, modify, and change the boundaries, facilities, and Improvements now or then part of the Common Areas. The Declarant is not obligated to, nor has it represented that it will, construct any Common Area Improvements, including, without limitation, the Recreational Facilities. The Declarant is the sole judge of the Common Area Improvements constructed by the Declarant, including, without limitation, the plans, specifications, design, location, completion schedule, materials, size, and contents of the facilities, Improvements, appurtenances, personal property, color, textures, finishes, or changes or modifications to any of them. Notwithstanding anything contained herein, neither the Declarant nor the Association makes any representations whatsoever to commence, complete, or construct any of the Recreational Facilities within any specific time period.

3.3 Public Facilities. The Community may include one (1) or more public facilities, including, without limitation, a lift station dedicated to the County and/or the Village as part of the waste water treatment system.

3.4 Mailboxes. Owners hereby acknowledge that the United States Postal Service has sole discretion to determine the form of mail delivery for the Community and may require cluster boxes to be installed and utilized at one (1) or more delivery points within the Property. Curbside delivery may not be available within the Property. Mailbox sites, equipment type, and method of delivery may change from time to time in the sole discretion of the United States Postal Service.

3.5 Retention/Detention Areas. Any retention/detention areas may be a part of the Common Areas, and if a part of the Common Areas, shall be maintained, administered, and operated by the Master Association in accordance with the Master Declaration as part of the Stormwater Management System. In furtherance of the foregoing, the Declarant hereby reserves and grants an easement in favor of the Master Association throughout all portions of the Property as may be necessary for the purpose of constructing, accessing, maintaining, and administering the retention/detention areas, and no Owner, tenant, resident, guest, or invitee, nor the Association, shall do any act which may interfere with the performance by the Declarant or the Master Association of its obligations hereunder.

THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION  
MAKE NO REPRESENTATIONS CONCERNING THE CURRENT OR FUTURE WATER

LEVELS IN ANY OF THE RETENTION/DETENTION AREAS IN THE COMMUNITY; PROVIDED, FURTHER, THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION BEAR NO RESPONSIBILITY TO ATTEMPT TO ADJUST OR MODIFY THE WATER LEVELS SINCE SUCH LEVELS ARE SUBJECT TO SEASONAL GROUNDWATER, SUN EXPOSURE, AND RAINFALL FLUCTUATIONS THAT ARE BEYOND THE CONTROL OF THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION. THERE IS NO GUARANTEE BY THE DECLARANT, THE MASTER ASSOCIATION, OR THE ASSOCIATION THAT WATER LEVELS OR RETENTION/DETENTION AREAS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME; AT TIMES, WATER LEVELS MAY BE NONEXISTENT. EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO SUCH OWNER'S LOT, HEREBY ACKNOWLEDGES THE WATER LEVELS OF ALL RETENTION/DETENTION AREAS MAY VARY AND HEREBY RELEASES THE DECLARANT, THE MASTER ASSOCIATION, THE ASSOCIATION, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, COMMITTEE MEMBERS, EMPLOYEES, MANAGERS, MANAGEMENT AGENTS, CONTRACTORS, AND SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, LIABILITIES, DAMAGES, COSTS, AND EXPENSES OF WHATEVER NATURE OR KIND (INCLUDING, WITHOUT LIMITATION, LEGAL FEES, RELATED TO, ARISING OUT OF AND/OR RESULTING FROM WATER LEVELS IN THE RETENTION/DETENTION AREAS REGARDLESS OF THE CAUSE THEREOF.

EACH OWNER, BY THE ACCEPTANCE OF A DEED OR TITLE TO A LOT, AGREES THAT NONE OF THE LISTED PARTIES SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY OR WATER QUALITY OF ANY RETENTION/DETENTION AREAS WITHIN OR AROUND THE COMMUNITY. THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO ERECT FENCES, GATES, OR WALLS AROUND OR ADJACENT TO ANY RETENTION/DETENTION AREAS WITHIN OR AROUND THE COMMUNITY. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE OR RESPONSIBLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY RETENTION/DETENTION AREAS. ALL PERSONS USING RETENTION/DETENTION AREAS DO SO AT THEIR OWN RISK. ALL OWNERS AND USERS OF ANY RETENTION/DETENTION AREAS SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF A DEED OR TITLE TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO RELEASE AND HOLD HARMLESS THE LISTED PARTIES FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, LIABILITIES, DAMAGES, COSTS, AND EXPENSES OF WHATEVER NATURE OR KIND (INCLUDING, WITHOUT LIMITATION, LEGAL FEES, RELATED TO, ARISING OUT OF AND/OR RESULTING FROM ANY AND ALL OF THE FOREGOING IN THIS PARAGRAPH INCLUDING, WITHOUT LIMITATION, CHANGES IN THE SAFETY OR QUALITY OF WATER IN RETENTION/DETENTION AREAS. ALL PERSONS ARE HEREBY NOTIFIED THAT, FROM TIME TO TIME, WILDLIFE MAY INHABIT OR ENTER INTO RETENTION/DETENTION AREAS WITHIN OR NEARBY THE COMMUNITY AND MAY

POSE A THREAT TO PERSONS, PETS, AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY, OR DAMAGE CAUSED BY SUCH WILDLIFE.

3.6 Special Taxing Districts. Prior to Turnover, the Declarant shall have the right, but not the obligation, to dedicate or transfer or cause the dedication or transfer of all or portions of the Common Areas to a special taxing district, or a public agency or authority under such terms as the Declarant deems appropriate in order to create or contract with special taxing districts and community development districts (or others) for lighting, perimeter walls, entrance features, roads, landscaping, irrigation areas, ponds, surface water management systems, wetlands mitigation areas, parks, recreational or other services, security or communications, or other similar purposes deemed appropriate by the Declarant, including, without limitation, the maintenance and/or operation of any of the foregoing. As hereinafter provided, the Declarant may sign any taxing district petition as attorney-in-fact for each Owner. Each Owner's obligation to pay taxes associated with such district shall be in addition to such Owner's obligation to pay Assessments. Any special taxing district shall be created pursuant to all applicable ordinances of County and all other applicable governing entities having jurisdiction with respect to the same.

3.7 Access Control Systems and Services. The Declarant may provide and/or install access control systems, monitoring systems, or other security/safety system, including, without limitation, a gatehouse, entry and exit gates, camera monitoring systems, and perimeter walls/fences, within the Property, including within any Tract and/or within the Common Areas, and contract for the service for same (collectively, "Access Control Systems and Services"). Additionally, the Association shall have the right, but not the obligation, to contract for the installation of additional Access Control Systems and Services for the Community. If provided, all costs associated with any Access Control Systems and Services shall be part of the Common Expenses. The Declarant hereby reserves for itself and the Master Association, and their respective contractors, suppliers, agents, and employees, and any prospective purchasers of Homes or Lots from the Declarant, an easement for free and unimpeded access through any such Access Control Systems and Services, subject only to such controls and restrictions as are agreed to in writing by the Declarant and/or the Master Association, as applicable. If the Association attempts to restrict or control access into the Community through means not approved by the Declarant and/or the Master Association, as applicable, the Declarant and the Master Association may take any and all measures necessary to eliminate same, including, without limitation, disabling any entry system during any hours desired by the Declarant or the Master Association, and the Declarant and the Master Association shall have no liability in this regard.

Additionally, the Declarant may install a fire protection system, burglar alarm system, or other security/safety system within the Common Areas and/or within Homes and contract for service for same. Thereafter, the Association shall have the right, but not the obligation, to contract for the service of any fire protection system, burglar alarm

system, or other security/safety system to the Homes on a bulk basis and to the Common Areas as Common Expenses.

THE OWNERS ACKNOWLEDGE THAT THE ACCESS CONTROL SYSTEMS AND SERVICES WILL NOT BE ABLE TO PREVENT CRIME. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER THE DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER TO COMMENCE, COMPLETE, CONSTRUCT, OR STAFF ANY ACCESS CONTROL SYSTEMS AND SERVICES WITHIN ANY SPECIFIC TIME PERIOD, IF AT ALL.

ALL OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES ACKNOWLEDGE THAT THE DECLARANT AND THE ASSOCIATION DO NOT REPRESENT OR WARRANT THAT: (i) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OTHER SECURITY/SAFETY SYSTEM, OR ANY ACCESS CONTROL SYSTEMS AND SERVICES RECOMMENDED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ASSOCIATION MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR (ii) THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OTHER SECURITY/SAFETY SYSTEM, OR ANY ACCESS CONTROL SYSTEMS AND SERVICES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEMS OR SERVICES ARE DESIGNED OR INTENDED.

NEITHER THE DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATION WHATSOEVER AS TO THE SECURITY OF THE PROPERTY OR THE ADEQUACY OR EFFECTIVENESS OF ANY ACCESS CONTROL SYSTEMS AND SERVICES. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY, EVEN IF CAUSED BY THE NEGLIGENCE OF THE DECLARANT AND/OR THE ASSOCIATION.

NEITHER THE DECLARANT NOR THE ASSOCIATION GUARANTEES OR WARRANTS, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH ACCESS CONTROL SYSTEMS AND SERVICES OR THAT ANY SUCH ACCESS CONTROL SYSTEMS AND SERVICES WILL PREVENT INTRUSION, THEFT, FIRE, DAMAGE, INJURY, DEATH, OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT SUCH ACCESS CONTROL SYSTEMS AND SERVICES ARE DESIGNED TO MONITOR SAME. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY OR OF THE HEALTH, SAFETY, OR WELFARE OF ANY OWNER, TENANT, RESIDENT, GUEST, OR INVITEE, OF THE LOT OR THE HOME, OR OF ANY PROPERTY, REAL OR PERSONAL, LOCATED WITHIN THE LOT OR HOME. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY CASUALTY OR INTRUSION INTO A LOT OR HOME.

EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO A LOT, AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING A USE OF, ANY PORTION OF THE PROPERTY, BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE, SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS, DAMAGES, LOSSES, AND CAUSES OF ACTION AGAINST THE DECLARANT AND THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE DECLARANT AND THE ASSOCIATION HAS BEEN DISCLAIMED. ALL OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES AGREE TO HOLD THE DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM (INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY AND/OR DEATH) ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT.

AS USED IN THIS SECTION 3.7, "DECLARANT" AND "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE DECLARANT'S AND THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, AND ASSIGNS.

3.8 Road Drainage. EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO A LOT, HEREBY ACKNOWLEDGES THAT THE ROAD(S) WITHIN THE COMMUNITY ARE DESIGNED AS A SECONDARY RESERVOIR FOR STORMWATER AND SURFACE WATER. THEREFORE, THE ROAD(S) ARE DESIGNED TO FLOOD IN THE EVENT THE PRIMARY RESERVOIR SYSTEM FAILS OR EXCEEDS CAPACITY. THE DECLARANT, NOR THE ASSOCIATION, SHALL BE RESPONSIBLE FOR ANY DAMAGE TO OR LOSS OF ANY LOT, HOME, IMPROVEMENT, OR PERSONAL PROPERTY OF ANY OWNER, TENANT, RESIDENT, GUEST, OR INVITEE IN THE EVENT THE ROAD(S) BECOME FLOODED.

3.9 Conveyance. Upon Turnover, all Common Areas shall be owned by the Association as if specifically deeded to the Association as follows: the Declarant shall convey to the Association the fee simple title to the Common Areas, and the Association shall be obligated to accept such conveyance, including responsibility for (i) all real estate taxes and assessments due with respect to the Common Areas from and after the date of recording of this Declaration; (ii) subject to all laws, ordinances, regulations, restrictions, prohibitions, and other requirements imposed by governmental authorities, including, without limitation, all building, zoning, land use and environmental laws, ordinances, codes, and regulations; (iii) matters which would be disclosed by an accurate survey of the Common Areas; (iv) easements, covenants, conditions, restrictions, reservations, limitations, and other matters of record; and (v) the terms and provisions of this Declaration.

The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance, and administration of the Common Areas. The Association shall, and does hereby, indemnify and hold the Declarant, its directors, officers, members,

managers, shareholders, agents, employees, affiliates, successors, and assigns (collectively, the "Declarant Parties") harmless on account thereof. The Association, by its joinder to this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. The Association shall accept any and all transfer of permits from the Declarant, or any other permittee, of any permit required by a governmental agency in connection with the development of the Community, as modified and/or amended. The Association shall cooperate with the Declarant, or any other permittee of such permits, as modified and/or amended, with any applications, certifications, documents, or consents required to effectuate any such transfer of permits to the Association.

The Association shall also accept the Common Areas and the personal property and Improvements appurtenant thereto in "AS IS" "WHERE IS" condition, with all faults, and without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Common Areas or any portion thereof, and the personal property and Improvements appurtenant thereto being conveyed. TO THE FULL EXTENT PERMITTED BY LAW (INCLUDING, WITHOUT LIMITATION SECTION 553.835, FLORIDA STATUTES), THE ASSOCIATION AND EACH OWNER KNOWINGLY AND VOLUNTARILY RELINQUISHES AND WAIVES, AND THE DECLARANT EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED) AS TO THE LOTS, THE HOMES, THE COMMON AREAS, PERSONAL PROPERTY, AND OTHER IMPROVEMENTS ON OR UNDER THE PROPERTY WHETHER ARISING FROM CUSTOM, USAGE, OR TRADE, COURSE OF CONDUCT, COURSE OF DEALING, CASE LAW, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR ANY IMPLIED WARRANTY OF FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. TO THE EXTENT THAT BY LAW OR OTHERWISE ANY OF THE WARRANTIES RELINQUISHED, WAIVED, OR DISCLAIMED CANNOT BE RELINQUISHED, WAIVED, OR DISCLAIMED, IN WHOLE OR IN PART, ALL SECONDARY, INCIDENTAL, AND CONSEQUENTIAL DAMAGES ARE SPECIFICALLY EXCLUDED AND DISCLAIMED (INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM CLAIMS OF PROPERTY DAMAGE, LOSS OF USE, PERSONAL INJURY, OR EMOTIONAL DISTRESS).

The Declarant hereby reserves the right, until the Community Completion Date, to require the Association to reconvey all or a portion of the Common Areas by quitclaim deed in favor of the Declarant in the event that such property is required to be owned by the Declarant for any purpose, including, without limitation, the reconfiguration of any adjacent property by replatting or otherwise. To the extent legally required, each Owner shall be deemed to have granted to the Declarant, and thereafter the Association, an irrevocable power of attorney, coupled with an interest, for the purposes herein expressed.

3.10 Mortgaging the Common Areas by the Declarant. Subject to Section 3.9, the Declarant may mortgage any part or all of the Common Areas to finance construction and development provided the mortgagee recognizes the rights of Owners under this

Declaration and neither the Association nor the Owners shall be personally liable for paying the mortgage. Neither the Association nor the Owners shall be required to join in or be entitled to consent to such mortgage.

3.11 Operation after Conveyance. Except as to the Association's right to grant easements and other interests as provided in this Declaration and except as to the taking of any Common Areas or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas to a third party without (i) if prior to Turnover, the approval of (a) a majority of the Board and (b) the written consent of the Declarant, or (ii) after Turnover, approval of (a) a majority of the Board and (b) sixty percent (60%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained.

3.12 Assumption of Risk. All persons using the Common Areas do so at their own risk. Without limiting any other provision herein, each Owner, tenant, resident, guest, and invitee accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupancy of any portion of the Common Areas, including, without limitation: (i) noise from maintenance equipment; (ii) use of pesticides, herbicides, and fertilizers; (iii) view restrictions and impairment caused by the construction of any structures and/or the maturation of trees and shrubbery; (iv) reduction in privacy caused by the removal or pruning of shrubbery or trees within the Property; and (v) design of any portion of the Property. Each Owner expressly indemnifies and agrees to hold harmless the Declarant Parties and the Association and its directors, officers, committee members, managers, agents, and employees (collectively, the "Association Parties"), from any and all actions, injuries, deaths, claims, losses, liabilities, damages (whether actual, consequential, incidental, or otherwise), judgments, orders, fines, liens, encumbrances, penalties, costs, and expenses of any kind or nature whatsoever, including, without limitation, Legal Fees (collectively, "Losses"), arising from or related to the person's use of the Common Areas, including, without limitation, the Recreational Facilities. BY THE ACCEPTANCE OF A DEED OR TITLE TO A LOT, EACH OWNER ACKNOWLEDGES THE COMMON AREAS AND AREAS IN THE VICINITY OF THE COMMON AREAS MAY CONTAIN WILDLIFE, SUCH AS, BUT NOT LIMITED TO, INSECTS, ALLIGATORS, COYOTES, RACCOONS, SNAKES, DUCKS, DEER, SWINE, TURKEYS, AND FOXES. THE DECLARANT AND THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE IS RESPONSIBLE FOR THEIR OWN SAFETY.

3.13 Obligation to Indemnify. Each Owner agrees to indemnify and hold harmless the Association Parties against any and all Losses incurred by or asserted against any of the Association Parties, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of the Common Areas by Owners, tenants, residents, guests, or invitees. Should any Owner bring suit against any of the Association Parties for any claim or matter and fail to obtain judgment therein against such Association Parties, such Owner shall be liable to such

parties for all Losses incurred by the Association Parties in the defense of such suit. Additionally, the Association and each Owner covenant and agree, jointly and severally, to indemnify, defend, and hold harmless the Declarant Parties from and against any and all Losses incurred by or asserted against any of the Declarant Parties, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of the Common Areas by the Association, the Owners, tenants, residents, guests, or invitees, or to other property serving the Association and the Owners, and Improvements thereon, or resulting from or arising out of activities or operations of the Association or the Owners within the Property. The costs of fulfilling the Association's indemnification, defense, and hold harmless obligations in this Section 3.13 shall be Common Expenses to the extent such matters are not covered by insurance maintained by the Association. Notwithstanding the foregoing, the indemnification and defense obligations in this Section 3.13 shall not apply to: (i) any damage claim directly asserted by the Association against the Declarant for defects in construction of Improvements constructed by the Declarant on the Common Areas provided such claim does not arise out of or result from any third-party claim, and/or (ii) any gross negligence or willful misconduct by the indemnified parties.

#### **ARTICLE IV**

#### **OPERATION OF COMMUNITY PRIOR TO CONVEYANCE**

After development of the Property, the Declarant may own all Lots within the Community until such time as the Declarant determines to sell and convey Lots to Owners. As such, the Declarant shall be the sole owner of all Lots and the sole member of the Association as set forth in the Articles. During such time, in addition to the rights and privileges granted to and reserved for the Declarant, the Declarant shall enjoy all the rights and privileges of an Owner under this Declaration as if the Declarant were deemed an Owner, including, without limitation, the easement rights set forth in Article V of this Declaration; provided, however, the Declarant shall not be subject to any duties or obligations of an Owner under this Declaration, including, without limitation, the restrictions set forth in Article VIII and Article XII of this Declaration. Notwithstanding the foregoing, the Declarant shall be responsible to maintain, repair, and replace all Lots and the Improvements thereon in the manner set forth in Section 7.4 and Section 7.5 of this Declaration for so long as the Declarant owns such Lots at the Declarant's expense.

#### **ARTICLE V**

#### **PROPERTY RIGHTS AND EASEMENTS**

5.1 Owners' Easement of Enjoyment. As long as this Declaration is in effect, each Owner, tenant, resident, guest, and invitee shall have, except as otherwise may be provided in this Declaration, a permanent and perpetual, non-exclusive easement for ingress and egress over, enjoyment in, and use of the Common Areas in common with all other Owners, tenants, residents, guests, and invitees. This easement shall be appurtenant to, shall pass with title to that Owner's Lot, and shall be subject to the following:



(i) The right of the Declarant, prior to the Community Completion Date, and thereafter, of the Association, at any and all times, and from time to time, to further additionally provide and make the Common Areas available to other individuals, persons, firms, or corporations, as it deems appropriate. The granting of such rights shall not invalidate this Declaration, reduce or abate any Owner's obligations pursuant to this Declaration, or give any Owner the right to avoid any of the covenants, agreements, or obligations to be performed hereunder.

(ii) The right of the Declarant and/or the Association to enter into easement agreements or other use or possession agreements whereby the Owners, Telecommunications Providers, the Association, and/or others may obtain the use, possession of, or other rights regarding certain property, on an exclusive or non-exclusive basis, for certain specified purposes. The Association may agree to maintain and pay the taxes, insurance, administration, upkeep, repair, and replacement of such property, the expenses of which shall be a part of the Common Expenses. Any such agreement by the Association prior to the Community Completion Date shall require the prior written consent of the Declarant. Thereafter, any such agreement shall require the approval of the majority of the Board, which consent shall not be unreasonably withheld or delayed.

(iii) The right of the Association to reasonably limit the number of guests or invitees of an Owner, resident, or tenant who may use the Common Areas and to prohibit such use of the Common Areas upon failure to abide by the provisions of the Governing Documents.

(iv) The right and duty of the Association to levy Assessments against each Lot for the purpose of operating, maintaining, repairing, and replacing the Common Areas in compliance with the provisions of this Declaration and the restrictions on portions of the Property from time to time recorded by the Declarant.

(v) The right of the Association in accordance with the Governing Documents to borrow money for the purpose of maintaining, repairing, replacing, and improving the Common Areas and, in aid thereof, to mortgage, pledge, or hypothecate the right of assessment and/or any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners in the Common Areas.

(vi) The right of the Association to dedicate, release, alienate, or transfer all or any part of the Common Areas owned by the Association to any public agency, authority, or utility; and to grant any covenant, restriction, or reservation against the Common Areas in favor of any such public agency, authority, or utility subject to the approval required in accordance with Section 3.11 hereof, except for such circumstances where the government is condemning the property through eminent domain.

(vii) The right of the Association, without any vote of the Owners, to grant easements and rights-of-way where necessary or desirable, for utilities, water, and sewer

facilities, cable television, and other services over the Common Areas to serve the Common Areas and any other portions of the Property.

(viii) The right of the Declarant and its officers, directors, managers, partners, employees, agents, licensees, and invitees to the non-exclusive access and use of the Common Areas, and any portion thereof, without charge and without notice, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes or for any other purpose deemed appropriate by the Declarant without interference from any Owner or any other person or entity whatsoever, and to grant (without consent of the Association and/or vote of the Owners) easements and rights-of-way as provided in this Declaration until the Community Completion Date.

(ix) The easements, restrictions, reservations, conditions, limitations, and rights provided elsewhere in this Declaration and as designated on the Plat.

(x) The right of the Association, the Declarant, and their respective officers, directors, managers, employees, agents, licensees, and invitees to come upon the Property (including, without limitation, a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient for the Association and/or the Declarant to carry on their respective duties, obligations, and responsibilities hereunder, and all other work reasonably inferred therefrom (including, without limitation, the Declarant's development and construction of the Community and Homes therein).

(xi) The right of the Declarant to access and enter the Common Areas at any time, even after the Community Completion Date, for the purposes of inspection and testing of the Common Areas. The Association and each Owner shall give the Declarant unfettered access, ingress, and egress to the Common Areas so the Declarant and/or its agents can perform all tests and inspections deemed necessary by the Declarant. In the event the Declarant exercises the rights in this Paragraph (xi), it is acknowledged by the Association and all Owners that the Declarant is performing any such rights for its own benefit and not for the benefit of the Association or the Owners and further, the Declarant shall have no obligation to inform the Association and/or the Owners of the result of any such inspection or testing. The Declarant shall have the right to make all repairs and replacements deemed necessary by the Declarant. At no time shall the Association or any Owner prevent, prohibit, or interfere with any testing, repair, or replacement deemed necessary by the Declarant relative to any portion of the Common Areas.

(xii) The right of the Association to promulgate, amend, and abolish Rules and Regulations governing the use of the Property, including, without limitation, the Common Areas and the Lots.

(xiii) The right of the Association, in addition to all other remedies available to the Association, to suspend the rights of Owners, tenants, residents, guests, and invitees to use the Common Areas and Recreational Facilities in accordance with Article XIV of this Declaration.

(xiv) The rights and duties of the Master Association under and in accordance with the SJRWMD Permit for the purposes of operating, maintaining, repairing, replacing, and improving the Stormwater Management System in accordance with the SJRWMD Permit and the rights and duties of the Master Association under and in accordance with the Master Declaration.

(xv) All of the provisions of the Master Governing Documents.

5.2 Ingress and Egress Easement. A perpetual and non-exclusive ingress and egress easement is hereby created and reserved by the Declarant for itself, the Master Association, the Association, and the Owners, tenants, residents, guests, and invitees, for pedestrian and vehicular traffic over, through, and across all sidewalks, paths, walkways, driveways, passageways, roadways, streets, and lanes as the same may exist upon, or be designed as part of, the Common Areas.

5.3 Public Easements. All of the Property shall be subject to a permanent and perpetual easement to provide for governmental services, including, without limitation, fire, police, school sponsored transportation, mail, health, sanitation, emergency services, and other public service personnel for the purpose of performing their appropriate functions, including, without limitation, ingress and egress over, through, and upon the Property and reasonable rights of access for persons and equipment necessary for such purposes.

5.4 Utilities Easement. A blanket easement upon, across, through, and under the Property is hereby created and reserved by the Declarant for the ingress, egress, installation, service, maintenance, repair, replacement, relocation, expansion, and operation of any and all utilities and other service lines, facilities, and systems (including, without limitation, those for supplying electricity, gas, cable television, internet, wireless nodes, and telephone service, for collecting, treating, and distributing water and for collecting, treating, and disposing of sewage and wastewater) servicing or intended to service any one (1) or more Improvements on the Property. A blanket easement upon, across, through, and under the Common Areas is hereby created for the disposal, through an irrigation system or otherwise, of treated effluent from any sewage and wastewater collection and disposal system servicing or intended to service one (1) or more Improvements. Without limiting the generality of the foregoing, the Declarant or any party providing any such utilities or other service may, by virtue of the easements created by this Section 5.4, install, maintain, repair, and replace on the Property any and all facilities that are necessary or useful for providing the utilities or service, may perform whatever excavations it considers necessary or helpful in doing so, and may perform whatever meter installations and meter reading it considers necessary or helpful in operating the utilities or service. The Declarant is hereby authorized to execute and record whatever instruments it deems necessary or desirable to effect or evidence the easements created by this Section 5.4, and shall be considered and deemed an agent of each Owner for purposes of executing and recording any such instrument with respect to the Lots owned by the Owner.

5.5 Development Easement. In addition to the rights reserved elsewhere herein, the Declarant reserves an easement for itself and the Declarant's affiliates over, upon, across, through, and under the Property as may be required or convenient in connection with the development of the Property, the development of the Non-Residential Property, and/or other lands designated by the Declarant, and to promote or otherwise facilitate the development, construction, and sale and/or leasing of Lots and Homes, any portion of the Property, any portion of the Non-Residential Property, and/or any other lands designated by the Declarant. Without limiting the generality of the foregoing, the Declarant specifically reserves the right to use all streets, roads, and rights of way within the Property for vehicular and pedestrian ingress and egress to and from construction sites. Each Owner acknowledges construction vehicles and trucks may use portions of the Common Areas. The Declarant shall have no liability or obligation to repave, restore, or repair any portion of the Common Areas as a result of the use of the same by construction traffic, and all maintenance and repair of such Common Areas shall be deemed ordinary maintenance of the Association payable by all Owners as part of the Common Expenses. Without limiting the foregoing, at no time shall the Declarant be obligated to pay any amount to the Association on account of the Declarant's use of the Common Areas. The Declarant has the right to use all portions of the Common Areas in connection with its marketing activities, including, without limitation, allowing members of the general public to inspect model homes, installing signs and displays, holding promotional parties and outings, and using the Common Areas for every other type of promotional or sales activity that may be employed in the marketing of residential homes. The easements created by this Section 5.5, and the rights reserved herein in favor of the Declarant, shall be construed as broadly as possible and supplement the rights of the Declarant set forth in this Declaration. At no time shall the Declarant incur any expense whatsoever in connection with its use and enjoyment of such rights and easements.

5.6 Easement for Encroachments. In the event that any Improvement upon the Common Areas as originally constructed, shall encroach upon any other property or Improvements thereon, or for any reason, then an easement appurtenant to the encroachment shall exist for so long as the encroachment shall naturally exist. If any building or Improvement upon a Lot shall encroach upon another Lot or upon the Common Areas by reason of original construction by the Declarant, then an easement for such encroachment shall exist so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvement and for any natural water runoff from roof overhangs, eaves, and other protrusions onto an adjacent Lot.

5.7 Support Easement. An easement is hereby created for the existence and maintenance, repair, and replacement of supporting structures in favor of the person or entity required to maintain same.

5.8 Drainage Easement. A non-exclusive easement shall exist in favor of the Declarant, the Master Association, the Association, SFWMD, the County, the Village, and/or any governmental agency having jurisdiction over, across, through, under, and upon the Property for drainage, irrigation, and water management purposes and in order

to construct, maintain, inspect, record data on, monitor, test, or repair, as necessary, any water management areas, conservation areas, mitigation areas, irrigation systems and facilities thereon and appurtenances thereto. Such drainage easement shall not be removed from its intended use by any Owners or others. No structure, landscaping, or other material or Improvement shall be placed or be permitted to remain which may damage or interfere with the drainage or irrigation of the Property and/or installation or maintenance of utilities or which may obstruct or retard the flow of water through the Property and/or water management areas and facilities or otherwise interfere with any drainage, irrigation, and/or easement provided for in this Section 5.8 or the use rights set forth elsewhere in this Declaration. Any such drainage easement shall not contain permanent Improvements, including, but not limited to, sidewalks, driveways, impervious surfaces, patios, decks, pools, air conditioners, structures, utility sheds, poles, fences, irrigation systems, trees, shrubs, hedges, or landscaping other than grass, except for (i) Improvements installed by the Declarant, (ii) initial landscaping of the Stormwater Management System, (iii) as required by the County, the Village, or the SFWMD Permit, and/or (iv) Improvements approved by the Association and the Master Association. Additionally, a non-exclusive easement is hereby granted to all Owners, the Association, the Master Association, and all owners of the Non-Residential Property over, across, through, under, and upon the Property, including, without limitation, the Lots, for surface water drainage purposes.

5.9 Association Easement. The Association is hereby granted an easement over, across, through, under, and upon all of the Property for the purposes of: (i) inspecting, constructing, maintaining, repairing, replacing, improving, and operating all Common Areas; (ii) performing any obligation the Association is obligated to perform under this Declaration; and (iii) performing any obligation of an Owner for which the Association intends to impose an Individual Assessment, including, without limitation, entering a Lot for the purpose of inspecting, maintaining, repairing, and replacing the Lot and Improvements thereon in the event the Owner thereof fails to do so. Any entry into a Lot by the Association, its directors, officers, committee members, managers, agents, and employees, in accordance with the Association's rights set forth in this Declaration shall not be deemed a trespass.

5.10 Emergency Access Easement. The Association shall have the right, without obligation, to enter upon any Lot for emergency, security, and safety reasons, as determined in the discretion of the Board, and to perform any act deemed necessary by the Board, including, without limitation, shutting off water or electricity and conducting any necessary maintenance, repairs, and replacements. The fees, costs, and expenses incurred by the Association in accordance with the foregoing shall be assessable against the Owner and the Lot as an Individual Assessment. Any entry into a Lot by the Association, its directors, officers, committee members, managers, agents, and employees, in accordance with the Association's rights set forth in this Declaration shall not be deemed a trespass.

5.11 Master Association Easement. The Master Association is hereby granted an easement over, across, through, under, and upon all of the Property for the purposes

of performing any obligation or exercising any right the Master Association is obligated or entitled to perform under this Declaration and/or under the Master Declaration. Any entry into a Lot by the Master Association, its directors, officers, committee members, managers, agents, and employees, in accordance with the Master Association's rights set forth in this Declaration and/or the Master Declaration shall not be deemed a trespass.

5.12 Assignments and Additional Easements. Until the Community Completion Date, the Declarant reserves the exclusive right to grant, modify, amend, relocate, and terminate, in its sole discretion, easements, permits, and/or licenses for ingress and egress, drainage, utilities, maintenance, Telecommunications Services, and other purposes over, under, through, upon and across the Property so long as any said easements do not materially and adversely interfere with the intended use of Homes previously conveyed to the Owners. All easements necessary for such purposes are reserved in favor of the Declarant, in perpetuity, for such purposes. The Declarant shall have the sole right to any fees of any nature associated therewith, including, without limitation, license or similar fees on account thereof. The Association and the Owners shall, without charge, collect and remit fees associated with any easement, license, or permit, received, if any, to the Declarant. The Association will not grant any easements or licenses to any other entity providing the same services as those granted by the Declarant, nor will it grant any such easement or license prior to the Community Completion Date without the prior written consent of the Declarant, which may be granted or denied in the Declarant's sole discretion. After the Community Completion Date, the Association shall have the rights of the Declarant only as set forth in this Section 5.12. The Owners hereby authorize the Declarant and the Association to execute, on their behalf and without any further authorization, such grants of easement or other instruments as may from time to time be necessary in accordance with the provisions of this Declaration and/or requirements of prevailing law.

5.13 Duration. All easements created herein or pursuant to the provisions hereof shall be perpetual unless stated to the contrary. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

5.14 Non-Interference with Easement Rights. No portion of the Common Areas may be obstructed, encumbered, or used by any Owner, tenant, resident, guest, or invitee for any purpose other than as permitted by the Declarant or the Association. No Owner, tenant, resident, guest, or invitee shall place any Improvements, material, or obstacle in, under, or over any easement area which would unreasonably interfere with the rights of the owner of the easement. Any such Improvement, material, or obstacle shall be promptly removed by the Owner at the Owner's sole cost and expense when requested by the owner of the easement, the Declarant, the Master Association, or the Association notwithstanding any lapse of time since such Improvement, material, or other obstacle was placed in or over the easement area. In the event an Owner fails to remove such Improvement, material, or obstacle, then the Declarant, the Master Association, or the Association may remove same and the expense of such removal shall be charged to the Lot and collected as an Individual Assessment levied by the Association under this

Declaration or as an individual assessment levied by the Master Association under the Master Declaration. The Declarant's or the Association's installation of any traffic calming devices shall not be considered an obstruction or unreasonable impediment to any use of the Common Areas, easements, or rights-of-way.

## **ARTICLE VI**

### **ANNEXATION TO AND WITHDRAWALS FROM THE PROPERTY**

6.1 Annexation by the Declarant. Prior to the Community Completion Date, the Declarant may, from time to time, without obligation and in its sole discretion, add any real property, including any Improvements thereon, to the Property by recording a Supplemental Declaration to this Declaration in the Official Records of the County. Except for applicable governmental approvals (if any), no consent to such annexation shall be required from any other party, including, without limitation, the Association, the Owners, or any Lenders; provided, however, the Association shall join in the execution of any such Supplemental Declaration at the request of the Declarant, but the absence of such joinder shall not affect the validity of the Supplemental Declaration. The Supplemental Declaration shall subject the annexed property to the covenants, conditions, and restrictions contained in this Declaration as though the annexed property were described herein as a portion of the Property. Such Supplemental Declaration may contain additions to, modifications of, or omissions from the covenants, conditions, and restrictions contained in this Declaration as deemed appropriate by the Declarant and as may be necessary to reflect the different character, if any, of the annexed property. The Declarant may designate any annexed property as Common Areas or Lots as set forth in the Supplemental Declaration annexing such property. Except as otherwise provided herein, prior to the Community Completion Date, only the Declarant may add additional lands to the Property. Nothing in this Declaration shall be construed to require the Declarant to add any real property to the Property or to require the Declarant to declare any portion of any properties added to the Property to be Common Areas or Lots.

6.2 Annexation by the Association. After the Community Completion Date, and subject to applicable governmental approvals (if any), additional property may be annexed with the approval of (i) a majority of the Board; and (ii) fifty-one percent (51%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained.

6.3 Withdrawal. Prior to the Community Completion Date, any portions of the Property, or any additions thereto, may be withdrawn by the Declarant from the provisions and applicability of this Declaration by recording a Supplemental Declaration to this Declaration in the Official Records of the County. The right of the Declarant to withdraw portions of the Property, or any additions thereto, shall not apply to any Lot that has been conveyed to an Owner unless that right is specifically reserved in the instrument of conveyance or the prior written consent of the Owner is obtained. The withdrawal of any portion of the Property, or any additions thereto, shall not require the consent or joinder of any other party, including, without limitation, the Association, the Owners (except as set forth above), or any Lenders; provided, however, the Association shall join in the

execution of any such Supplemental Declaration at the request of the Declarant, but the absence of such joinder shall not affect the validity of the Supplemental Declaration. If the Declarant withdraws portions of the Property, or any additions thereto, from the operation of this Declaration, the Declarant may, but is not required to, subject to governmental approvals (if any), create other forms of residential property ownership or other Improvements of any nature on the property not subjected to or withdrawn from the operation of this Declaration. The Declarant shall not be liable or responsible to any person or entity on account of its decision to do so or to provide, or fail to provide, the amenities and/or facilities which were originally planned to be included in such areas. If so designated by the Declarant, owners or tenants of such other forms of housing or improvements upon their creation may share in the use of all or some of the Common Areas and other facilities and/or roadways that remain subject to this Declaration. The expense of the operation of such facilities shall be allocated to the various users thereof, if at all, as determined by Declarant. The Association shall have no right to withdraw land from the Property.

6.4 Effect of Filing Supplemental Declaration. Any Supplemental Declaration filed pursuant to this Article VI shall be effective upon recording in the Official Records of the County, unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and Assessment liability in accordance with the provisions of the Supplemental Declaration and this Declaration.

## **ARTICLE VII**

### **MAINTENANCE AND IMPROVEMENT OF THE PROPERTY**

7.1 Common Areas. Except as otherwise specifically provided in this Declaration to the contrary, the Association shall at all times maintain, repair, replace, and operate the Common Areas in a continuous and satisfactory manner. The Association shall also be responsible for the payment of property taxes and governmental assessments levied against the Common Areas. The Association shall have the right, but not the obligation, to arrange for periodic inspections of the Common Areas by a licensed contractor and/or engineer and to determine the parameters of such inspection from time to time, if any. The fees, costs, and expenses incurred by the Association to inspect, maintain, repair, replace, and operate the Common Areas shall be Common Expenses. Notwithstanding the foregoing, the fees, costs, and expenses incurred by the Association for any maintenance, repair, or replacement of any portion of the Common Areas occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents shall be borne solely by such Owner and the Lot owned by such Owner shall be subject to an Individual Assessment for all such fees, costs, and expenses.

7.2 Irrigation System. The Association shall also maintain, repair, and replace the irrigation system throughout the Property as part of the Common Expenses. Notwithstanding the foregoing, the Association shall not be responsible for the



replacement of any landscaping upon any Lot occasioned by insufficient watering or poor water quality. Due to water quality, the irrigation system may cause staining on Homes, fences, or other Improvements or paved areas upon the Property. The cleaning and removal of any such staining within an Owner's Lot shall be performed in accordance with the exterior maintenance responsibilities as to Townhome Lots and Single-Family Lots as further set forth herein. In the event any portion of the irrigation system is adversely affected by an Owner's Improvements to a Lot (including, without limitation, landscaping, fences, or concrete or brick pavers), the cost to correct, repair, and replace such portion of the irrigation system shall be the responsibility of the Owner and shall be assessable against the Owner and the Lot as an Individual Assessment. Further, the Owner shall be responsible for all fees, costs, and expenses of maintenance, repair, or replacement of any portion of the irrigation system located on such Owner's Lot if such maintenance, repair, or replacement is occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents.

7.3 Lot Landscaping. The Association shall maintain landscaping within the Lots as initially installed by the Declarant, including the following: (i) trimming trees and shrubs; (ii) mowing, trimming, edging, and fertilizing lawns; (iii) weeding, by chemical treatment or otherwise, in curb joints, expansion joints, and driveways; and (iv) weeding and mulching of flower beds. The Board shall determine the need for such landscaping maintenance from time to time and at its sole discretion. Notwithstanding the Association's responsibility to maintain landscaping in accordance with this Section 7.3, neither the Declarant, nor the Association shall be responsible to maintain, prevent, or redirect natural root growth or be liable for any damage, or repair thereof, to any property cause by any tree, or the root system thereof, planted within a Lot or the Common Areas. All fees, costs, and expenses incurred by the Association in carrying out its landscaping maintenance shall be Common Expenses; provided, however, due to the specific level of landscaping maintenance services provided to Single-Family Lots and Townhome Lots, these Common Expenses shall be allocated among the Single-Family Lots and the Townhome Lots based upon the specific level of landscaping maintenance services received by each respective Lot type as reasonably determined by the Board. Each Lot within each respective Lot type shall share equally the landscaping maintenance costs allocated to such respective Lot type. Notwithstanding the foregoing, the fees, costs, and expenses incurred by the Association for any landscaping maintenance occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents shall be borne solely by such Owner and the Lot owned by such Owner shall be subject to an Individual Assessment for all such fees, costs, and expenses.

7.3.1 Replacements. Notwithstanding the Association's responsibility to maintain landscaping in accordance with this Section 7.3, each Owner shall be responsible to replace landscaping within the Lots in the event any such landscaping becomes diseased, is dead or dying, or is destroyed by natural occurrences. In such event, such landscaping shall be replaced by the Owner of the Lot at the Owner's sole expense with landscaping of the same or substantially similar type and size, unless

otherwise approved by the ACC. No other objects or landscaping may be installed in place of any such landscaping, unless otherwise approved by the ACC.

7.3.2 Alterations. In the event an Owner alters, improves, or otherwise changes any landscaping upon the Owner's Lot (subject to approval obtained in accordance with this Declaration) which increases the landscaping maintenance, and cost therefor, to be performed by the Association, the increase in landscaping maintenance costs incurred, or to be incurred, by the Association shall be assessable against the Owner and the Lot as an Individual Assessment.

7.3.3 Association Access. Under no circumstances shall the Association be responsible for maintaining any inaccessible areas within fences or walls that form a part of a Lot. In the event any landscaped areas to be maintained by the Association are not readily accessible, including, without limitation, due to the failure to include a gate of adequate size within a fence or wall enclosing any portion of a Lot, the Owner shall be deemed to have voluntarily and knowingly assumed the responsibility to perform, at the Owner's sole cost and expense, all landscaping maintenance as to the landscaped areas for which access is denied or not readily available to the same standards as performed by the Association. No Owner shall be exempt from such Owner's share of Common Expenses attributable to landscape maintenance by refusal or inability to provide the Association with access to the Owner's Lot for the purpose of performing maintenance upon such Lot in accordance with this Declaration or by voluntarily undertaking any maintenance upon such Lot which is otherwise the responsibility of the Association in accordance with this Declaration.

7.4 Townhome Lots. Except as otherwise set forth in this Declaration, each Owner of a Townhome Lot shall maintain, repair, and replace all portions of the Townhome Lot, including, without limitation, the Home and the contents therein, in a first class, safe, clean, neat, and attractive condition at such Owner's sole cost and expense.

7.4.1 Party Walls. The Homes constructed upon Townhome Lots are attached by a common wall, known as a "Party Wall," between each Home that adjoins another Home upon the neighboring Townhome Lot. The center line of a Party Wall is the common boundary of the adjoining Home. The cost of maintaining each side of a Party Wall shall be borne by the Owner using said side, except as otherwise provided herein. Each adjoining Owner of a Party Wall, and such Owner's heirs, successors, and assigns, shall have the right to use same jointly with the other Owner to said Party Wall as herein set forth. The term "use" shall and does include normal interior usage such as paneling, plastering, decoration, erection of tangent walls, and shelving but prohibits any form of alteration which would cause an aperture, hole, conduit, break, or other displacement of the original concrete forming said Party Wall. Repairs or replacement of any Party Wall shall be to its original construction. Structural changes to Party Walls are prohibited. Each Owner shall have right to file a lien against the adjoining Townhome Lot(s) and the Owner(s) thereof for repair costs.

7.4.2 Shared Roofing. The entire roof of each building containing Homes constructed on Townhome Lots, any and all roof structure support, and any and all appurtenances to such structures, including, without limitation, the roof covering, fascia, soffit, and roof drainage fixtures, shall be collectively referred to as "Shared Roofing." The Association shall maintain, repair, and replace the Shared Roofing. Alteration and improvement of the Shared Roofing by anyone other than the Declarant or the Association are prohibited.

7.4.3 Exterior Maintenance. The Association shall be responsible for normal and routine pressure cleaning and painting of the exterior of the Homes constructed on Townhome Lots and shall maintain, repair, and replace the driveways serving the Homes constructed on Townhome Lots. The Board shall determine the need for such maintenance, repair, or replacement from time to time and at its sole discretion. The Board shall determine, from time to time and at its sole discretion, the paint color scheme of the buildings containing Homes constructed on Townhome Lots. Alteration and improvement of any driveway serving any Home constructed on a Townhome Lot by anyone other than the Declarant or the Association are prohibited.

7.4.4 Association Expenses. All fees, costs, and expenses incurred by the Association in carrying out its obligations related to the Townhome Lots in this Section 7.4 shall be Common Expenses of the Association allocated among the Townhome Lots only, and all Owners of Townhome Lots within each building containing Homes constructed on Townhome Lots shall share the cost of such maintenance, repair, or replacement equally as reasonably determined by the Board. Notwithstanding the foregoing, the fees, costs, and expenses incurred by the Association for any such maintenance, repair, or replacement occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents shall be borne solely by such Owner and the Townhome Lot owned by such Owner shall be subject to an Individual Assessment for all such fees, costs, and expenses.

7.5 Single-Family Lots. Except as otherwise set forth in this Declaration, each Owner of a Single-Family Lot shall maintain, repair, and replace all portions of the Single-Family Lot, including, without limitation, the Home and the contents therein, in a first class, safe, clean, neat, and attractive condition at such Owner's sole cost and expense.

7.5.1 Exterior Maintenance. Without limitation, each Owner is solely responsible for the proper cleaning, maintenance, repair, and replacement of the exterior of the Owner's Home, including, without limitation, the roof and the exterior walls of the Home.

7.5.2 Paved and Concrete Surfaces. Each Owner shall be responsible to maintain, repair, and replace the driveways and walkways, including, without limitation, concrete or brick pavers, and other paved and concrete surfaces comprising part of the Owner's Lot and that portion of the driveway serving the Owner's Single-Family Lot located within the right-of-way immediately adjacent to such Owner's Single-Family Lot

between such Owner's Single-Family Lot and the private Common Area roadway. If the Village, the County, or any of their respective subdivisions, agencies, and/or divisions must remove any portion of the paved or concrete surfaces located for which the Owner of the Single-Family Lot is responsible for the installation, repair, replacement, or maintenance of utilities, then the Owner of the applicable Single-Family Lot shall be responsible to replace or repair the paved or concrete surfaces at such Owner's expense, if such expenses are not paid for by the Village or the County, as applicable.

7.6 Maintenance of Property Owned by Others. The Association shall, if designated by the Declarant (or by the Board after Turnover), maintain vegetation, landscaping, irrigation systems, community identification/features, infrastructure, and/or other areas or elements designated by the Declarant (or by the Board after Turnover) upon areas that are within or outside of the Property. Such areas may abut, or be proximate to, the Property, and may be owned by, or be dedicated to, others including, but not limited to, a utility, governmental or quasi-governmental entity, or a property owners' association. These areas may include, for example purposes only and not limited to, parks, swale areas, landscape buffer areas, berm areas or median areas within the right-of-way of public streets, roads, drainage areas, community identification or entrance features, and/or community signage or other identification. The Association shall have the right to enter into new agreements or arrangements from time to time for improvements and facilities serving the Members or to amend such agreements or arrangements if the Board deems the same reasonable and appropriate for the continued use and benefit of any part of the Common Areas.

7.7 Alterations and Improvements. The Association, by and through the Board, may make alterations and Improvements to the Common Areas, any portion thereof and any Improvements thereon, costing, in the aggregate, equal to or less than of Twenty Thousand Dollars (\$20,000.00) without the approval of the Owners. Alterations and Improvements costing, in the aggregate, in excess of Twenty Thousand Dollars (\$20,000.00) must first be approved by a majority of the Owners present, in person or by proxy, at a meeting of the Members at which a quorum is attained.

7.8 Stormwater Management System. The Stormwater Management System, including, without limitation, swales, pipes, pumps, and/or retention/detention areas, as may be part of the Common Areas and/or Lots, shall be maintained, repaired, replaced, and operated by the Master Association in accordance with the Master Declaration. The Association has the right to utilize the Stormwater Management System. All fees, costs, and expenses regarding the Stormwater Management System shall be assessed and collected through the Master Association assessments. Notwithstanding the foregoing, in the event the Stormwater Management System is adversely affected by Owner's Improvements to the Lot (including, without limitation, landscaping, fences, or concrete or brick pavers), the cost to correct, repair, or replace the Stormwater Management System shall be the responsibility of the Owner and such costs shall be assessable against the Owner and the Lot as an individual assessment levied by the Master Association in accordance with the Master Declaration. No Improvement shall be constructed, installed, placed, or maintained in any manner that would obstruct, interfere with, or adversely affect

the Stormwater Management System. NOTWITHSTANDING THE FOREGOING, THE MASTER ASSOCIATION, THE ASSOCIATION, AND THE DECLARANT SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DRAINAGE ISSUES OF ANY TYPE WHATSOEVER RESULTING FROM AN OWNER'S IMPROVEMENT TO OR ALTERATION OF THE LOT.

7.9 Exterior Finish and Water Intrusion. Exterior walls may be improved with a finish material composed of stucco or cementitious coating (collectively, the "Exterior Finish"). If so, then while the Exterior Finish is high in compressive or impact strength, it is not of sufficient tensile strength to resist building movement. It is the nature of the Exterior Finish to experience some cracking and it will expand and contract in response to temperature, sometimes creating minor hairline cracks in the outer layer of the Exterior Finish application. This is normal behavior and considered a routine maintenance item for the Owner. Each Owner is responsible to inspect the Exterior Finish to the exterior walls for cracking and engage a qualified professional to seal those cracks and repair the affected area. In addition, each Owner is responsible for inspecting the caulk material in the exterior wall system openings (i.e., windows, doors, hose bibs, etc.) for peeling, cracking, or separating. If the inspection reveals any such items, the Owner is responsible for engaging a qualified professional to clean, repair, re-caulk, and repaint those areas of the Home to ensure the Owner's Home remains watertight. All of the foregoing shall be completed by the Owner in a timely fashion to prevent any damage to the Home, particularly given that Florida experiences heavy rainfall and humidity on a regular basis. Each Owner acknowledges that running air conditioning machinery with windows and/or doors open in humid conditions can result in condensation, mold, and/or water intrusion. The Declarant and the Association shall not have liability under such circumstances for any damage or loss that may occur in the event an Owner fails to maintain their Home in accordance with this provision. FURTHER, GIVEN THE CLIMATE AND HUMID CONDITIONS IN FLORIDA, MOLDS, MILDEW, TOXINS, AND FUNGI MAY EXIST AND/OR DEVELOP WITHIN HOMES. EACH OWNER IS HEREBY ADVISED THAT CERTAIN MOLDS, MILDEW, TOXINS, AND/OR FUNGI MAY BE, OR IF ALLOWED TO REMAIN FOR A SUFFICIENT PERIOD MAY BECOME, TOXIC AND POTENTIALLY POSE A HEALTH RISK. BY ACQUIRING TITLE TO A LOT, EACH OWNER SHALL BE DEEMED TO HAVE ASSUMED THE RISKS ASSOCIATED WITH MOLDS, MILDEW, TOXINS, AND/OR FUNGI AND TO HAVE RELEASED THE DECLARANT PARTIES AND THE ASSOCIATION PARTIES FROM ANY AND ALL LIABILITY RESULTING FROM SAME.

7.10 Declarant Indemnification. The Association, being the entity responsible for the ownership, operation, maintenance, repair, and replacement of the Common Areas and other portions of the Property as set forth in this Article VII, hereby agrees to indemnify, defend, and hold the Declarant Parties harmless from and against any and all Losses arising out of or in any way resulting from or in any way connected with: (i) any acts or omissions of the Association Parties and their respective heirs, successors, and assigns; (ii) personal injury, loss of life, or damage to property sustained on or about the Common Areas, or other property serving the Association, and Improvements thereon; and/or (iii) activities or operations of the Association or the Owners. The Association's

obligation to defend the Declarant Parties shall be triggered upon any allegation or claim being asserted that, in whole or in part, is to be indemnified or defended pursuant to this Section 7.10. If any indemnified party is compelled to enforce the Association's obligations in this Section 7.10, such indemnified party shall recover any and all Legal Fees incurred in prosecuting such enforcement action in addition to Legal Fees incurred in defending the underlying allegations or claims. The costs of fulfilling the Association's indemnification, defense, and hold harmless obligations in this Section 7.10 shall be Common Expenses to the extent such matters are not covered by insurance maintained by the Association. Notwithstanding the foregoing, the indemnification and defense obligations in this Section 7.10 shall not apply to: (i) any damage claim directly asserted by the Association against the Declarant for defects in construction of Improvements constructed by the Declarant on the Common Areas provided such claim does not arise out of or result from any third-party claim, and/or (ii) any gross negligence or willful misconduct by the indemnified parties.

7.11 Right of the Association to Enforce. In addition to all other remedies available to the Association, in the event the Owner fails to comply with any of its obligations as set forth in this Article VII, including, without limitation, failing to properly maintain, repair, and replace the Owner's Lot, or any Improvements thereon, the Association shall have the right, without obligation, to enter the Lot, as applicable, for the purpose of performing the maintenance, repair, and replacement obligations on behalf of the Owner. The costs and expenses incurred by the Association in performance thereof shall be assessable against the Lot and the Owner as an Individual Assessment. The determination of whether an Owner is failing to properly maintain, repair, and replace the Lot, or any Improvements thereon, shall be determined in the sole discretion of the Board. Without limitation, the Declarant hereby grants the Association an easement over all portions of the Property for the purpose of ensuring compliance with the requirements of this Article VII.

## **ARTICLE VIII**

### **USE RESTRICTIONS**

Except as to the Declarant and any portion of the Property owned by the Declarant, all of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions, the Architectural Guidelines, the Rules and Regulations, and any and all additional rules and regulations which may, from time to time, be adopted by the Declarant, prior to Turnover, and thereafter, by the Board:

8.1 Use of Lots. Each Lot is restricted to residential use as a residence by the Owner, tenants, residents, guests, and invitees thereof. Except as to the Declarant, no trade, business, profession, or commercial activity, or any other nonresidential use, shall be conducted upon any portion of the Property or within any Lot or Home by any Owner, tenant, resident, or guest, except that a home office is permitted so long as no customers or excessive deliveries are caused thereby, as determined in the sole discretion of the Board, and subject to applicable statutes and ordinances. No Owner, tenant, resident, guest, or invitee may actively engage in any solicitations for commercial purposes within

the Property. No garage sales are permitted, except as approved by the Board in writing. Prior to the Community Completion Date, the Association shall not permit any garage sales without the prior written consent of the Declarant.

8.2 Subdivision and Regulation of Land. No portion of any Lot shall be divided or subdivided or its boundaries changed without the prior written approval of the Declarant, prior to the Community Completion Date, and thereafter, the prior written approval of the Board, which may be granted or denied in the Declarant's or the Board's sole discretion. No Owner shall inaugurate or implement any variation from, modification to, or amendment of governmental regulations, land use plans, land development regulations, zoning, or any other development orders or development permits applicable to the Property, without the prior written approval of Declarant, prior to the Community Completion Date, and thereafter, the prior written approval of the Board, which may be granted or denied in the Declarant's or the Board's sole discretion.

8.3 Nuisances. No nuisance, as determined by the Board, nor any use or practice that is the source of unreasonable annoyance to others within the Property or which interferes with the peaceful possession and proper use of the Property, as determined by the Board, is permitted. Nothing shall be done or kept within the Property which may reasonably be expected to increase the rate of insurance maintained by the Association. No loud noises or noxious odors, as determined by the Board, shall be permitted within the Property.

8.4 Lawful Use. No immoral, improper, offensive, unlawful, or obnoxious use shall be made of any portion of the Property, as determined by the Board. All laws, zoning ordinances, and regulations of all governmental entities having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental entities for maintenance, modification, or repair of a portion of the Property shall be the same as the responsibility for maintenance and repair of the property concerned.

8.5 Animals. No animals of any kind shall be raised, bred, or kept within the Property for commercial or breeding purposes. Only common domesticated household pets, including dogs or cats, may reside within a Home. No other animals, livestock, horses, swine (but specifically excluding miniature domesticated pigs), or poultry of any kind shall be kept, raised, bred, or maintained on any portion of the Property. No more than three (3) animals are permitted to be kept on any Lot. All animals shall be maintained and kept in accordance with all applicable County ordinances and the Rules and Regulations. No animal shall be permitted outside a Home unless such animal is kept on a leash, carried by hand, or within an enclosed portion of the Lot. No animal may be left unattended outside a Home. No dog runs or enclosures shall be permitted on any Lot. All solid animal waste deposited by an animal on the Property shall be immediately picked up and properly disposed of in a sanitary manner. Owners are responsible for the cost of repair or replacement of any Common Areas or property of the Association or for which the Association is responsible damaged by their animal. No animal shall become a nuisance, as determined by the Board, which nuisance activities include, without limitation, barking, growling, biting, jumping on others, lunging at others, or other

obnoxious or aggressive behaviors. A determination by the Board that an animal kept or harbored in a Home is a nuisance shall be conclusive and binding on all parties. The Board shall have the right, without obligation, to demand permanent removal of any animal deemed to be a nuisance by the Board. When notice of permanent removal of any animal is given by the Board, the animal shall be removed within forty-eight (48) hours of the receipt of such notice. Each Owner shall be responsible for all the activities of the animal. Each Owner who determines to keep an animal or permits an animal to be kept within the Owner's Home hereby agrees to indemnify and hold harmless the Association Parties and the Declarant Parties against any Losses arising from or related to such Owner having any animal or permitting any animal on and within the Property.

8.6 Vehicle Restrictions and Parking. No commercial vehicle, limousine, dually truck, monster truck, recreational vehicle, golf cart, scooter, mini motorcycle, all-terrain vehicle (ATV), boat (or other watercraft), trailer (including, without limitation, boat trailers, house trailers, mobile homes, and trailers of every other type, kind, or description), or camper, may be kept within the Property except within the enclosed garage of a Home. The term "commercial vehicle" shall not be deemed to include law enforcement vehicles, sport utility vehicles (SUVs), or clean personal use vehicles, such as, and for example purposes only, pick-up trucks, vans, or cars if they are used on a daily basis for normal personal transportation; provided, however, vehicles with commercial lettering and/or images and/or ladders, racks, and hooks or such other equipment attached to such vehicles shall be "commercial vehicles" prohibited by this Section 8.6. The term "monster truck" shall be deemed to include pickup trucks modified with large suspension and large tires resulting in a lifted truck body. No vehicles bearing a "for sale" sign or with tarpaulin covers shall be parked anywhere within the Property within the view of others. Vehicles without a valid license plate and current registration are not permitted within the Property. No vehicle shall be used as a domicile or residence, either temporarily or permanently. No Owner, tenant, resident, or guest shall keep any vehicle on any Lot which is deemed to be a nuisance by the Board. No vehicle which cannot operate on its own power shall remain within the Property for more than twelve (12) hours, except within the enclosed garage of a Home. No repair or maintenance of vehicles, except emergency repair, shall be made within the Property, except in the garage of a Home. No vehicles shall be stored on blocks. No ATVs, scooters, or mini motorcycles are permitted to be used at any time on the Common Areas. Vehicles shall be parked in the garage or driveway of the respective Lot and shall not block the sidewalk. No vehicles of any nature shall be parked on any portion of the Property except on the paved or concrete surfaced parking area thereof. Vehicles shall not park on the paved or concrete surfaces comprising the Common Areas, including, without limitation, the private roadways, except in designated parking areas, if any. To the extent the Property has any guest parking, Owners, residents, and tenants are prohibited from parking in such guest parking spaces. No vehicles used in business for the purpose of transporting goods, equipment, and the like, shall be parked in the Property except during the delivery of goods or during the provision of services. Subject to applicable laws and ordinances, any vehicle parked in violation of this Section 8.6 and/or the Rules and Regulations may be towed by the Association at the sole expense of the owner of such vehicle. Each Owner, by acceptance of title to a Lot, irrevocably grants to the Association and its designated towing service the right to



enter a Lot and tow vehicles in violation of this Section 8.6 and/or the Rules and Regulations. Neither the Association nor the towing company shall be liable to the Owner or the owner of such vehicle for trespass, conversion, or otherwise, nor guilty of any criminal act, by reason of such towing or removal, and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind.

8.7 Oil and Mining Operations No oil, drilling development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or on any Lot, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon or on any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Lot.

8.8 Hazardous Substances. No flammable, combustible, or explosive fuel, fluid, chemical, hazardous waste, or substance shall be kept on any portion of the Property, except those which are required for normal household use. No fuel storage shall be permitted within the Property, except as may be necessary or reasonably used for swimming pools, spas, barbecues, fireplaces, or similar household devices. Any such permitted fuel storage must be installed underground or in a manner to be screened from view by landscaping or other materials approved by the ACC.

8.9 Ownership by Entity. In the event that an Owner is other than a natural person, that Owner shall, prior to any occupancy of the Home, designate, in writing signed by an officer, director, or managing member of the entity, one (1) or more persons who are to be the occupants of the Home and register such persons with the Association. All provisions of the Governing Documents shall apply to both such Owner and the designated occupants.

8.10 Leases. Homes may be leased only in their entirety, and no room or portion of a Home may be leased. No Home or portion thereof shall be leased to transient tenants or for hotel-like rental. No Owner may list the Owner's Home on any website (e.g., AirBnB, VRBO, or HomeAway), print, or online publication advertising the Home for short term, "hotel-like" rental. No Home shall be subleased or subject to an assignment of lease. Occupancy within a leased Home shall only be by the tenant(s) and those individuals listed as occupants in the lease agreement. No lease shall be for a term of less than three (3) months nor more than one (1) year, and no Home may be leased more than two (2) times in any calendar year. All lease agreements shall be in writing. Within five (5) days following execution of a lease agreement, but in no event later than occupancy of the Home by the tenant(s), the Owner shall: (i) notify the Association in writing with the name of the tenant(s) and all others that will be occupying the Home; and (ii) provide the Association with a true, correct, and complete copy of the executed lease agreement. In the event Owner fails to timely comply with the foregoing, such lease shall be null and void and of no further force or effect. The provisions of this Section 8.10 shall also apply to renewals and extensions of lease agreements.

No Owner may lease a Home if such Owner is delinquent in the payment of any monetary obligation to the Association. In the event an Owner whose Home is leased is delinquent in the payment of any monetary obligation to the Association, the Association may, without limitation of other lawful remedies, make written demand to such Owner and such Owner's tenant(s) for payment of rent to be remitted to the Association in accordance with the relevant provisions of the Homeowners' Association Act. All leases are hereby made subordinate to any lien filed by the Association, whether prior or subsequent to such lease.

No Owner may lease a Home where such Owner is, at the time the Owner desires to lease a Home, in violation of any of the covenants, terms, conditions, and restrictions of the Governing Documents. Every lease shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the full compliance by the tenant(s) and the occupant(s) with the covenants, terms, conditions, and restrictions of the Governing Documents.

By acceptance of title to a Home, the Owner hereby agrees, at the Owner's sole expense, to remove by legal means, including, without limitation, eviction, the tenant(s) and occupant(s) in the event of any violation of any provision of the Governing Documents by the tenant(s) or occupant(s). Notwithstanding the foregoing, should the Owner fail to remove the tenant(s) and occupant(s) from the Home, the Association shall have the right, but not the obligation, to terminate the lease agreement and to evict/eject such tenant(s) and occupant(s) and exercise all such other legal remedies as may be available to the Association on behalf of the Owner. All Legal Fees associated with such eviction/ejectment and/or action for other legal remedies as may be available to the Association shall be assessable against the Owner and the Lot as an Individual Assessment.

Every Owner shall be deemed to have delegated its right of enjoyment to the Common Areas to the Owner's tenant(s) and occupant(s) of the leased Home, subject to the provisions of the Governing Documents. Any such delegation shall not relieve any Owner from its responsibilities and obligations provided herein.

The Owner shall be jointly and severally liable with the tenant(s) to the Association for any amount which is required by the Association to repair any damage to the Common Areas or any other property for which the Association is responsible resulting from acts or omissions of tenant(s) and/or occupant(s) of the leased Home (as determined in the sole discretion of the Board) and to pay any claim for injury or damage to property caused by the negligence of the tenant(s) and/or occupant(s) of the leased Home, the costs and expenses of which shall be assessable against the Owner and the Lot as an Individual Assessment.

Each Owner shall collect from the tenant(s) and remit to the Association, no later than the date of occupancy of the Home by the tenant(s), a security deposit in the amount one (1) month's rental which may be used by the Association to cover expenses related to the maintenance and repairs of the Common Areas or any other property for which the

Association is responsible resulting from acts or omissions of tenant(s) or occupant(s) (as determined in the sole discretion of the Board). Payment of interest, claims against the security deposit, refunds, and disputes regarding the disposition of the security deposit shall be handled in the same fashion as provided in Part II of Chapter 83, Florida Statutes. In the event that the Owner does not properly remit the security deposit to the Association, the Association may charge the security deposit to the Owner as an Individual Assessment. Notwithstanding anything to the contrary herein, the leasing of a Home and the collection of the deposit referred to herein from an Owner shall not reduce or abate any Owner's obligations pursuant to the Governing Documents or give any Owner the right to avoid any of the covenants, agreements, or obligations to be performed pursuant to the Governing Documents.

8.11 Personal Property Storage and Storage Structures. All personal property of Owners, tenants, residents, and guests shall be stored within the Homes, except for tasteful and typical patio furniture (as determined by the Board). No temporary or permanent utility or storage shed, storage building, tent, shack, or other structure or building shall be permitted within the Property. Water softeners, trash containers, propane tanks, and other similar devices shall be properly screened from view in a manner approved by the ACC.

8.12 Decorations. No decorative items, including, without limitation, birdbaths, light fixtures, sculptures, statues, or weather vanes, shall be installed or placed within or upon any portion of a Lot without the prior written approval of the ACC. Notwithstanding the foregoing, holiday lighting and decorations shall be permitted to be placed upon the Lot commencing the month in which the holiday is celebrated and removed not later than two (2) weeks after the passing of the holiday (e.g., Halloween decorations and lighting may be displayed commencing October 1<sup>st</sup> and must be removed by November 14<sup>th</sup>, and Christmas decorations and lighting may be displayed commencing December 1<sup>st</sup> and must be removed by January 8<sup>th</sup>). The Association may require the removal of any holiday lighting that creates a nuisance, as determined by the Board (e.g., unacceptable spillover to an adjacent Home or excessive travel through the Property).

8.13 Extended Vacation and Absences. In the event a Home will be unoccupied for an extended period, the Home must be prepared prior to departure by: (i) removing all movable furniture, plants, and other objects from outside the Home; and (ii) designating a responsible firm or individual to care for the Home, should the Home suffer damage or require attention, and providing a key to that firm or individual. Neither the Association nor the Declarant shall have any responsibility of any nature relating to any unoccupied Home.

8.14 Fences and Walls. No walls or fences shall be erected, constructed, or installed without the prior written consent of the ACC. In the event that any planned wall or fence is to be erected, constructed, or installed within an easement area or to cross any easement area, such ACC approval shall be subject to the Owner first receiving written approval from the easement holder(s) and all other applicable governmental authorities. In the event any wall or fence is installed within any easement area or blocks

access to any easement area, the Owner shall be solely responsible for the prompt removal of the wall or fence and shall repair or replace the wall or fence once the easement holder completes work within the easement area and/or if the need for access to the easement area is no longer required at such time. No chain link or wood fencing of any kind is permitted. All walls and fences must be in compliance with the Architectural Guidelines. Fences shall not be installed flush to the ground so that drainage will be blocked in any way. Walls shall be constructed in such a manner as to permit proper drainage. Notwithstanding that an Owner has obtained the approval of the ACC to erect, construct, or install a wall or fence, doing so shall be at the Owner's sole risk so long as the Declarant has not yet begun or is engaged in development of on an adjacent Lot. The Declarant shall have the right, without obligation and in its sole discretion, to temporarily remove the wall or fence if deemed necessary by the Declarant in order to complete development on the adjacent Lot. In the event such development activity on an adjacent Lot or the Declarant's temporary removal of the wall or fence causes damage to or destruction of such Owner's wall or fence or any part thereof, the Owner on whose Lot the wall or fence has been damaged shall be required, at the Owner's expense, to repair or replace such wall or fence in conformance with the requirements of the ACC's initial approval of wall or fence, and the Declarant shall have no liability for any such damage or destruction. Such repair or replacement shall commence as soon as development of the adjacent Lot has been completed and shall be pursued to completion with due diligence.

8.15 Screened Enclosures. All screening, screened enclosures, and enclosure of balconies or patios, including, without limitation, with vinyl windows, shall have the prior written approval of the ACC and shall be in compliance with the Architectural Guidelines. No rear yard screen enclosure shall extend beyond the boundary created by the side walls of the Home and cannot be higher than the roofline of the Home. No screen enclosure shall be constructed, installed, or maintained in the front portion of any Home, including, without limitation, any front porch or covered entryway.

8.16 Garages. No garage shall be converted into a living area unless approved the Board and the ACC, as applicable. Garage doors shall remain closed at all times except when vehicular or pedestrian access is required. No Owner shall store any items, materials, or other personal property in the garage of such Owner's Home to the extent such storage would limit or prohibit the use of the garage for the parking of vehicles.

8.17 Garbage Containers. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on any portion of the Lot, except in clean and sanitary garbage containers. Each Owner shall be responsible for properly depositing garbage and trash in garbage containers sufficient for pick-up by the appropriate collection agencies in accordance with the requirements of any such agency. No garbage containers, supplies, or other similar articles shall be maintained on any Lot so as to be visible from another Lot or the Common Areas, except for proper garbage removal. Garbage containers shall not be placed outside the Home for removal earlier than 7:00 p.m. on the day preceding scheduled removal and shall be removed the day of scheduled removal. No outside burning of trash or garbage is permitted. No odor shall be permitted

to arise from a garbage container so as to render the Property or any portion thereof unsanitary, offensive, detrimental, or a nuisance to Owners, tenants, residents, or guests or to any other property in the vicinity thereof or to its occupants.

8.18 Hurricane Shutters. Any hurricane shutters or other protective devices visible from outside a Home shall be of a type as approved in writing by the ACC, shall match the color or trim of a Home and be of a neutral color. Any approval by the ACC shall not be deemed an endorsement of the effectiveness of hurricane shutters or other protective devices. Panel, accordion, and roll-up style hurricane shutters may not be installed or closed except forty-eight (48) hours prior to the expected arrival of a hurricane and must be removed or opened within seventy-two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise.

8.19 Artificial Vegetation. Except as otherwise permitted by Florida law, no artificial grass, plants, or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Lot, unless approved by the ACC.

8.20 Laundry. Subject to the provisions of section 163.04, Florida Statutes, to the extent applicable, no rugs, mops, or laundry of any kind, or any other similar type article, shall be shaken, hung, or exposed so as to be visible outside the Home or Lot. Clotheslines or clothes poles may be installed in the rear of a Lot so long as it is not visible from the Common Areas or an adjoining Lot; provided, that, any such clothesline or clothes pole shall be removed when it is not in use as a clothesline or clothes pole.

8.21 Satellite Dishes and Antennae. Except as may be installed by the Declarant or the Association, no antennas, satellite dishes, aerials, or other devices for communication or transmission of current shall be placed on any portion of the Common Areas or any property owned by the Association. Subject to the Federal Telecommunications Act of 1996, as amended from time to time, satellite dishes approved by the ACC to be installed on a Lot or other area in the exclusive control of the Owner shall be no greater than one (1) meter in diameter. In no event, however, shall lines or wires for communication or the transmission of current be constructed, placed, or permitted to be placed within the Common Areas unless the same shall be installed by the Declarant or the Association for the common use of all Owners. Any installation of communication equipment by an Owner shall not relieve such Owner from payment of any portion of Assessments. The ACC may, from time to time, adopt reasonable standards regarding the visibility and location of permissible antennas, satellite dishes, or any other communication equipment to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation.

8.22 Signs and Flags. Except as otherwise provided in section 720.304(2), Florida Statutes, no flags or flag poles are permitted without the prior written approval of the ACC. No sign, display, poster, banner, advertisement, notice, or other lettering shall

be exhibited, displayed, inscribed, painted, hung, or affixed in or upon any Home, Lot, or vehicle, that is visible from the Common Areas or another Lot.

8.23 Sports Equipment. No recreational, playground, or sports equipment, either permanent or temporary, including, without limitation, basketball backboards and hoops, skateboard ramps, or play structures, shall be installed, constructed, or placed within or about any portion of a Lot without the prior written consent of the ACC. Such approved equipment shall be located at the rear of the Lots or on the inside portion of corner Lots within the setback lines. Tree houses or platforms of a similar nature shall not be constructed on any part of a Lot. The Board may adopt, amend, or rescind reasonable rules and regulations regarding the use of any recreational, playground, or sports equipment, including, without limitation, times during which basketball hoops and/or play structures may be used.

8.24 Swimming Pools. No above-ground pools shall be permitted on any Lot. All in-ground pools, hot tubs, spas, and appurtenances installed shall require the prior written approval of the ACC. The design must incorporate, at a minimum, the following: (i) the composition of the material must be thoroughly tested and accepted by the industry for such construction; (ii) any swimming pool constructed on any Lot shall have an elevation at the top of the pool of not over two feet (2') above the natural grade unless otherwise approved by the ACC; (iii) any swimming pool constructed on any Lot must be constructed with the necessary safety barriers and barrier gates as required by Florida law. Unless installed by the Declarant, no diving boards, slides, or platforms shall be permitted without ACC approval. All pools shall be adequately maintained and chlorinated (or cleaned with similar treatment). Under no circumstances may chlorinated water be discharged onto adjacent Lots, streets, roadways, or into any retention/detention areas within the Property or adjoining properties.

8.25 Visibility on Corners. Notwithstanding anything to the contrary, no obstruction to visibility at street intersections shall be permitted and such visibility clearances shall be maintained as required by the Board and governmental agencies. No vehicles, objects, fences, walls, hedges, shrubs, plantings, or other Improvements shall be placed or permitted on a corner Lot where such obstruction would create a traffic problem.

8.26 Wells and Septic Tanks. No individual wells or septic tanks are permitted on any Lot.

8.27 Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window coverings, as determined by the Board, and no newspaper, aluminum foil, sheets, cardboard, towels, or other temporary window treatments are permitted. No security bars shall be placed on the windows of any Home without prior written approval of the ACC. No awnings, canopies, or shutters shall be affixed to the exterior of a Home without the prior written approval of the ACC. No reflective tinting or mirror finishes on windows shall be permitted without the prior written approval of the ACC.

8.28 Solar Panels. To the extent not prohibited by law, solar collectors shall not be visible from the road on which the Home is situated. The ACC may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within forty-five degrees (45°) east or west of due south if such determination does not impair the effective operation of the solar collectors.

8.29 Air Conditioning Units. Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are permitted. All exterior air conditioning units, pumps, electric, mechanical, and all other equipment must be screened from view by landscaping or other materials as approved in writing by the ACC, and in any event, no exterior air conditioning units or other equipment shall be placed in the front of a Home.

8.30 Control of Contractors. Except for direct services which may be offered to the Owners (and then only according to the Rules and Regulations relating thereto as adopted from time to time), no person other than an Association director or officer or the Association's manager shall direct, supervise, or in any manner attempt to assert any control over any contractor of the Association.

8.31 Cooking. No cooking shall be permitted, nor shall any goods or beverages be consumed, on the Common Areas, except in areas designated for those purposes by the Association. The Board shall have the right to prohibit or restrict the use of grills or barbecue facilities throughout the Property.

8.32 Responsibility for Personal Property and Persons. Each Owner assumes sole responsibility for the health, safety, and welfare of such Owner and the residents, tenants, guests, and invitees of the Owner's Lot, including, without limitation, minors, and the personal property of all of the foregoing. No person shall cause or permit any damage to the Common Areas or any other property for which the Association is responsible or interfere with the rights of other Owners hereunder. Neither the Declarant nor the Association shall be responsible for any loss or damage to any personal property brought into, used, placed, or left within or upon the Common Areas, including, without limitation, the Recreational Facilities (if any). Any person using the Common Areas, including, without limitation, engaging in any contest, game, function, exercise, competition, or other activity, shall do so at their own risk. By the use of the Common Areas, each Owner, tenant, resident, guest, and invitee agrees to indemnify and hold harmless the Association Parties and the Declarant Parties from and against all Losses incurred by or asserted against any of the Association Parties or the Declarant Parties as a result of or in any way related to use of the Common Areas by such persons. Should any Owner, tenant, resident, guest, or invitee bring suit against any of the Association Parties or the Declarant Parties for any Losses and fail to obtain judgment therein against the Association Parties or the Declarant Parties, the Owner, tenant, resident, guest, or invitee, as applicable, shall be liable to the Association Parties or the Declarant Parties, as applicable, for all Legal Fees incurred by the Association Parties or the Declarant Parties, as applicable, in the defense of such suit.

8.33 Activities. The Common Areas shall not be used by Owners, tenants, residents, guests, or invitees for any society, party, religious, political, charitable, fraternal, civil, fund-raising, or other purposes without the prior written consent of the Board, which consent may be withheld for any reason.

8.34 Association Personal Property. Personal property of the Association used in connection with the Community and/or the Common Areas shall not be removed from the location in which it is placed or from the Common Areas without the prior written consent of the Board.

8.35 Master Association Rules and Regulations. The Owners, tenants, residents, guests, and invitees shall additionally abide by the use restrictions, rules, and regulations as set out in the Master Governing Documents.

8.36 Declarant Exemption. The use restrictions and limitations set forth in this Article VIII, the Architectural Guidelines, and the Rules and Regulations shall not apply to the Declarant or to any property owned by the Declarant and shall not be applied in a manner that would prohibit or restrict the development or operation of the Property by the Declaration or adversely affect the interests of the Declarant. The Declarant shall specifically be exempt from any rules, restrictions, resolutions, or other actions of the Board or of the Members which interfere in any manner whatsoever with the Declarant's plans for development, construction, sale, lease, or use of the Property and to the Improvements thereon. The Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Article VIII in addition to whatever remedies at law to which it might be entitled. Without limiting the foregoing, the Declarant shall have the right to: (i) develop and construct Lots, Homes, Common Areas, and Improvements thereon within the Property, and make any additions, alterations, or changes thereto; (ii) maintain sales offices for the sale, re-sale, and/or lease of Lots and of properties located outside of the Property, general offices, and construction operations within the Property; (iii) place, erect, or construct portable, temporary, or accessory buildings or structures within the Property for sales, construction storage, or other purposes deemed suitable by the Declarant; (iv) temporarily deposit, dump, or accumulate materials, trash, refuse, debris, and rubbish in connection with the development or construction of any portion of the Property; (v) post, display, inscribe, or affix to any portion of the Property, signs and other materials used in developing, constructing, selling, or promoting the sale of any portion of the Property; (vi) excavate fill from any retention/detention areas or water bodies within and/or contiguous to the Property by dredge or dragline, store fill within the Property, and remove and/or sell excess fill; (vii) grow or store plants and trees within, or contiguous to, the Property and use and/or sell excess plants and trees; (viii) use construction vehicles in connection with construction, improvement, installation, or repair by the Declarant, or its agents, within the Property; and (ix) undertake all activities which, in the sole opinion of the Declarant, are necessary or convenient for the development and sale of any portion of the Property.



## **ARTICLE IX** **INSURANCE**

### **9.1     Common Areas.**

9.3.1 Coverages. The Association shall purchase and maintain the following insurance coverages subject to the following provisions:

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

(ii)    Liability Insurance. General liability insurance coverage insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance, repair, replacement, and use of the Common Areas and any Improvements thereon, and for any other risks insured against by such policies with such limits deemed appropriate by the Board. Such policies must provide that they may not be cancelled or substantially modified by any party, without at least thirty (30) days' prior written notice to the Declarant (until the Community Completion Date) and the Association.

(iii)   Flood Insurance. If the Common Areas are located within an area which has special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Association may maintain insurance coverage in appropriate amounts, available under NFIP, for all buildings and other insurable property within any portion of the Common Areas located within a designated flood hazard area.

(iv)    Fidelity Coverage. Adequate fidelity coverage shall be maintained in accordance with the By-Laws.

(v)     Directors and Officers Liability Insurance. Adequate directors' and officers' liability insurance in such amounts and with such provisions as approved by the Board.

(vi)    Additional Insurance. Such other insurance coverage as deemed appropriate by the Board, from time to time, including, without limitation, worker's compensation insurance and insurance for lawsuits related to employment contracts in which the Association is a party, in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Common Areas and any Improvements now or hereafter located thereon or in the best interests of the

Association and/or its officers and directors. All coverage obtained by the Association shall cover all activities of the Association and all properties maintained by the Association, whether or not the Association owns title thereto.

9.3.2 Cost of Payment of Premiums and Deductibles. Except as otherwise provided herein, the costs of all insurance maintained by the Association, and any other fees or expenses incurred that may be necessary or incidental to carry out the provisions hereof, are Common Expenses.

9.3.3 Condemnation. In the event the Association receives any award or payment arising from the taking of any Common Areas or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and Improvements thereon to the extent deemed advisable by the Board, and the remaining balance thereof, if any, shall then be distributed pro rata to the Owners and Lenders as their respective interests may appear.

9.2 Single-Family Lot Insurance. Each Owner of a Single-Family Lot shall be required to obtain and maintain insurance in an amount equal to the then full replacement cost of all insurable Improvements on such Owner's Single-Family Lot, less a reasonable deductible. Such insurance shall be sufficient for necessary repair or reconstruction work and shall cover the costs to demolish a damaged Home, as applicable, remove the debris, and to re-sod and landscape land comprising the Single-Family Lot. Upon the request of the Association, each Owner of a Single-Family Lot shall be required to supply the Board with evidence of insurance coverage on such Owner's Single-Family Lot and Home which complies with the provisions of this Section 9.2. Without limiting any other provision of this Declaration or the powers of the Association, the Association shall specifically have the right, without obligation, to bring an action to require an Owner to comply with the Owner's obligations hereunder. The Association, its directors, officers, committee members, agents, and employees, shall not be liable to any Owner should an Owner fail for any reason whatsoever to obtain insurance coverage on the Owner's Single-Family Lot and Home.

9.3 Townhome Lot Insurance. As may be reasonably determined by the Board, from time to time not less than one hundred twenty (120) days prior to the expiration of then-existing coverage, due to coverage availability, market conditions, and other relevant factors, insurance upon Townhome Lots shall be obtained in either manner set forth below. Any change in the manner of obtaining insurance coverage for Townhome Lots shall become effective sixty (60) days after the recording of a certificate in the Official Records of the County providing notice of such change under this Section. Within thirty (30) days after recording said certificate, the Association shall provide each Owner with written notice of such change to provide a reasonable amount of time for the Owners to comply with such change. Upon the request of the Association, each Owner of a Townhome Lot shall be required to supply the Board with evidence of insurance coverage on such Owner's Townhome Lot and Home which complies with the provisions of this Section 9.3. Without limiting any other provision of this Declaration or the powers of the

Association, the Association shall specifically have the right, without obligation, to bring an action to require an Owner to comply with the Owner's obligations hereunder. The Association, its directors, officers, committee members, agents, and employees, shall not be liable to any Owner should an Owner fail for any reason whatsoever to obtain insurance coverage on the Owner's Townhome Lot and Home. The costs of all insurance maintained by the Association in accordance with this Section 9.3, and any other fees or expenses incurred that may be necessary or incidental to carry out the provisions hereof, are Common Expenses of the Association allocated among the Townhome Lots only, and all Owners of Townhome Lots within each building containing Homes constructed on Townhome Lots shall share said fees, costs, and expenses equally as reasonably determined by the Board.

9.3.1 Coverage Option One. The Association shall purchase and maintain property and casualty insurance in an amount equal to the then full replacement cost, exclusive of items normally excluded from such coverage, of all Shared Roofing now or hereafter located upon the Townhome Lots, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Shared Roofing in developments similar to the Community in construction, location, and use. Each Owner of a Townhome Lot shall be required to obtain and maintain insurance in an amount equal to the then full replacement cost of all other insurable Improvements on such Owner's Townhome Lot, less a reasonable deductible. Such insurance shall be sufficient for necessary repair or reconstruction work and shall cover the costs to demolish a damaged Home, as applicable, remove the debris, and to re-sod and landscape land comprising the Townhome Lot.

9.3.2 Coverage Option Two. The Association shall purchase and maintain property and casualty insurance in an amount equal to the then full replacement cost, exclusive of items normally excluded from such coverage, of all Improvements located upon the Townhome Lots, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to said Improvements in developments similar to the Community in construction, location, and use. Such insurance shall be sufficient for necessary repair or reconstruction work and shall cover the costs to demolish a damaged Home, as applicable, remove the debris, and to re-sod and landscape land comprising the Townhome Lot. Notwithstanding the foregoing, the coverage purchased and maintained by the Association shall exclude all personal property within the Townhouse Lot, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the Townhouse Lot. Each Owner of a Townhome Lot shall be required to obtain and maintain insurance in an amount equal to the then full replacement cost of all the foregoing items, less a reasonable deductible.

9.4 Declarant. Prior to Turnover, the Declarant shall have the right, at the Association's expense, to provide insurance coverage under its master insurance policy in lieu of any of the foregoing. Until the Community Completion Date, the Declarant shall

be named as “additional insured” by endorsement on all policies obtained by the Association. Notwithstanding anything to the contrary, the Declarant Parties shall not be liable to any Owner or any other person should the Association fail for any reason whatsoever to obtain insurance coverage for the Common Areas or should the Owner fail for any reason whatsoever to obtain insurance coverage for their Lot.

9.5 Insurance Trustee. The Board may, in its sole discretion, appoint itself, a Florida or national bank with trust powers, or such other person or entity, in the Board’s sole discretion, as insurance trustee hereunder. If the Board fails or elects not to appoint an insurance trustee, the Association will perform directly all obligations imposed upon the insurance trustee by this Declaration. Fees and expenses of any insurance trustee shall be Common Expenses.

9.6 Association as Agent. The Association is irrevocably appointed agent for each Owner of any interest relating to the Common Areas to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

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

## **ARTICLE X**

### **DAMAGE TO OR DESTRUCTION OF THE PROPERTY**

10.1 Damage to or Destruction of a Lot. In the event a Lot, or any portion thereof, is damaged or destroyed by fire, flood, or other casualty, the Owner of such Lot shall do one (1) of the following: (i) the Owner shall commence reconstruction and/or repair of the Lot (“Required Repair”), or (ii) the Owner shall, to the extent permitted by law, tear the Home on the Lot down, remove all the debris, and re-sod and landscape the Lot as required by the ACC (“Required Demolition”). The Required Repair or the Required Demolition must be: (i) approved by the ACC; (ii) commenced within ninety (90) days after damage or destruction of the Improvements on the Single-Family Lot; and (iii) conducted in a continuous, diligent, and timely manner.

10.1.1 Each Owner acknowledges that the issuance of a building permit or a demolition permit in no way shall be deemed to satisfy the requirements set forth herein, which are independent of, and in addition to, any requirements for completion of work or progress requirements set forth in applicable statutes, zoning codes, and/or building codes.

10.1.2 Notwithstanding anything to the contrary herein, to the extent that insurance coverage obtained and maintained by the Association covers casualty damage to or destruction of a Lot or any Improvement thereon, the Owner of such damaged or destroyed Lot shall not perform any activities that would negate such coverage or impair the availability of such coverage. Any insurance proceeds received by the Association for such casualty damage to or destruction of a Lot or any Improvement thereon shall be applied to the repair or replacement of the property so covered if the Required Repair is undertaken by the Owner of the Lot or shall be applied to the tear down and removal of the property so covered if the Required Demolition is undertaken by the Owner of the Lot.

10.1.3 The Association shall have the right to inspect the progress of the Required Repair or the Required Demolition, as applicable. In addition to all other remedies available to the Association, the Association shall have the right, without obligation, to bring an action against an Owner who fails to comply with the requirements of this Section 10.1. Without limitation, if an Owner refuses or fails, for any reason, to perform the Required Repair or the Required Demolition, then the Association, in the Board's sole and absolute discretion, is hereby irrevocably authorized by such Owner to perform the Required Repair or the Required Demolition on such Owner's behalf. The Association shall have the absolute right to perform the Required Demolition to a Home pursuant to this Section 10.1.3 if any contractor certifies in writing to the Association that such Home cannot be rebuilt or repaired without demolition. The costs and expenses of any Required Repair or the Required Demolition, as applicable, conducted by the Association in accordance with this Section 10.1.3, including, without limitation, any costs and expenses incurred with the management and oversight of any such Required Repair or Required Demolition performed by the Association, shall be levied against the Lot and the Owner thereof as an Individual Assessment. The Association Parties shall not be liable to any person if the Association does not enforce the rights given to the Association in this Section 10.1.

10.2 Damage to or Destruction of the Common Areas. In the event of damage to or destruction of the Common Areas, or any portion thereof, the Association shall be responsible for repair and reconstruction after casualty and shall be commenced within ninety (90) days after damage or destruction of the Improvements on the Common Areas. Any repair or reconstruction of improvements hereunder shall be substantially in accordance with the plans and specifications of the original Improvement, or as the Improvement was last constructed, subject to modification to conform to the then current governmental regulation(s). In the event insurance proceeds are insufficient to effect total repair or reconstruction of the Common Areas, or any portion thereof, damaged or destroyed by casualty, the Association may raise the necessary funds in excess of insurance proceeds by levying Special Assessments against all Owners.

10.3 Standard of Work. The standard for all demolition, reconstruction, and other work performed as required by this Article X shall be in accordance with the Architectural Guidelines and any other standards established by the Board with respect to any casualty that affects all or a portion of the Property.

## **ARTICLE XI**

### **ASSESSMENTS AND COLLECTION**

11.1 Covenant to Pay Assessments. In order to fulfill the terms, provisions, covenants, conditions, restrictions, reservations, regulations, burdens, liens, and easements herein contained and to maintain, operate, and preserve the Common Areas for the use and benefit of the Owners, tenants, residents, guests, and invitees, there is hereby imposed upon each Lot and each Owner, the affirmative covenant and obligation to pay to the Association, commencing from and after the first conveyance of a Lot from the Declarant as evidenced by the recordation of a deed in the County's Official Records, all Assessments as set forth herein, which Assessments include, without limitation, General Assessments, Special Assessments, and Individual Assessments. Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title in any manner (whether or not so expressed in the deed), including, without limitation, any purchaser at a judicial sale, shall be deemed to have covenanted and agreed to pay to the Association all Assessments or charges as are fixed, established, and collected from time to time by the Association and that each Lot and the Owners thereof are jointly and severally liable for their portion of Assessments. Any individual or entity, unless otherwise set out herein, acquiring title to a Lot shall be personally liable, jointly and severally, for any unpaid sums due and payable to the Association that are attributed to the Lot, including, without limitation, any unpaid Assessments, late fees, interest, and any Legal Fees with respect to such Lot. Each Owner is jointly and severally liable with the previous owner of the Lot for all unpaid Assessments that came due up to the time of transfer of title.

11.2 Establishment of Lien. Each Assessment, and other charges and fees set forth herein, together with interest thereon, administrative late fees, and costs of collection, including, without limitation, all Legal Fees, shall be a charge and continuing lien in favor of the Association encumbering the Lot and all personal property located thereon owned by the Owner against whom each such Assessment is made. The lien established by this Section 11.2 shall relate back to the date of recording this Declaration among the County's Official Records.

11.3 Master Association Assessments. Assessments levied and imposed upon the Owners and the Lots by the Master Association in accordance with the Master Declaration shall be collected by the Association, on behalf of all Owners and all Lots. The Association shall thereafter remit such Master Association assessments to the Master Association. The duty of the Association to pay the Master Association assessments on behalf of all Owners and all Lots shall not be deferred or relieved by any non-payment of Master Association assessments by any Owner. Any Master Association assessment for which the Association is required to pay in the event of Owner non-payment shall be assessable against such non-paying Owner and such Owner's Lot as an Individual Assessment.

11.4 General Assessments. General Assessments levied by the Association shall be used for, among other things, the purpose of operating and maintaining the

Association and the Property, including, without limitation, the Common Expenses. General Assessments shall be established by the adoption of the annual budget as further set forth in the By-Laws and subject to this Section 11.4. The Board may, from time to time, determine when General Assessments will be collected by the Association (i.e., monthly, quarterly, or annually). Unless otherwise established by the Board, General Assessments shall be collected in advance on a monthly basis. The Board shall fix the date of commencement and the amount of General Assessments for each fiscal year of the Association at least thirty (30) days in advance of the commencement of the fiscal year for which the annual budget is adopted. Written notice of General Assessments shall thereupon be sent to every Owner subject thereto at least fifteen (15) days prior to payment of the first installment thereof. In the event no such notice of a change in General Assessments for the upcoming fiscal year is given, the amount payable shall continue to be the same as the amount payable for the previous fiscal year, until changed in the manner provided for herein. The amount of General Assessments (and applicable installments) may be changed at any time by the Board from that originally stipulated or from any other General Assessments that are in the future adopted. The General Assessments for any year shall be levied for the fiscal year (to be reconsidered and amended, as necessary), but the amount of any revised General Assessment to be levied during any period shorter than a full fiscal year shall be in proportion to the number of months (or other appropriate installments) remaining in such fiscal year.

11.4.1 Reserves. The Declarant does not and will not create Statutory Reserves. The Board may, but shall have no obligation to, include in the annual budget Non-Statutory Reserves, including, without limitation, reserves for maintenance, repair, and replacement of the Recreational Facilities. Reserves shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Reserves are established. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Reserves or any portion thereof through the Community Completion Date. Therefore, in the event Statutory Reserves are later created by the Owners in accordance with section 720.303(6)(d), Florida Statutes, or in the event the Board creates Non-Statutory Reserves, the Declarant shall not be responsible for the payment of any such Reserves through the Community Completion Date or to such other date provided by law, whichever is longer.

11.4.2 Allocation. Except as provided herein with respect to "Vacant Lots" and "Spec Lots" (as such terms are hereinafter defined) and with respect to the costs to be incurred by the Association to maintain certain Improvements on the Lots, as further set forth below, General Assessments imposed by the Association shall be imposed against all Lots equally.

11.4.2.1 Vacant Lots and Spec Lots. Subject to the rights of the Declarant pursuant to Section 11.11 below, any Lot that does not have a Home constructed thereon as evidenced by a Certificate of Occupancy (a "Vacant Lot") and any Lot that has a Home constructed thereon but is owned by the Declarant (a "Spec Lot") shall be assessed at ten percent (10%) of the General Assessment, less Reserves (if

any), assessed to Lots with Homes constructed thereon and owned by Owners. In accordance with section 720.308(1)(a), Florida Statutes, this lesser General Assessment amount reflects that Vacant Lots and Spec Lots will not benefit from maintenance and other services provided by the Association. At such time as a Home is conveyed by the Declarant to an Owner, then the Spec Lot shall be deemed a fully assessed Lot and shall be responsible for one hundred percent (100%) of General Assessments, except as otherwise provided herein. Notwithstanding any other provision to the contrary, Vacant Lots and Spec Lots shall not be responsible for Reserves or Individual Assessments and to the extent permitted by law, Special Assessments, as further set forth below. Assessments shall commence as to each Owner on the day of the conveyance of title of a Home to such Owner. Each Owner agrees that so long as it does not pay more than the required amount, they shall have no grounds upon which to object to either the method of payment or nonpayment by other Owners or the Declarant of any sums due.

11.4.2.2 Lot Maintenance. Due to the specific level of maintenance and other services provided by the Association to Single-Family Lots and to Townhome Lots in accordance with Article VII of this Declaration, the costs to be incurred by the Association to maintain the Single-Family Lots and Townhome Lots will differ. Therefore, in accordance with section 720.308, Florida Statutes, the costs to be incurred by the Association for maintenance upon the Lots shall be allocated among the Single-Family Lots and Townhome Lots based upon the specific level of maintenance services received by each respective Lot type. Each Lot within each respective Lot type shall share equally the landscaping maintenance costs allocated to such respective Lot type.

11.5 Special Assessments. The Association, by and through the Board, shall have the right to levy Special Assessments, from time to time, against all Owners and Lots or one (1) or more Lots or one (1) or more Owners to the exclusion of other Lots and Owners for any of the following purposes: (i) the cost of reconstructing, replacing, or improving the Common Areas, or any portion thereof or Improvements thereon, or any other portion of the Property for which the Association is responsible; (ii) any casualty loss affecting the Association, the Common Areas, or any portion thereof or Improvements thereon, or any other portion of the Property for which the Association is responsible to the extent such loss exceeds the insurance proceeds, if any, receivable by the Association as a result of such loss; (iii) any judgment against the Association (or against any director or officer if and to the extent such director or officer is entitled to be indemnified by the Association therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Association as a result of such judgment, or an agreement by the Association (or such director or officer to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such director or officer) to the extent such settlement exceeds the insurance proceeds, if any, received by the Association as a result of such settlement agreement; (iv) Legal Fees incurred by the Association in connection with litigation (whether incurred for the preparation, filing, prosecution, or settlement thereof or otherwise), except those Legal Fees incurred by the Association in connection with the collection of Assessments or as may be the subject of an Individual Assessment; and (v) in the event of a deficit in the Association's operating account(s) resulting from inadequate payment of General



Assessments or the Association's expenditures exceed the amount(s) budgeted for the then-current fiscal year. Prior to Turnover, Special Assessments may be levied by the Association with the approval of (i) a majority of the entire Board; and (ii) fifty-one percent (51%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained. After Turnover, no vote of the Owners shall be required for the levy of Special Assessments, unless such Special Assessment is made for a nonessential, discretionary Improvement. Until the Community Completion Date, no Special Assessments shall be imposed without the written consent of the Declarant. Special Assessments levied hereunder shall be due within the time specified and in the amount specified by the Board in the action levying such Special Assessment. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Special Assessments through the Community Completion Date to the extent permitted by law. If, however, the Declarant is held responsible for payment of any Special Assessment prior to the Community Completion Date, the Developer shall only be responsible for payment of such Special Assessment on Vacant Lots and Spec Lots at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. Special Assessments shall be subject to all of the applicable provisions of this Article XI including, without limitation, interest charges, administrative late fees, lien filing, and foreclosure procedures.

11.6 Individual Assessments. The Association, by and through the Board, shall have the right to levy Individual Assessments, from time to time, against one (1) or more Lots or one (1) or more Owners to the exclusion of other Lots and Owners for any of the following purposes: (i) the costs, fees, and expenses incurred by the Association for the repair or replacement of damage to the Common Areas, or any portion thereof or Improvements thereon, or any other portion of the Property for which the Association is responsible caused by the misuse, negligence, or other action or inaction of an Owner, resident, tenant, guest, or invitee; (ii) the costs, fees, and expenses incurred by the Association for the maintenance, repair, or replacement to a Lot and/or Home conducted by the Association in the event an Owner fails to properly maintain, repair, or replace their Lot or Home in a manner required by this Declaration; (iii) charges for costs and expenses of the Association which are not Common Expenses but which are attributable to a specific Lot or Lots and which are designated as a special charge, including, but not limited to, Legal Fees attributable to a specific Lot or Lots and non-payment of Master Association assessments; (iv) "Use Fees" (as such term is hereinafter defined); and (v) other fines, expenses, and charges incurred against particular Lots and/or Owners to the exclusion of others as may be contemplated in this Declaration. Individual Assessments levied hereunder shall be due within the time specified and in the amount specified by the Board in the action levying such Individual Assessment. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Individual Assessments through the Community Completion Date. Individual Assessments shall be subject to all of the applicable provisions of this Article XI, including, without limitation, interest charges, administrative late fees, lien filing, and foreclosure procedures.

11.7 Use Fees. The Association shall have the authority to charge any specific fees, dues, or charges to be paid for any special services, for any special or personal use of the Common Areas, or to reimburse the Association for the expenses incurred in connection with such service or use ("Use Fees"). Use Fees are assessable against the Lot and the Owner as an Individual Assessment. The Association may establish, from time to time, by resolution, rule or regulation, or by delegation to an officer or agent, including, a professional management company, Use Fees. The sums established shall be payable by the Owner utilizing the service or facility as determined by the Association.

11.8 Designation of Assessments. The designation of Assessment type and amount shall be made by the Board. Prior to the Community Completion Date, any such designation must be approved in writing by the Declarant. Such designation may be made on the budget prepared by the Board. The designation shall be binding upon all Owners.

11.9 Initial Contribution. The first purchaser of each Home from the Declarant, at the time of closing of the conveyance from the Declarant to the purchaser, shall pay to the Declarant an initial contribution in the amount of one (1) quarter's General Assessments at the time of closing (the "Initial Contribution"). The funds derived from the Initial Contributions shall be used at the discretion of the Declarant for any purpose, including, without limitation, to offset and lessen the Declarant's funding obligations, support costs, and start-up costs.

11.10 Resale Contribution. For each conveyance of a Home by an Owner to a purchaser after the Home has been conveyed by the Declarant, there shall be collected from the purchaser at the time of closing of the conveyance from the Owner to the purchaser a resale contribution in the amount of one (1) quarter's General Assessments at the time of closing payable to the Association (the "Resale Contribution"). The funds derived from the Resale Contributions are income to the Association and shall be used at the sole discretion of Board for any purpose, including, without limitation, future and existing capital improvements, Common Expenses, support costs, and start-up costs. The Resale Contribution shall not be deemed advance payment of Assessments, nor shall Resale Contribution have any effect on future Assessments. The Resale Contribution shall not be applicable to conveyances from the Declarant.

11.11 Declarant's Funding Obligations. Each Owner acknowledges and agrees that because General Assessments, Special Assessments, and Reserves (if any) are allocated in accordance with this Article XI, it is possible the Association may collect more or less than the amount budgeted for Common Expenses. Prior to Turnover, the Declarant shall have the option, in its sole discretion, to: (i) pay any Common Expenses incurred by the Association that exceed the Assessments received from Owners and other receivables and income of the Association, including, without limitation, the Initial Contributions and Resale Contributions, late fees, and interest charges as set out in section 720.308(1)b), Florida Statutes (the "Deficit"), or (ii) pay General Assessments on Vacant Lots and Spec Lots at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. Notwithstanding any other provision of this Declaration to the contrary, the Declarant shall never be required to (i) pay Assessments if the Declarant

has elected to fund the Deficit instead of paying Assessments on Vacant Lots or Spec Lots; (ii) pay Special Assessments, Individual Assessments, or Reserves; and/or (iii) fund any deficit caused by Owners who have failed to pay Assessments and/or any other monetary obligation due to the Association and/or the Master Association. The Declarant shall elect annually whether it will pay General Assessments or fund the Deficit. Notwithstanding the foregoing, the Declarant may at any time give thirty (30) days' prior written notice to the Association changing its funding obligation election. Any of the Declarant's funding obligations to the Association may be satisfied in the form of monetary payment or by "in kind" contributions of services or materials, or by any combination of the foregoing. The Deficit, if any, to be paid by the Declarant pursuant to this Section 11.11 shall be determined by looking at the Declarant control period as a whole, without regard to quarterly, annual, or any other accounting or fiscal periods and without regard to intraperiod allocations. In that regard, in the event it is determined at Turnover that there is a Deficit and the Declarant has previously advanced funds to the Association in excess of the Deficit during the Declarant control period, the Declarant shall be entitled to the immediate repayment from the Association of the amount of funds advanced by the Declarant in excess of the Deficit. After Turnover, the Declarant shall pay General Assessments on Vacant Lots and Spec Lots at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. To the extent not prohibited by law, the Declarant shall not be responsible for any Reserves, Special Assessments, or Individual Assessments, even after Turnover; but, if the Declarant is held responsible for any of the foregoing prior to the Community Completion Date, the Developer shall only be responsible for payment of same at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. Upon transfer of title of a Lot owned by the Declarant, the Lot shall be assessed in the amount established for Lots owned by Owners other than the Declarant, prorated as of and commencing with, the month following the date of transfer of title. THE DECLARANT DOES NOT PROVIDE A GUARANTEE OF THE LEVEL OF ASSESSMENTS. AS SUCH, THERE IS NO MAXIMUM GUARANTEED LEVEL OF ASSESSMENTS DUE FROM OWNERS. AS SUCH, THE PROVISIONS OF SECTIONS 720.308(2) THROUGH 720.308(6), FLORIDA STATUTES, ARE NOT APPLICABLE TO THE DECLARANT OR THE CALCULATION OF THE DEFICIT OR OTHER AMOUNTS DUE FROM THE DECLARANT.

11.12 Declarant Subsidy of the Association's Budget. Prior to the Community Completion Date and/or based on the number of Lots owned by Owners, the Declarant may seek to keep Assessments lower than they otherwise may be by subsidizing the Association's budget by making voluntary contributions in amounts determined in the Declarant's sole discretion. The amount of any such voluntary contributions may vary from time to time or may be discontinued and recommenced by the Declarant from time to time. The determination to subsidize the Association's budget, the amount of any such voluntary contribution, the discontinuance and/or commencement of any such voluntary contributions shall all be made by the Declarant, without obligation and in the Declarant's sole discretion. Each Owner shall be solely responsible to review the Association's budget then in effect to determine if and to what extent the Declarant is making any voluntary contributions to subsidize the budget and thus lower the Assessments payable by the Owners that would otherwise be higher based on the Common Expenses. Any voluntary

contribution made by the Declarant may be applied to offset the Deficit remaining at Turnover.

11.13 Surplus. Any surplus Assessments collected by the Association may be allocated towards the next year's Common Expenses or, in the Board's sole and absolute discretion, to the funding of Reserves, whether or not budgeted. Under no circumstances shall the Association be required to pay surplus Assessments to Owners.

11.14 Estoppel Certificates. No Owner shall sell or convey such Owner's interest in a Lot unless all sums due to the Association have been paid in full and an estoppel certificate shall have been received from the Association by such Owner. The Association shall prepare and maintain a ledger noting Assessments due from each Owner. The party requesting the estoppel certificate shall be required to pay the Association a reasonable fee for the preparation and delivery of such estoppel certificate in accordance with section 720.30851, Florida Statutes.

11.15 Non-Use. No Owner may be exempt from personal liability for Assessments duly levied by the Association. No Owner may release the Lot owned by such Owner from the liens and charges hereof either by waiver or suspension of the use and enjoyment of the Common Areas and Improvements thereon or by abandonment of such Owner's Lot, by refusal to provide the Association with access to the Owner's Lot for the purpose of performing maintenance upon such Lot in accordance with this Declaration, or by voluntarily undertaking any maintenance upon such Lot which is otherwise the responsibility of the Association in accordance with this Declaration.

11.16 Payment of Other Obligations. Each Owner shall pay all taxes and obligations relating to its Lot which, if not paid, could become a lien against the Lot that is superior to the lien for Assessments created by this Declaration. A Lender shall give written notice to the Association if the mortgage held by such Lender is in default. The Association shall have the right, but not the obligation, to cure such default within the time periods provided in the mortgage held by such Lender. In the event the Association makes such payment on behalf of an Owner, the Association shall, in addition to all other rights reserved herein, be subrogated to all of the rights of the Lender. All amounts advanced on behalf of an Owner pursuant to this Section 11.16 shall be assessable against the Owner and the Lot as an Individual Assessment.

11.17 Subordination of the Lien to Mortgages. The lien for Assessments shall be subordinate to a bona fide first mortgage held by a Lender on any Lot recorded in the County's Official Records prior to the recordation of a claim of lien for unpaid Assessments hereunder. A Lender having a bona fide first mortgage, its successor or assignee, obtaining title to a Lot as a result of the foreclosure of its first mortgage or by deed in lieu of such foreclosure, shall hold title subject to the liability and lien of any Assessment becoming due after such foreclosure or deed in lieu of foreclosure. Further, any such Lender who acquires title to a Lot as the result of the foreclosure of its first mortgage or by deed in lieu of such foreclosure shall be liable for any past due Assessments or any other unpaid sums due and payable to the Association that are

attributed to the Lot in such amounts as provided for in section 720.3085, Florida Statutes, so long as such Lender initially named the Association as a defendant in its foreclosure action. Any unpaid Assessments for which such Lender, its successor or assignee, obtaining title is not liable shall be reallocated and assessed to all Owners (including such Lender, its successor or assignee) as a part of the Common Expenses. Any other person or entity acquiring title to the Lot through the foreclosure of the first mortgage (or deed in lieu of such foreclosure) shall owe all sums due on the Lot, including, but not limited to, interest charges, administrative late fees, and Legal Fees, as any subsequent Owner owes in accordance with section 720.3085, Florida Statutes. Any sale or transfer pursuant to a foreclosure (or by deed in lieu of foreclosure) shall not relieve the Owner from liability for, nor the Lot from, the lien of any Assessments made thereafter.

11.18 Non-Payment of Assessments. If any Assessment is not paid within ten (10) days (or such other period of time established by the Board from time to time) after the due date, then the Association, by and through the Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

(i) Charge an administrative late fee in the maximum amount permitted by the Homeowners' Association Act.

(ii) Charge interest at the highest rate permitted by law on such Assessment from the date it becomes due until the date it is paid.

(iii) Accelerate Assessments then due for up to the next ensuing twelve (12) month period based upon the then existing amount and frequency of Assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the General Assessments, for all Special Assessments, Individual Assessments, and/or for all other amounts payable to the Association, even if levied after acceleration.

(iv) Suspend the rights to use the Common Areas and/or to vote on any matter on which Owners have the right to vote in accordance with Article XIV of this Declaration.

(v) Record a claim of lien against the Lot and file an action in equity to foreclose its lien at any time after the effective date thereof in the name of the Association and in like manner as a foreclosure of a mortgage on real property.

(vi) File an action at law to collect said Assessments, interest charges, administrative late fees, and all costs of collection thereof, including, without limitation, Legal Fees, without waiving any lien rights or rights of foreclosure of the Association.

(vii) Collect any monetary obligation due to the Association from the rents paid by any tenant occupying the Home if the Owner has leased the Home in accordance with section 720.3085, Florida Statutes.

11.19 Application of Payments. All payments received and applied by the Association on accounts shall be first applied to any interest charges accrued, then to any administrative late fees, then to any costs incurred in collection, including, without limitation, all Legal Fees, and then to the delinquent Assessment. The foregoing allocation of payments shall apply notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment, or any purported accord and satisfaction in any amount less than the total amount due to the Association.

11.20 Exemption. Notwithstanding anything to the contrary herein, governmental entities shall not be responsible for the payment of Assessments. Additionally, the Board shall have the right to exempt any portion of the Property from Assessments, provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes: (i) any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; and (ii) any of the Property exempted from ad valorem taxation by the laws of the State of Florida or exempted from Assessments by other provisions of this Declaration.

11.21 Collection by Declarant. If for any reason the Association shall fail or be unable to levy or collect Assessments, then in such event, the Declarant shall at all times have the right, but not the obligation, to: (i) advance such sums as a loan to the Association to bear interest and to be repaid as hereinafter set forth; and/or (ii) to levy and collect such Assessments by using the remedies available as set forth above, including, but not limited to, recovery of the costs of collection, including, without limitation, Legal Fees. Such remedies shall be deemed assigned to the Declarant for such purposes. If the Declarant advances sums, it shall be entitled to immediate reimbursement, upon written demand, from the Association for such amounts so paid, plus interest thereon at the then-applicable Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection, including, without limitation, Legal Fees.

11.22 Rights to Pay Assessments and Receive Reimbursement. The Association, the Declarant, and any Lender shall have the right, but not the obligation, jointly and severally, and at their sole option, to pay any Assessments or other charges which are in default and which may or have become a lien or charge against any Lot or Home. If so paid, the party paying the same shall be subrogated to the enforcement rights of the Association with regard to the amounts due. If paid by the Declarant and/or a Lender, the Declarant and/or Lender, as applicable, will be entitled to immediate reimbursement, upon written demand, from the Association for such amounts so paid, plus interest thereon at the then-applicable Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection, including, without limitation, Legal Fees.

11.23 Mortgagee Right. Each Lender may request in writing to the Association that the Association notify such Lender of any default of the Owner of the Lot subject to

the Lender's mortgage which default is not cured within thirty (30) days after the Association learns of such default. A failure by the Association to furnish notice to any Lender shall not result in liability of the Association because such notice is given as a courtesy to the Lender and the furnishing of such notice is not an obligation of the Association to the Lender.

## **ARTICLE XII**

### **ARCHITECTURAL CONTROL**

12.1 ACC Membership. The ACC shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions relating to the Community. The ACC shall be the Declarant, until the Community Completion Date. From and after the Community Completion Date, the ACC shall consist of a minimum of three (3) members, who must be Owners, appointed by the Board, and who shall serve at the pleasure of the Board. From and after the Community Completion Date, the Board shall have the right to change the number of members on the ACC, and to appoint, remove, and replace all members of the ACC.

12.2 ACC Authority. The ACC shall have the authority to approve or disapprove all Improvements and alterations and additions thereto throughout the Property conducted by Owners. The ACC shall have the right to evaluate all plans and specifications as to harmony of exterior design, landscaping, location of any proposed Improvements, relationship to surrounding structures, topography, and conformity with such other reasonable requirements as shall be adopted by the ACC. The ACC may condition its approval of plans and specifications as it deems appropriate and may require submission of additional plans and specifications or other information prior to approving or disapproving any plans and specifications submitted by an Owner. The ACC shall have the power to promulgate such architectural guidelines, standards, rules, and regulations, including, without limitation, establishment of fees, as it deems necessary to carry out the provisions and intent of this Article XII. The ACC may impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning, or other local governmental codes. The ACC may, from time to time, adopt standards governing the performance or conduct of Owners, contractors, subcontractors, and their respective employees within the Community. The ACC may also promulgate requirements to be inserted in all contracts relating to construction within the Community, and each Owner shall include same therein. Prior to the Community Completion Date, any additional standards or modification of existing standards shall require the consent of the Declarant, which may be granted or denied in the Declarant's sole discretion.

12.3 Approval Required. No Improvements of any type or kind whatsoever shall be constructed, installed, erected, placed, removed, planted, painted, altered, modified, replaced, or changed on a Lot visible from the exterior of the Home until the plans and specifications showing the nature, kind, shape, height, materials, plans, color scheme, and location of the proposed work have been submitted to and approved in writing by the ACC. The ACC shall not, however, be responsible for reviewing any plans, specifications,

or designs as to structural safety or conformance with building or other codes. Each Owner is solely responsible for compliance with all applicable building or other codes and ordinances of the Village, the County and any other governmental agency having jurisdiction and shall obtain all required building and other permits from all governmental authorities having jurisdiction. Nothing in this Declaration shall be interpreted as an exemption from compliance with all applicable building or other codes and ordinances of the Village, the County, and any other governmental agency having jurisdiction.

12.4 Architectural Guidelines. Each Owner and its contractors, subcontractors, and their employees shall observe, and comply with, the Architectural Guidelines that now or may hereafter be promulgated by the Declarant or the ACC. The Architectural Guidelines shall be effective from the date of adoption, shall be specifically enforceable by injunction or otherwise in addition to all other available remedies, and shall have the effect of covenants as if specifically set forth herein. The Architectural Guidelines shall not require any Owner to alter the Improvements approved by the ACC and previously constructed unless such Improvement is to be altered, changed, or modified by a subsequent request. Until the Community Completion Date, the Declarant shall have the right to approve and amend the Architectural Guidelines prior to their effectiveness, which approval, may be granted in its sole discretion. In accordance with section 720.3035, Florida Statutes, proposed architectural plans, Improvements, and such other similar requests, plans, specifications, and designs submitted by, or on behalf of, an Owner and, to the extent the Association has not adopted Architectural Guidelines or other published architectural guidelines and standards, then the standards to be used by the ACC in reviewing any such request shall be in accordance with the location, size, and appearance as already existing in the Property.

12.5 ACC Meetings. The ACC shall meet from time to time as may be necessary to perform its duties hereunder. The ACC may from time to time, by resolution unanimously adopted in writing, designate a 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 ACC, except the granting of variances pursuant to Section 12.8 below. In the absence of such a designation, a majority of the ACC shall constitute a quorum to transact business at any meeting, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ACC.

12.6 ACC Procedure. An Owner desiring to obtain the approval of the ACC shall observe the following:

12.6.1 The Owner shall submit an application to the ACC with respect to any proposed Improvement or alteration, modification, or change to an Improvement, together with the required application(s) and other fee(s) as established by the ACC, including, without limitation, a security deposit as set forth in Section 12.7 below. The applications shall include such information as may be required by the application form adopted by the ACC. The ACC may also require submission of samples of building materials and colors proposed to be used. At the time of such submissions, the Owner shall, if requested, submit to the ACC, such site plans and/or plans and specifications for



the proposed Improvement, prepared and stamped by a registered Florida architect or residential designer, and landscaping and irrigation plans, prepared by a registered landscape architect or designer showing all existing trees and major vegetation stands and surface water drainage plan showing existing and proposed design grades, contours relating to the predetermined ground floor finish elevation, pool plans and specifications, and the times scheduled for completion, all as reasonably specified by the ACC.

12.6.2 In the event the information submitted to the ACC is, in the ACC's opinion, incomplete or insufficient in any manner, the ACC may request and require the submission of additional or supplemental information. The Owner shall, within fifteen (15) days thereafter, comply with the request. The ACC shall not review any application submitted for approval until all plans and specifications and all other information as may be required by the ACC has been properly submitted to the ACC.

12.6.3 No later than thirty (30) days after receipt of all information required by the ACC for final review, the ACC shall approve or deny the application in writing. The ACC shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in the ACC's sole discretion, for aesthetic or any other reasons or to impose qualifications and conditions thereon. In approving or disapproving such plans and specifications, the ACC shall consider the suitability of the proposed Improvements, the materials of which the Improvements are to be built, the site upon which the Improvements are proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the ACC fails to respond within said thirty (30) day period, the plans and specifications shall be deemed disapproved by the ACC.

12.6.4 In the event that the ACC disapproves any plans and specifications, the Owner may request a rehearing by the ACC for additional review of the disapproved plans and specifications. The meeting shall take place no later than thirty (30) days after written request for such meeting is received by the ACC, unless the Owner waives this time requirement in writing. The ACC shall make a final written decision no later than thirty (30) days after such meeting. In the event the ACC fails to provide such written decision within said thirty (30) days, the plans and specifications shall be deemed disapproved.

12.6.5 Upon final disapproval (even if the members of the Board and the ACC are the same), the Owner may appeal the decision of the ACC to the Board within thirty (30) days of the ACC's written review and final disapproval. Review by the Board shall take place no later than thirty (30) days subsequent to the receipt by the Board of the Owner's request therefor. If the Board fails to hold such a meeting within thirty (30) days after receipt of request for such meeting, then the plans and specifications shall be deemed disapproved. The Board shall make a final decision no later than sixty (60) days after such meeting. In the event the Board fails to provide such written decision within said sixty (60) days after such meeting, such plans and specifications shall be deemed disapproved. The decision of the ACC, or, if appealed, the Board, shall be final and binding upon the Owner and the Owner's heirs, legal representatives, successors, and assigns.

12.7 Security Deposit. An Owner desiring to make Improvements may be required by the ACC, in its sole and absolute discretion, depending upon the Improvements being requested and the manner of installation of such Improvements, to provide to the ACC, at the time of the Owner's submission of plans and specifications for review and approval by the ACC, a security deposit to: (i) cover all or any part of the costs of incidental damage caused to the Common Areas, an adjacent Home or Lot, or any other property (whether real or personal) by virtue of such Owner's work, and (ii) to pay for the review and inspection fees if and to the extent not paid by the Owner. The security deposit shall initially be One Thousand Dollars (\$1,000.00) and may be changed by the ACC from time to time without need to amend this Declaration. The Association shall not be obligated to place the security deposit in an interest-bearing account.

12.7.1 The Owner shall be entitled to the return of the security deposit upon: (i) such Owner's written notice to the ACC that the Improvements covered by the security deposit have been completed in accordance with the plans and specifications approved by the ACC; (ii) the ACC's inspection of such Improvements confirming completion; provided, however, should any incidental damage be caused by virtue of such Owner's construction of Improvements to the Common Areas or any other portion of the Property for which the Association is responsible, the security deposit shall not be returned to the Owner until such damages have been repaired; and (iii) the Owner's payment of all review and inspection fees. In the event that the Owner has not repaired damages to the Common Areas or any other portion of the Property for which the Association is responsible to the satisfaction of the ACC, the Association shall have the right, without obligation, after five (5) days' notice to the offending Owner, to repair such incidental damage and to use so much of the security deposit held by the Association to reimburse itself for the costs of such work. Further, the offending Owner hereby agrees to indemnify and reimburse the Association for all reasonable costs expended by the Association that exceed the security deposit, including, without limitation, Legal Fees, incurred in connection therewith. All amounts incurred or paid by the Association to repair damages caused by and not repaired by an Owner as set forth in this Section 12.7 shall, in addition to the other rights of the Association, be subject to an Individual Assessment levied by the Association against such Owner, which Individual Assessment shall be collectible in the same manner as other Assessments as set forth in this Declaration.

12.7.2 Should any incidental damage be caused to an adjacent Lot or Home by virtue of such Owner's work, the Owner of the adjacent Lot (the "Adjacent Lot Owner") may, at such Adjacent Lot Owner's sole option: (a) remedy such damage and submit to the Association a receipt, invoice, or statement therefor for reimbursement from the offending Owner's security deposit; or (b) allow the offending Owner to repair such incidental damage to the Adjacent Lot Owner's Lot or Home, at the offending Owner's sole cost and expense, and upon receipt by the Association of written notice from the Adjacent Lot Owner that such incidental damage has been repaired, the offending Owner shall be entitled to a return of the balance of the security deposit being held by the Association, if any.

12.7.3 The Association's return of the security deposit does not and shall not be construed to constitute a determination by members and representatives of the ACC, the Declarant, and/or the Association of the structural safety, approval or integrity of any Improvement, conformance with building or other codes or standards, the proper issuance of governmental permits and approvals for any Improvement, or compliance with this Declaration.

12.7.4 The ACC, the Declarant, and the Association shall not be liable or responsible to anyone for any damages, losses, or expenses resulting from the Association's holding of the security deposit or disbursement thereof. In the event of any disagreement relating to the security deposit held by the Association or the disbursement thereof, the Association shall be entitled (but not obligated) to refuse to disburse the security deposit (or any portion thereof) as long as such disagreement may continue, and the Association shall not become liable in any way for such refusal. The Association shall have the right at any time, after a dispute has arisen, to pay the security deposit (or any portion thereof) held by it into any court of competent jurisdiction for payment to the appropriate party, whereupon the Association's obligations hereunder shall terminate, and the Association shall be automatically released of any and all obligations.

12.8 Variances. The ACC shall have the power to grant variances from any requirements set forth in this Declaration or from the Architectural Guidelines, on a case-by-case basis, provided that the variance sought is reasonable and results from a hardship upon the Owner. The granting of a variance shall not nullify or otherwise affect the right to require strict compliance with the requirements set forth in this Declaration or in the Architectural Guidelines on any other occasion, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of the Lot, including, but not limited to, zoning ordinances, easements, setback lines, or requirements imposed by any governmental or municipal authority.

12.9 Construction Activities. Work regarding all Improvements by Owners shall be completed within the time period set forth in the application as approved by the ACC. Each Owner shall deliver to the ACC, if requested, copies of all construction and building permits as and when received by the Owner. Each construction site in the Community shall be maintained in a neat and orderly condition throughout construction. Construction activities shall be performed on a diligent, workmanlike and continuous basis. Roadways, easements, swales, Common Areas and other such areas in the Property shall be kept clear of construction vehicles and construction materials and debris at all times. All refuse and debris shall be removed or deposited in a dumpster on a daily basis. No materials shall be deposited or permitted to be deposited in any Common Areas or other Lots or be placed anywhere outside of the Lot upon which the construction is taking place. No hazardous waste or toxic materials shall be stored, handled, and used, including, without limitation, gasoline and petroleum products, except in compliance with all applicable federal, state, and local statutes, regulations, and ordinances, and shall not be deposited in any manner on, in, or within the construction site or adjacent property. All construction activities shall comply with the Architectural Guidelines. There shall be provided to the ACC, if requested, a list (name, address, telephone number and identity of contact

person), of all contractors, subcontractors, materialmen, and suppliers and changes to the list as they occur working within the Property. Contractors, subcontractors, and their employees shall utilize those roadways and entrances into the Property as are designated by the ACC for construction activities. The ACC shall have the right to require that contractors, subcontractors, and their employees check in at the designated construction entrances and to refuse entrance to persons and parties whose names are not registered with the ACC.

12.10 Inspection. There is specifically reserved to the Association and the ACC and to any agent or member of either of them, the right of entry and inspection upon any portion of the Property at any time, within reasonable daytime hours, and without notice for the purpose of determining whether there exists any violation of the terms of any approval or the terms of this Declaration or the Architectural Guidelines. Upon the completion of any work approved by the ACC, the applicant shall give the ACC written notice of such completion. Within forty-five (45) days of receipt of the written notice of completion, the ACC, or its authorized representative, may inspect the work. If the ACC finds the work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of the noncompliance specifying the particulars of the noncompliance. Within thirty (30) days of such noncompliance notice, the Owner shall remedy the noncompliance to the satisfaction of the ACC. If the Owner fails to comply, the ACC shall have the right, without obligation, to enter the Lot and remove the noncompliant Improvement or remedy the noncompliance, at the ACC's sole option. All costs, expenses, and fees incurred by the ACC in removing the noncompliant Improvement or remedying the noncompliance, including, without limitation, Legal Fees, shall be taken from the security deposit (if any) and/or shall be assessable against the Owner and the Lot as an Individual Assessment.

12.11 Violation. Without limitation of any other remedies available to the Association, if work is performed in violation of this Article XII, the Owner, shall, upon demand of the Association or the ACC, cause such Improvement to be removed, and/or restored to its preexisting condition until approval is obtained or in order to comply with the plans and specifications originally approved by the ACC. In the event the Owner fails to comply with such demand within the time specified therein, the Association shall have the right, without obligation, to enter the Lot, restore the noncompliant Improvement to its preexisting condition, and/or remove the noncompliant Improvement or remedy the noncompliance, at the Association's sole option. All costs, expenses, and fees incurred by the Association in removing the noncompliant Improvement, restoring the noncompliant Improvement to its preexisting condition, and/or remedying the noncompliance, including, without limitation, Legal Fees, shall be taken from the security deposit (if any) and/or shall be assessable against the Owner and the Lot as an Individual Assessment. Additionally, each Owner is responsible for ensuring compliance with all terms and conditions of these provisions and of the Architectural Guidelines by all of the Owner's contractors, subcontractors, and their employees. In the event of any violation of any such terms or conditions by any of the foregoing, the ACC shall have, in addition to all other remedies available to the ACC, the right to prohibit the violating contractor,

subcontractor, and/or employee from entering the Property and/or performing any further services within the Property.

12.12 Exemption. Notwithstanding anything to the contrary contained in the Governing Documents, Improvements of any kind made on behalf of or by the Declarant, its contractors, subcontractors, employees, agents, and assigns, within the Property shall not be subject to the Governing Documents or review and approval by the ACC, the Association, or the Owners. Further, the Architectural Guidelines shall not be applicable to any property owned by the Declarant, including, without limitation, Vacant Lots and Spec Lots.

12.13 No Waiver of Future Approvals. The approval of the ACC of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that Owner or another Owner. Similarly, the denial by the ACC of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to approve or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that Owner or another Owner.

12.14 Exculpation. By submitting a request for review and approval by the ACC, the Owner, individually and on behalf of the Owner's heirs, successors, and assigns, shall be deemed to have and does automatically agree to indemnify, defend, and hold harmless the ACC and its members and representatives, the Association Parties, and the Declarant Parties from and against any and all Losses arising from, relating to, or in any way connected with the Improvement or alteration to an Improvement for which such request was submitted and/or the security deposit therefor. The ACC and its members and representatives, the Association Parties, and the Declarant Parties shall not be liable for any cost or damages incurred by any Owner or any other party whatsoever, due to any mistakes in judgment, negligence, or any action of the ACC or its members or representatives, the Association Parties, or the Declarant Parties in connection with the approval or disapproval of plans and specifications. Each Owner agrees, by acquiring title to a Lot, that it shall not bring any action or suit against the Declarant Parties, the Association Parties, or the ACC or its members or representatives in order to recover any damages caused by the actions of the Declarant Parties, the Association Parties, or the ACC or its members or representatives in connection with the provisions of this Article XII. The Association does hereby indemnify, defend, and hold the Declarant Parties and the ACC and its members and representatives, harmless from all Losses of all nature resulting by virtue of the acts of the Owners, the Association Parties, the ACC or its members or representatives. The Declarant Parties, the Association Parties, the ACC and its members and representatives, and any person acting on behalf of any of them, shall not be liable for the safety, soundness, workmanship, materials, or usefulness for any purpose of any Improvement or alteration to any Improvement proposed by plans or specifications and shall not be responsible for any defects in any plans or specifications or the failure of same to comply with applicable laws or code nor for any defects in any

Improvement or alteration to any Improvement constructed pursuant thereto. Each Owner submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

### **ARTICLE XIII** **AMENDMENTS**

13.1 Declarant Amendment. Prior to Turnover, this Declaration may be amended only by an instrument in writing signed by the Declarant and joined by the Association, except as limited by applicable law or except as expressly set forth herein.

13.2 Membership Amendment. After Turnover, this Declaration may be amended by the affirmative vote of two-thirds (2/3<sup>rds</sup>) of all Members, except as otherwise required by applicable law as it exists on the date this Declaration is recorded in the County's Official Records or except as expressly set forth herein.

13.3 Scrivener's Errors. Amendments to this Declaration for correction of scrivener's errors or other nonmaterial changes may be made by the Board after Turnover without the consent of the Owners.

13.4 Compliance with Governmental and Lender Requirements. Notwithstanding any provision of this Declaration to the contrary, prior to Turnover, the Declarant shall have the right to amend this Declaration, from time to time, to make such changes, modifications, and additions herein and hereto as may be requested or required by any Lender, SJRWMD, or any other governmental agency or body as a condition to, or in connection with such agency's or body's regulatory requirements or agreement to make, purchase, accept, insure, guaranty, or otherwise approve loans secured by mortgages on Lots. No approval or joinder of the Association, the Owners, or any other party shall be required or necessary to such amendment. After Turnover, but subject to Section 13.5 below, the Board shall have the right to amend this Declaration, from time to time, to make such changes, modifications, and additions herein and hereto as may be requested or required by any Lender, SJRWMD, or any other governmental agency or body as a condition to, or in connection with such agency's or body's regulatory requirements or agreement to make, purchase, accept, insure, guaranty, or otherwise approve loans secured by mortgages on Lots. No approval or joinder of the Owners, or any other party shall be required or necessary to any such amendments by the Board. Any such amendments by the Board shall only require the approval of a majority of the entire Board.

13.5 General Restrictions on Amendments. No amendment to this Declaration shall abridge, prejudice, amend, alter, or otherwise affect the rights of the Declarant or the Master Association without the prior written consent of the Declarant or the Master Association, respectively, which consent may be withheld for any reason whatsoever. Any attempt to amend contrary to this prohibition shall be of no force or effect whatsoever. No amendment shall alter the provisions of this Declaration benefiting Lenders without the prior approval of the Lender(s) enjoying the benefit of such provisions. Any proposed amendment to this Declaration which would affect the Stormwater Management System,

affect the operation and maintenance of the Stormwater Management System, or water management portions of the Common Areas shall be submitted to the Master Association and SJRWMD for review and approval prior to finalization of the amendment. SJRWMD shall determine if the proposed amendment will require modification of the SJRWMD Permit. If a permit modification is necessary, SJRWMD will so advise the permittee. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to this Declaration, then the prior written consent of such entity or agency must also be obtained. No amendment that withdraws property from the terms of this Declaration shall be recorded unless approved in writing by the City Attorney's office. Nothing contained herein shall create an obligation on the part of the City Attorney's Office to approve any amendment.

13.6 Recording. Amendments to this Declaration adopted pursuant to this Article XIII shall be recorded among the Official Records of the County.

13.7 Notice of Amendment. Within thirty (30) days after recording an amendment to this Declaration, the Association shall mail, deliver, or electronically transmit a copy of the amendment to the Members. However, if a copy of the proposed amendment is provided to the Members before the amendment's adoption consistent with this Article XIII, and the proposed amendment is not changed before the vote, the Association, in lieu of providing a copy of the amendment, may provide notice to the Members that the amendment was adopted, identifying the Official Records Book and Page number of the recorded amendment, and that a copy of the amendment is available at no charge to the Member upon written request to the Association. Notwithstanding the foregoing, the failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

13.8 No Vested Rights. Each Owner, by acceptance of a deed to a Lot, irrevocably waives any claim that such Owner has any vested rights pursuant to case law or statute with respect to this Declaration or any of the other Governing Documents. It is expressly intended that the Declarant and the Association have the broad right to amend this Declaration and the other Governing Documents, except as limited by applicable law as it exists on the date this Declaration is recorded in the County's Official Records or except as expressly set forth herein.

## **ARTICLE XIV** **ENFORCEMENT**

14.1 Enforcement. All Owners, tenants, residents, guests, and invitees shall be governed by and shall comply with the Governing Documents, all of which may be enforced by the Declarant until the Community Completion Date, the Association, any Owner, and any Lender in any action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. In the event the Declarant and/or the Association engages the services of an attorney to seek enforcement of any of the provisions of the Governing Documents, the Declarant and the Association shall be entitled to reimbursement of their Legal Fees incurred to bring about

compliance, regardless of whether litigation is necessary or commenced for the enforcement. The prevailing party in any such litigation shall be entitled to reimbursement of all costs thereof including, but not limited to, Legal Fees, from the non-prevailing party. The Legal Fees incurred by the Declarant and/or the Association to bring about compliance and/or to obtain a judgment should litigation be necessary shall be levied as an Individual Assessment and collectible in the same fashion as any other Assessment as provided in this Declaration.

14.2 Default by Owners. No default by any Owner in the performance of the covenants and promises contained in the Governing Documents shall be construed or considered to be (i) a breach by the Declarant or the Association of any of their promises or covenants in the Governing Documents; (ii) an actual, implied, or constructive dispossession of another Owner from the Common Areas; or (iii) an excuse, justification, waiver, or variance of the covenants and promises contained in the Governing Documents.

14.3 Voting Right Suspension. Pursuant to section 720.305, Florida Statutes, if an Owner is more than ninety (90) days delinquent in the payment of any monetary obligation due to the Association, the Board may suspend the voting rights of the Owner for such nonpayment. A voting rights suspension shall be approved by the Board at a properly noticed Board meeting. Once approved by the Board, the Board shall notify the Owner of the voting rights suspension in writing. A voting interest which has been suspended may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action pursuant to the Governing Documents. The voting rights suspension shall end upon full payment of all monetary obligations then due to the Association. Notwithstanding the foregoing, no voting right suspension shall be imposed against the Declarant through and until the Community Completion Date.

14.4 Use Rights Suspension for Nonpayment. Pursuant to section 720.305, Florida Statutes, if an Owner is more than ninety (90) days delinquent in the payment of any monetary obligation due to the Association, the Board may suspend the rights of the Owner, the Owner's tenants, residents, guests, and invitees, to use Common Areas for such nonpayment. A use rights suspension due to nonpayment shall be approved by the Board at a properly noticed Board meeting. Once approved by the Board, the Board shall notify the Owner of the use rights suspension due to nonpayment in writing. The suspension of the right of an Owner, the Owner's tenants, residents, guests, and invitees, to use the Common Areas shall not apply to that portion of the Common Areas used to provide vehicular and pedestrian access or utility services to such Owner's Lot. Notwithstanding the foregoing, no use right suspension for nonpayment shall be imposed against the Declarant through and until the Community Completion Date.

14.5 Use Rights Suspension and Fines. Pursuant to section 720.305, Florida Statute, the Board may suspend, for a reasonable period of time, the rights of any Owner,



the Owner's tenants, residents, guests, and invitees, to use the Common Areas and/or may levy a reasonable fine, which may exceed One Hundred Dollars and No Cents (\$100.00) per violation, against any Owner, the Owner's tenants, residents, guests, and invitees, for any violation of the Governing Documents. Each day of a continuing violation shall be deemed a separate violation, and the fine shall continue to accrue per day per violation, which may exceed One Thousand Dollars and No Cents (\$1,000.00), until the violation(s) are brought into compliance. Fines shall be assessable against the Owner and the Lot as an Individual Assessment and collectible in the same manner as all other Assessments, including, without limitation, the filing of a claim of lien and foreclosure. The rights of an Owner, the Owner's tenants, residents, guests, and invitees, to use the Common Areas may be suspended and/or a fine may be levied against such Owner, the Owner's tenants, residents, guests, and invitees, by the Board at a properly noticed meeting of the Board. However, the suspension and/or fine may not be imposed until the individual sought to be suspended and/or fined has had a hearing before a compliance committee (the "Compliance Committee"), which shall take place not sooner than fourteen (14) days from the date the notice of the hearing is mailed to the violating individual. The notice must include a description of the alleged violation; the specific action required to cure such violation, if applicable; and the date and location of the hearing. The Compliance Committee shall consist of other Owners appointed by the Board, who are not directors, officers, or employees of the Association, or the spouse, parent, child, brother, or sister of a director, officer, or employee of the Association. Only if the Compliance Committee, by majority vote, approves the proposed suspension and/or fine at such hearing can the suspension and/or fine be imposed. After the hearing, the Compliance Committee shall provide written notice to the Owner and to the Owner's tenants, residents, guests, employees, invitees, and agents, if applicable, of the Compliance Committee's findings related to the violation, including any applicable fines or suspensions that the Compliance Committee approved or rejected, and how the violation may be cured, if applicable. The fine is effective upon providing written notice to the violating individual of the fine or such earlier date as set out in the written notice which fine shall not commence earlier than the date of the Board's levy of the fine. The use rights suspension is effective upon providing written notice to the violating individual of the use rights suspension. The suspension of the right of an Owner, the Owner's tenants, residents, guests, and invitees, to use the Common Areas shall not apply to that portion of the Common Areas used to provide vehicular and pedestrian access or utility services to such Owner's Lot. Notwithstanding the foregoing, no use right suspension or fine shall be imposed against the Declarant through and until the Community Completion Date.

14.6 No Waiver. The failure to enforce any right, provision, covenant, or condition in the Governing Documents, shall not constitute a waiver of the right to enforce such right, provision, covenant, or condition in the future.

14.7 Rights Cumulative. All rights, remedies, and privileges granted to the Declarant, the Association, and the ACC pursuant to the Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude any of them from pursuing such additional remedies, rights, or privileges as may be granted or as it might have by law.

**ARTICLE XV**  
**ADDITIONAL RIGHTS OF DECLARANT**

15.1 Construction and Sales Offices. The Declarant shall have the perpetual right to take such action reasonably necessary to transact any business necessary to consummate the development of the Property and sales, re-sales, leases, or encumbrances of Lots, Homes, and/or other properties owned by the Declarant or others outside of the Property. This right shall include, without limitation, the right to maintain models, sales/leasing offices and parking associated therewith, have signs on any portion of the Property, have employees in the models and offices without the payment of rent or any other fee, maintain offices in models and use of the Common Areas, to show Lots or Homes to prospective purchasers of Lots, Homes, or other properties owned by the Declarant outside of the Community. The sales/leasing office, signs, and all items pertaining to development and sales shall remain the property of the Declarant shall not be considered a part of the Common Areas. The Declarant further reserves the right to make repairs to the Common Areas and to carry on construction activity for the benefit of the Property. The Declarant shall have all of the foregoing rights without charge or expense and without notice to the Association or the Owners. The rights reserved hereunder shall extend beyond Turnover. In the event a clubhouse is constructed by the Declarant, the Declarant shall have the right to use one (1) or more offices of the Declarant's choosing within the clubhouse for sales/leasing purposes and shall have the right to use a location within the entry area for display of sales/leasing materials through Turnover. After Turnover, the Declarant shall have the right to use one (1) office of the Declarant's choosing within the clubhouse for sales/leasing purposes for a fee of One Hundred Dollars and No Cents (\$100.00) per month and shall have the right to use a location within the entry area for display of sales/leasing materials until the Declarant abandons such right in writing to the Association or until the Community Completion Date, whichever is later.

ALL OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES OF THE PROPERTY ARE HEREBY PLACED ON NOTICE THAT THE DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, AND OTHER DESIGNEES MAY BE, FROM TIME TO TIME, CONDUCTING EXCAVATION, CONSTRUCTION, AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE PROPERTY. BY THE ACCEPTANCE OF A DEED, TITLE, OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE, OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTY, EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE, FOR THEMSELVES AND EACH OF THEIR RESPECTIVE HEIRS, LEGAL REPRESENTATIVES, AND ASSIGNS, AUTOMATICALLY ACKNOWLEDGES, STIPULATES, AND AGREES AS FOLLOWS: (i) THAT NONE OF THE DECLARANT'S ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION, TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO THE

PROPERTY WHERE THE ACTIVITIES ARE BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS); (iii) THAT THE OWNER, TENANT, RESIDENT, GUEST, AND INVITEE IS AT RISK OF SUFFERING INJURY TO BOTH THEIR PERSON AND/OR PROPERTY AS A RESULT OF ENTRY UPON ANY PROPERTY WITHIN OR IN PROXIMITY TO THE PROPERTY WHERE THE ACTIVITIES ARE BEING CONDUCTED, AND EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE EXPRESSLY ASSUMES FULL RESPONSIBILITY FOR THE RISK OF BODILY INJURY, DEATH, OR PROPERTY DAMAGE SUFFERED AS A RESULT OF THE CONSTRUCTION AND OTHER ACTIVITIES; (iv) THAT EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE HEREBY RELEASES, WAIVES, DISCHARGES, AND HOLDS HARMLESS THE DECLARANT, ITS PARTNERS AND AFFILIATES, AND EACH OF THEIR RESPECTIVE PARTNERS, AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, AND ASSIGNS, AND ANY SUBSEQUENT DECLARANT, FROM ALL LOSSES, CLAIMS, COSTS, LIABILITIES, DAMAGES, INCLUDING COMPENSATORY, CONSEQUENTIAL, PUNITIVE, OR OTHERWISE, AND INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE OR BODILY INJURY OR DEATH, WHETHER CAUSED BY NEGLIGENCE OR AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH THE CONSTRUCTION AND OTHER ACTIVITIES; (v) ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (vi) THAT THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO THE DECLARANT TO SELL, CONVEY, LEASE, AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE PROPERTY.

NO PERSON OR ENTITY SHALL INTERFERE WITH THE COMPLETION AND SALE OF LOTS. WITHOUT LIMITING THE FOREGOING, EACH OWNER, BY ACCEPTANCE OF A TITLE TO A LOT, AGREES THAT ACTIONS OF OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES MAY IMPACT THE VALUE OF LOTS. THEREFORE, EACH OWNER IS BENEFITED BY THE FOLLOWING RESTRICTIONS: PICKETING AND POSTING OF NEGATIVE SIGNS IS STRICTLY PROHIBITED IN ORDER TO PRESERVE THE VALUE OF THE LOTS IN THE COMMUNITY AND THE RESIDENTIAL ATMOSPHERE THEREOF.

15.2 Modification. The development and marketing of the Community will continue as deemed appropriate in the Declarant's sole discretion, and nothing in the Governing Documents, or otherwise, shall be construed to limit or restrict such development and marketing. It may be necessary or convenient for the development of the Property to, as an example and not a limitation, modify the boundary lines of the Common Areas; change the zoning of any portion of the Property now existing or hereafter changed to be other than single-family residential and/or to make such uses of all or any part of the Property as shall be permitted by applicable zoning regulations as they may exist from time to time; grant easements, dedications, agreements, licenses, restrictions, reservations, covenants, rights-of-way, and to take such other actions which the Declarant, or its agents, affiliates, or assignees, may deem necessary or appropriate.

The Association and the Owners shall, at the request of the Declarant, execute and deliver any and all documents and instruments which Declarant deems necessary or convenient, in its sole and absolute discretion, to accomplish the same.

**15.3 Community Approvals.** The Declarant hereby has, shall have, and hereby reserves the right to enter upon the Property in order for the Declarant to final-out and/or close-out any and all approvals, permits, orders, conditions, and/or requirements that have been issued or imposed by any governmental entity in connection with the development and construction of the Community and all Improvements therein (collectively, the "Community Approvals"), and for the Declarant to comply and adhere to the same. Without limiting the generality of the foregoing, in exercising any such rights, the Declarant shall have the right to remove and/or relocate any and all items (including, without limitation, landscape materials, fences, and/or other Improvements) that may be required to be removed and/or relocated to final-out and/or close-out any and all Community Approvals without compensation to the Association or the Owners. The Association is and shall be responsible for complying, and causing all Common Areas to comply, with the Community Approvals including, without limitation, those Community Approvals that may be in the Declarant's name and not yet transferred to the Association. All fees, costs, and expenses of complying with the Community Approvals shall be deemed Common Expenses of the Association. In the event the Declarant is unable to: (i) final-out and/or close-out any and all such Community Approvals as a result of Association's failure to timely and/or properly perform any of its operation, maintenance, and/or repair obligations pursuant to this Declaration and/or any other applicable governmental laws, regulations, codes, approvals, and/or rules; or (ii) obtain a return of any bond or surety posted by the Declarant in connection with the development and construction of the Community, then the Declarant shall have the immediate right, but not the obligation, in its sole discretion, to (a) commence an enforcement action against the Association, including, without limitation, monetary penalties and injunctive relief, to compel the Association to maintain such portions of the Community as required by this Declaration and/or the Community Approvals, as applicable; or (b) take any and all actions necessary, at the Association's sole cost and expense, to comply with and adhere to any such Community Approvals. The Association hereby agrees to indemnify and reimburse the Declarant (within ten (10) days of receipt of a written invoice from the Declarant) for all costs and expenses incurred by the Declarant in the event the Declarant takes actions in accordance with this Section 15.3. The rights granted to the Declarant hereunder shall survive Turnover and continue for such period of time as is necessary for the Declarant to fully comply with all Community Approvals.

**15.4 Right to Approve Sales Materials.** All sales, promotional, and advertising materials for any sale of property within the Community prior to the Community Completion Date by any party shall be subject to the prior written approval of the Declarant. The Declarant shall deliver notice of the Declarant's approval or disapproval of all such materials and documents within thirty (30) days of receipt of such materials and documents, and, if disapproved, set forth the specific changes requested. If the Declarant fails to do so within such thirty (30) day period, the Declarant shall be deemed to have waived any objections to such materials and documents and to have approved

the foregoing. Upon disapproval, the foregoing procedure shall be repeated until approval is obtained or deemed to be obtained.

15.5 Promotional Events. Prior to the Community Completion Date, the Declarant, its agents, affiliates, or assignees, shall have the right, at any time, to hold marketing, special, and/or promotional events within the Property without any charge for use. The Declarant, its agents, affiliates, or assignees, shall have the right to market the Community in advertisements and other media by making reference to the Community, including, but not limited to, pictures or drawings of the Property and any and all Improvements within the Property.

15.6 Trademarks. All logos, trademarks, and designs used in connection with the Community are the property of the Declarant. No person or entity shall use the name of the Community, its logo, or any derivative of such name or logo in any printed or promotional material without the Declarant's prior written approval. The Association shall have no right to use the foregoing prior to the Community Completion Date, except with the express written permission of the Declarant. After the Community Completion Date, such right shall automatically pass from the Declarant to the Association. Notwithstanding the foregoing, Owners may use the name of the Community in printed or promotional materials where such term is used solely to specify that particular property is located within the Community.

15.7 Refund of Taxes and Other Charges. Unless otherwise provided herein, the Association agrees that any deposits, taxes, fees, or other charges paid by the Declarant to any governmental authority, utility company, or any other entity which at a later date are refunded in whole or in part, shall be returned to the Declarant in the event such refund is received by the Association. In the event the Association fails or refuses to return any such deposits, taxes, fees, or other charges to the Declarant within ten (10) days of receipt, the Declarant, without limitation of other available remedy, shall be issued a credit in the same amount of any such deposits, taxes, fees, or other charges against its financial obligations in favor of the Association.

15.8 Additional Covenants. The Declarant may record additional covenants, conditions, restrictions, and easements applicable to portions of the Property, and may form condominium associations, sub-associations, or cooperatives governing such property. No person or entity shall record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without the Declarant's prior review and prior written consent. Evidence of the Declarant's prior written consent shall be obtained in the form of a joinder executed by the Declarant and recorded with such instrument. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect whatsoever unless subsequently approved by written consent signed by the Declarant and recorded in the County's Official Records.

15.9 Declarant as Attorney-In-Fact. Each Owner, by reason of having acquired ownership of a Lot, whether by purchase, gift, operation of law, or otherwise, and each

tenant and resident of a Home, by reason of his or her occupancy, is hereby declared to have acknowledged and agreed: (i) to his or her automatic consent to any rezoning; replatting; creation of one (1) or more special taxing districts; amendment, modification, and/or termination of the Title Documents (if any); covenant in lieu of unity of title; change, addition, or deletion made in, on, or to the Community by the Declarant (collectively, the "Modifications"); and (ii) to have waived any right to object to or comment on any matter regarding the Modifications, including, without limitation, the form or substance of any Modification. In respect thereto, each Owner of a Lot and tenant and resident of a Home hereby designates the Declarant to act as agent and attorney-in-fact on behalf of such Owner, tenant, and resident to consent to any such Modification. If requested by the Declarant, each Owner shall evidence his or her consent to a Modification in writing (provided, however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). Further, each Owner, by reason of having acquired ownership of a Lot, hereby agrees to execute, at the request of the Declarant, any document and/or consent which may be required by any government agency to allow the Declarant and/or its affiliates to complete the plan of development of the Community, as such plan may be hereafter amended, and each such Owner hereby further appoints the Declarant as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of each such Owner, any and all of such documents and/or consents. This power of attorney is coupled with an interest and is therefore irrevocable.

15.10 Right to Contract for Telecommunications Services. The Declarant prior to Turnover, and thereafter, the Association, shall have the right, but not the obligation, to enter into one (1) or more contracts for the provision of one (1) or more Telecommunications Services for all or any part of the Property. Prior to the Community Completion Date, all contracts between a Telecommunications Provider and the Association shall be subject to the prior written approval of the Declarant. If any such contract is established, the fees for the Telecommunications Services payable to the Telecommunications Provider shall be Common Expenses.

15.11 Affirmative Obligation of the Association. In the event the Association believes that the Declarant has failed in any respect to meet the Declarant's obligations under this Declaration or under law or the Common Areas are defective in any respect, the Association shall give written notice to the Declarant detailing the alleged failure or defect. The Association agrees that once the Association has given written notice to the Declarant pursuant to this Section 15.11, the Association shall be obligated to permit the Declarant and its agents to perform inspections of the Common Areas and to perform all tests and make all repairs/replacements deemed necessary by the Declarant to respond to such notice at all reasonable times, including, without limitation, during normal business hours. The rights reserved in this Section 15.11 include the right of the Declarant to repair or address, in the Declarant's sole option and at the Declarant's expense, any aspect of the Common Areas deemed defective by the Declarant during its inspections of the Common Areas.

15.12 Duration of Rights. The rights and privileges of the Declarant as set forth in this Article XV are in addition to, and are no way a limit on, any other rights or privileges

of the Declarant. The rights of the Declarant set forth in this Declaration shall, unless specifically provided to the contrary herein, extend for a period of time ending upon the earlier of: (i) the Community Completion Date; or (ii) a relinquishment by the Declarant in an amendment to this Declaration. Neither the Association nor any Owner, nor group of Owners, may record any document that, in any way, affects, limits, or restricts the rights of the Declarant or conflict with the provisions of the Governing Documents.

15.13 Amendment and Assignment. This Article XV may not be suspended, superseded, or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by the Declarant. All or any part of the rights, exemptions, powers, and reservations of the Declarant herein contained may be conveyed or assigned, in whole or in part, to other persons or entities by an instrument in writing duly executed, acknowledged and, at Declarant's option, recorded in the County's Official Records.

## **ARTICLE XVI**

### **MASTER ASSOCIATION**

16.1 Membership. In addition to membership in the Association, the Owner of the fee simple title of record of each Lot shall be a mandatory member of the Master Association in accordance with the Master Association's Articles of Incorporation. Each Owner shall have an interest in the Master Association upon acceptance of a deed to the Lot.

16.2 Master Declaration. The Property and the use thereof shall be subject to all of the provisions of the Master Declaration and all other Master Governing Documents. As such, the Owners, tenants, residents, guests, and invitees shall abide by all of the provisions as set out in the Master Governing Documents.

## **ARTICLE XVII**

### **GENERAL PROVISIONS**

17.1 Delegation. The Association may delegate all or a portion of its obligations hereunder to a licensed manager or professional management company selected by the Board, from time to time. The Association specifically shall have the right to pay for management services on any basis approved by the Board (including, without limitation, bonuses or special fee arrangements for meeting financial or other goals) as Common Expenses.

17.2 Binding Effect. Subject to the Declarant's right to amend this Declaration prior to Turnover and the Association's right to amend this Declaration after Turnover, the covenants, conditions, and restrictions of this Declaration shall run with and bind the land and shall be binding upon and inure to the benefit of and be enforceable by the Declarant, the Association, and the Owners, and their respective legal representatives, heirs, successors, and assigns. However, the same are not intended to create nor shall they be

construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary.

17.3 Compliance with Provisions. All present and future Owners, tenants, residents, guests, and invitees shall be subject to and shall comply with the provisions of the Governing Documents. The acceptance of title to or interest in a Lot, the occupancy of a Home, or the leasing of a Home shall constitute an adoption, consent, and ratification by such Owner, tenant, resident, guest, and invitee of the provisions of the Governing Documents, whether or not any reference to the Governing Documents is contained in any instrument by which such person acquired title to or an interest in a Lot, in any occupancy agreement, or in any lease agreement. The Declarant shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than the Declarant.

17.4 Interpretation. The provisions of the Governing Documents shall be liberally construed to effectuate their purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Property. Article, section, and paragraph captions, headings, and titles inserted throughout the Governing Documents are intended as a matter of convenience only and in no way shall such captions, headings, or titles define, limit, or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of the Governing Documents. Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

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

17.6 Disputes as to Use. In the event there is any dispute as to whether the use of the Property or any portion thereof complies with the covenants, restrictions, easements, or other provisions contained in the Governing Documents, such dispute shall be referred to the Declarant prior to the Community Completion Date, and thereafter, to the Board, and a determination rendered by the Declarant, or thereafter, the Board, with respect to such dispute shall be final and binding on all parties concerned therewith.



Notwithstanding anything to the contrary herein contained, any use by the Declarant of the Property shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

17.7 Notices. Any notice or other communication required or permitted to be given to any person, firm, or entity under the provisions of the Governing Documents shall be deemed to have been properly sent when mailed, postage prepaid, to: (i) each Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; (ii) the Association, certified mail, return receipt requested, at the Association's mailing address as reflected in the records of the Florida Department of State, Division of Corporations, or such other address as the Association shall hereinafter notify the Declarant and the Owners of in writing; and (iii) the Declarant, certified mail, return receipt requested, at 2300 Glades Road, Suite 202E, Boca Raton, Florida 33431, or such other address as the Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in the Declarant's address being deemed notice to the Owners.

17.8 Florida Statutes. The Governing Documents are governed by the laws of the State of Florida. Whenever the Governing Documents refer to the Florida Statutes, it shall be deemed to refer to the Florida Statutes as they exist and are effective on the date this Declaration is recorded in the County's Official Records, except to the extent provided otherwise in the Governing Documents as to any particular provision of the Florida Statutes.

17.9 Venue. Venue for any action, proceeding, or litigation arising out of or concerning the Governing Documents shall be brought and heard in a court located in the County to the exclusion of all other venues and the Owners, tenants, residents, guests, and invitees hereby expressly waive their rights to venue elsewhere.

17.10 Jury Waiver. EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE HEREBY KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO ENFORCE, DEFEND, OR INTERPRET ANY RIGHT OR REMEDIES UNDER, OR ARISING IN CONNECTION WITH AND/OR RELATING TO, WITHOUT LIMITATION, THE GOVERNING DOCUMENTS, USE OF THE PROPERTY, COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, OR VALIDATION, PROTECTION, OR ENFORCEMENT ACTION OR OMISSION OF ANY PARTY.

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

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

17.12 Reliance. BEFORE ACCEPTING TITLE TO OR INTEREST IN A LOT, EACH OWNER HAS THE RIGHT TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THE GOVERNING DOCUMENTS. BY ACCEPTANCE OF TITLE TO OR INTEREST IN A LOT, EACH OWNER ACKNOWLEDGES HE OR SHE HAS SOUGHT AND RECEIVED SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. THE DECLARANT IS RELYING ON EACH OWNER CONFIRMING IN ADVANCE OF ACQUIRING A LOT THAT THE GOVERNING DOCUMENTS ARE VALID, FAIR, AND ENFORCEABLE. SUCH RELIANCE IS DETRIMENTAL TO THE DECLARANT. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXISTS PROHIBITING EACH OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THIS DECLARATION IS INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR THE DECLARANT TO SUBJECT THE PROPERTY TO THE GOVERNING DOCUMENTS, EACH OWNER DOES HEREBY RELEASE, WAIVE, COVENANT NOT TO SUE, ACQUIT, SATISFY, AND FOREVER DISCHARGE THE DECLARANT PARTIES FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES, AND DEMANDS WHATSOEVER, IN LAW OR IN EQUITY, WHICH AN OWNER MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR, OR ASSIGN OF THE OWNER HEREAFTER CAN, SHALL, OR MAY HAVE AGAINST ANY OF THE DECLARANT PARTIES FOR, UPON, OR BY REASON OF ANY MATTER, CAUSE, OR THING WHATSOEVER RESPECTING THE GOVERNING DOCUMENTS. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

17.13 Official Records to Lenders. In accordance with section 720.303(5)(d), Florida Statutes, the Association shall make available for inspection upon written request, during normal business hours or under reasonable circumstances, the books, records, and financial statements of the Association to a Lender.

17.14 Notice to Lender. Upon written request by a Lender, identifying the name and address of the Lender and the name and address of the applicable Owner, the Lender shall be entitled to timely written notice of: (i) any condemnation loss or casualty loss which affects a material portion of the Lot to the extent the Association is notified of the same; (ii) any delinquency in the payment of Assessments owed by an Owner of a Home subject to a first mortgage held by the Lender which remains uncured for a period of sixty (60) days; (iii) any lapse, cancellation, or material modification of any insurance policy or fidelity coverage maintained by the Association; and (iv) any proposed action that specifically requires the consent of the Lender. In the event the Association fails to provide the Lender with written notice of any of the foregoing, the Declarant and the Association shall not be liable for such failure.

17.15 Consent and Release for Use of Likeness. Each Owner, by obtaining title to a Lot, and each resident and tenant of a Home, by occupancy of a Home, and each guest and invitee of an Owner, resident, or tenant, by use of any portion of the Property and/or participation in or attendance at any event of the Association or the Declarant, is hereby deemed to have consented and agreed to the following: (i) the taking and use, including, without limitation, in marketing materials and/or media publications, of photographs and/or videos of such persons during any use of any portion of the Property and/or during any participation in any and all activities sponsored, promoted, or arranged by or through the Declarant and/or the Association, whether or not such activities take place on the Property or elsewhere; and (ii) waiver of any and all rights to inspect, approve, or receive compensation for the taking and use of such person's photographs and/or videos and the use of such person's likeness in any marketing materials, media publications, or other advertising.

17.16 Duration. All of the covenants, conditions, restrictions, and provisions of this Declaration shall run with and bind the Property for a term of fifty (50) years from the date of recording this Declaration among the Official Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless an instrument executed by at least eighty percent (80%) of the total voting interests of the Association and by all mortgagees having a first mortgage encumbering any Lot has been recorded among the Official Records of the County agreeing to terminate this Declaration.

17.17 Conservation Lands. The boundaries of the Association may be adjacent to local, state and/or federal conservation lands. The following provisions apply to these conservation lands:

17.17.1 Conservation lands may be maintained by the use of prescribed burns that generate smoke

17.17.2 Conservation lands may be accessed via designated entry points by foot, bicycle, or horseback only

17.17.3 The use of motorized vehicles on conservation lands is prohibited

17.17.4 Bicycles used on conservation lands must be pedaled at all times; may include Class 1 electric bicycles; and may not be electric and/or gas powered without pedals and that operate by means of a throttle

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**[SIGNATURE PAGES FOLLOW]**

**IN WITNESS WHEREOF**, JKM Acquisitions, LLC, a Florida limited liability company, has caused this instrument to be signed on this \_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

**JKM ACQUISITIONS, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
Adam P. Freedman, its Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_  
\_\_\_\_\_

**STATE OF FLORIDA                    )**  
  **) ss:**  
**COUNTY OF PALM BEACH        )**

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2025, by Adam P. Freedman as Manager for **JKM ACQUISITIONS, LLC**, a Florida limited liability company, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

My Commission Expires:

**JOINDER TO DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION**

**LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation (the "Association"), does hereby consent to and join in the **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LOTIS PALM BAY 1 HOMEOWNERS** (the "Declaration") to which this Joinder is attached. The terms, provisions, covenants, conditions, and restrictions of the Declaration are and shall be binding upon the undersigned and its successors and assigns. This Joinder shall evidence the Association's acknowledgement, understanding, and acceptance of the rights and obligations as set forth in the Declaration. Notwithstanding this Joinder, this Joinder shall not affect the validity of the Declaration as the Association has no right to approve the Declaration.

**IN WITNESS WHEREOF**, Lotis Palm Bay 1 Homeowner's Association, Inc., a Florida not for profit corporation, has caused this instrument to be signed on this \_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

**ASSOCIATION:**

**LOTIS PALM BAY 1 HOMEOWNER'S  
ASSOCIATION, INC.** a Florida not for profit  
corporation

By: \_\_\_\_\_  
James S. Gielda, its President

**STATE OF FLORIDA**                    )  
  ) **ss:**  
**COUNTY OF PALM BEACH**        )

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by James S. Gielda as President for **LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LOTIS PALM BAY 1  
HOMEOWNER'S ASSOCIATION PROPERTY**



**EXHIBIT "B"**

**ARTICLES OF INCORPORATION OF LOTIS PALM BAY 1  
HOMEOWNER'S ASSOCIATION, INC.**



**ARTICLES OF INCORPORATION OF LOTIS PALM BAY 1  
HOMEOWNER'S ASSOCIATION, INC.**

In order to form a not for profit corporation under and in accordance with the provisions of Chapter 617, Florida Statutes, the undersigned hereby incorporates this not for profit corporation for the purposes and with the powers hereinafter set forth, and to that end, the undersigned by these Articles of Incorporation, certifies as follows:

**ARTICLE I  
DEFINITIONS**

All initially capitalized terms used herein shall have the same meaning as set out in the Declaration of Covenants, Conditions, and Restrictions for Lotis Palm Bay 1 Homeowners, as amended from time to time (the "Declaration"), unless an alternative definition is provided herein.

**ARTICLE II  
NAME AND ADDRESS**

The name of the corporation is **LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION, INC.** (the "Association"). The principal address and mailing address of the Association shall be 2300 Glades Road, Suite 202E, Boca Raton, Florida 33431, or such other principal address or mailing address and may be designated, from time to time, by the Board.

**ARTICLE III  
OBJECTS AND PURPOSES**

The objects and purposes for which the Association is formed are those as authorized by the Governing Documents, including, without limitation, the operation, maintenance, and control of the Common Areas and all Improvements thereon, to conduct and transact generally the business of a not for profit corporation, and to do all things and exercise all powers and perform all functions that a not for profit corporation is authorized or empowered to do, exercise, or perform under and by virtue of the Florida Not For Profit Corporation Act and the Homeowners' Association Act.

**ARTICLE IV  
POWERS**

Without limitation, the powers of the Association shall include and be governed by the following provisions:

4.1 Common Law and Statutory Powers. The Association shall have all common-law and statutory powers of a not-for-profit corporation under the laws of Florida

which are not in conflict with the Declaration, these Articles, and the By-Laws, including those powers under and pursuant to the Florida Not For Profit Corporation Act and the Homeowners' Association Act. In the event of any conflict between the provisions of the Florida Not For Profit Corporation Act and the Homeowners' Association Act, the Homeowners' Association Act shall apply. In the event of any conflict between these Articles and the By-Laws, these Articles shall control; and in the event of any conflict between these Articles and the Declaration, the Declaration shall control.

4.2 Necessary Powers. The Association shall also have those powers reasonably necessary to fulfill the purposes for which the Association is formed, which powers shall include, but not be limited to, the following:

(a) To make Assessments for the operation, management, maintenance, repair, replacement, improvement, and reconstruction after casualty of the Common Areas pursuant to the Declaration; and to collect Assessments, including, without limitation, by lien filing and foreclosure procedures.

(b) To purchase equipment, supplies, material, and other personal property as may be required in the maintenance, repair, replacement, improvement, operation, and management of the Common Areas pursuant to the Declaration.

(c) To buy, accept, own, operate, lease, sell, trade, and mortgage both real and personal property as may be necessary or convenient in the administration of the Association.

(d) To acquire and pay for insurance on the Common Areas, as set forth in the Declaration, for the protection of the Association and the Common Areas and to acquire and pay for directors and officers liability insurance to protect the directors and officers of the Association.

(e) To make, amend, alter, rescind, and promulgate reasonable rules and regulations for the use and appearance of the Property for the benefit, health, safety, and welfare of the Members.

(f) To provide for management, maintenance, repair, replacement, improvement, and operation of the Common Areas pursuant to the Declaration and to delegate to a management entity or management agent those powers and duties which are not specifically required by these Articles to be retained by the Board.

(g) To employ and dismiss vendors, contractors, attorneys, accountants, engineers, architects, and other professionals and personnel to perform the services required for proper operation of the Property and the Association.

(h) To negotiate, enter into, amend, and terminate contracts and agreements, including, without limitation, with governmental authorities.

(i) To use and expend the monies collected by the Association to effectuate its purposes and powers, including, but not limited to, the payment of utilities and all taxes and assessments made by public bodies which may be levied upon the Common Areas.

(j) To select depositories for the Association funds and to determine the manner of receiving, depositing, and disbursing corporate funds.

(k) To enforce by legal means the provisions of the Governing Documents.

(l) To possess, enjoy, and exercise all powers necessary to implement, enforce, and carry into effect the powers above described, including the power to acquire, hold, convey, and deal in real and personal property.

(m) To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of the purposes and powers of the Association under the Governing Documents.

## **ARTICLE V**

### **MEMBERS**

5.1 Membership. Except as set forth herein, every person or entity who is a record owner of a fee or undivided fee interest in any Lot shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member. No Member may assign, hypothecate, or transfer in any manner membership in the Association except as an appurtenance to the Lot. Any Member of the Association who conveys or loses title to a Lot by sale, gift, bequest, judicial decree, or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of membership resulting from ownership of such Lot.

5.2 Voting Rights. The Association shall have two (2) classes of voting membership:

5.2.1 Class A. Except as set forth herein, Class A Members shall be all Members, with the exception of the Declarant while the Declarant is a Class B Member. Each Member shall be entitled to one (1) vote for each Lot owned by such Member, which vote shall not be divisible and shall be cast in the manner provided by the By-Laws.

5.2.2 Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to one thousand (1,000) votes. Class B membership shall cease and be converted to Class A membership upon Turnover.

**ARTICLE VI**  
**TERM**

The term for which the Association is to exist shall be perpetual. Except as otherwise set forth in the Declaration, in the event of dissolution of the Association, other than incident to a merger or consolidation, the Common Areas shall be conveyed to a local government body. In the event the local government body does not accept such conveyance, the Common Areas shall be conveyed to a non-profit organization with similar purposes. Any Member may petition the local Circuit Court for the appointment of a receiver to manage the affairs of the dissolved Association and to manage the Property and Improvements thereon, in the place and stead of the Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and the Property. Further, the Property shall continue to be subject to the provisions of the Declaration, including, without limitation, Assessments levied in accordance with the Declaration. Each Owner shall continue to be personally obligated to the successors or assigns of the Association for Assessments to the extent that Assessments are required to enable the successors or assigns of the Association to properly maintain, operate, and preserve the Common Areas as then-existing and as then-continues to be used for the common use and enjoyment of the Owners.

**ARTICLE VII**  
**INITIAL SUBSCRIBER**

The name and address of the initial subscriber to these Articles is as follows:

JKM Acquisitions, LLC

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

**ARTICLE VIII**  
**BOARD OF DIRECTORS**

The property, business, and affairs of the Association shall be managed by the Board, which shall consist of not less than three (3) directors, nor more than seven (7) directors, which number shall always be odd as may be determined by the Board from time to time. Except for directors appointed by the Declarant, directors shall be Members of the Association or shall be the authorized representative, officer, or employee of corporate Members of the Association. All directors shall be natural persons who are eighteen (18) years of age or older and shall comply with all additional eligibility requirements set forth in the Homeowners' Association Act. The directors shall be elected in the manner set forth in the By-Laws. The following are the names and addresses of the persons appointed to act as directors until their successors are elected and qualified:

Adam P. Freedman

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

James S. Gielda

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

Jeff Johnson

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

## **ARTICLE IX** **OFFICERS**

The affairs of the Association shall be managed by a President, a Vice President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time designate in the Board's sole discretion, the powers and duties of which shall be designated by the Board as the Board deems necessary in its sole discretion, all of whom shall serve at the pleasure of the Board. Upon Turnover, all officers must be Members of the Association. All officers shall be natural persons who are eighteen (18) years of age or older and shall comply with all additional eligibility requirements set forth in the Homeowners' Association Act. The names and addresses of the current officers of the Association, who shall hold office until their successors are duly elected in the manner set forth in the By-Laws are as follows:

PRESIDENT	James S. Gielda	2300 Glades Road, Suite 202E Boca Raton, Florida 33431
VICE PRESENT	Adam P. Freedman	2300 Glades Road, Suite 202E Boca Raton, Florida 33431
SECRETARY/ TREASURER	Jeff Johnson	2300 Glades Road, Suite 202E Boca Raton, Florida 33431

## **ARTICLE X** **INDEMNIFICATION**

Each and every director, officer, and duly appointed member of a committee ("committee member") of the Association shall be indemnified by the Association against all costs, expenses, and liabilities, including Legal Fees, reasonably incurred by or imposed upon him/her in connection with any negotiation, proceeding, arbitration, litigation, or settlement in which he/she becomes involved by reason of his/her being or having been a director, officer, or committee member of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a director, officer, or committee member at the time such fees, costs, or expenses are incurred. Notwithstanding the above, in the event of a settlement in connection with any of the foregoing, the indemnification provisions provided in this Article X shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the fees, costs, and expenses of such settlement as being in the best interest of the Association. In the event a director, officer, or committee member admits that he/she is guilty of or is adjudged guilty of willful misconduct or gross negligence in

the performance of his/her duties, the indemnification provisions of this Article X shall not apply. The foregoing right of indemnification provided in this Article X shall be in addition to and not exclusive of any and all rights of indemnification to which a director, officer, or committee member of the Association may be entitled under statute or common law.

Upon the resignation of a director who has been designated, appointed, or elected by the Declarant, or the resignation of an officer or committee member who was elected or appointed by the Declarant-controlled Board, the Association and the Members shall remise, release, acquit, and forever discharge such director, officer, and committee member of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, claims, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages (except to the extent and such damages are covered by insurance), judgments, executions, claims, and demands whatsoever, in law or in equity, which the Association or the Members, their successors, assigns, heirs, and personal representatives, had, now have, or will have against such director, officer, or committee member by reason of having been a director, officer, or committee member. Notwithstanding, the foregoing shall not apply in the event of a criminal act where such director, officer, or committee member pled guilty or nolo contendere or was adjudicated guilty.

## **ARTICLE XI**

### **BY-LAWS**

The By-Laws may be altered, amended, or rescinded in the manner set forth in the By-Laws; provided, however, that at no time shall the By-Laws conflict with these Articles or the Declaration. Any attempt to amend contrary to these prohibitions shall be of no force or effect.

## **ARTICLE XII**

### **AMENDMENTS**

12.1 Declarant Amendment. Prior to Turnover, these Articles may be amended only by an instrument in writing signed by the Declarant and joined by the Association, except as expressly set forth herein.

12.2 Membership Amendment. After Turnover, these Articles may be amended by the affirmative vote of two-thirds (2/3<sup>rd</sup>s) of all of the Members. The approval of the Members of a proposed amendment may be obtained by written consent in lieu of a membership meeting pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

12.3 Proviso. No amendment to these Articles shall conflict with the terms of the Declaration or the By-Laws. No amendment to these Articles shall be adopted which shall abridge, prejudice, amend, or alter the rights of the Declarant, as determined in the sole discretion of the Declarant, without the prior written consent of the Declarant. Any attempt to amend contrary to this prohibition shall be of no force or effect whatsoever.

12.4 Filing and Recording. Amendments to these Articles adopted pursuant to this Article XII shall be recorded among the Official Records of the County and filed in the Office of the Secretary of State of the State of Florida.

12.5 Notice of Amendment. Within thirty (30) days after recording an amendment to these Articles, the Association shall mail, deliver, or electronically transmit a copy of the amendment to the Members. However, if a copy of the proposed amendment is provided to the Members before they vote on the amendment, and the proposed amendment is not changed before the vote, the Association, in lieu of providing a copy of the amendment, may provide notice to the Members that the amendment was adopted, identifying the Official Records Book and Page number of the recorded amendment, and that a copy of the amendment is available at no charge to the Member upon written request to the Association. Notwithstanding the foregoing, the failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

### **ARTICLE XIII** **REGISTERED AGENT**

The name and address of the registered agent of the Association who shall serve until his/her successor is properly appointed by the Board shall be PG Law, PL, 5030 Champion Boulevard, Suite G11-281, Boca Raton, Florida 33496. The Association shall have the right to designate subsequent registered agents without amending these Articles.

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**[SIGNATURE PAGE FOLLOWS]**





**ACCEPTANCE BY REGISTERED AGENT**

Having been named to accept service of process for **LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, at the place designated in these Articles of Incorporation of Lotis Palm Bay 1 Homeowner's Association, Inc., the undersigned hereby agrees to act in this capacity and further agrees to comply with the provisions of all statutes relative to the proper and complete discharge of his duties.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

PG LAW, PL

By: \_\_\_\_\_  
Stephen J. Grave De Peralta, Manager  
(Registered Agent)

**EXHIBIT "C"**

**SJRWMD PERMIT**

**EXHIBIT "D"**

**BY-LAWS OF  
LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION, INC.**

**BY-LAWS OF  
LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION, INC.**

**ARTICLE I  
IDENTIFICATION**

These are the By-Laws of **LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION, INC.** (the "Association"). The Association is a not for profit corporation organized pursuant to and under Chapter 617, Florida Statutes, and a homeowners' association pursuant to and under Chapter 720, Florida Statutes, for the purpose, among other things, of administering, managing, operating, and maintaining the residential community known as "**LOTIS PALM BAY 1 HOMEOWNERS**" located in Brevard County, Florida. If utilized by the Association, the seal of the Association shall bear the name of the Association; the word "Florida;" the words "Corporation Not for Profit."

**ARTICLE II  
DEFINITIONS**

All initially capitalized terms used herein shall have the same meaning as set out in the Declaration of Covenants, Conditions, and Restrictions for Lotis Palm Bay 1 Homeowners, as may be amended from time to time (the "Declaration"), to which these By-Laws of Lotis Palm Bay 1 Homeowner's Association, Inc. are attached as Exhibit "D", as may be amended from time to time (these "By-Laws"), unless an alternative definition is provided herein.

**ARTICLE III  
MEMBERSHIP AND MEMBERSHIP MEETINGS**

3.1 Membership. The qualification for membership, the manner of admission to the membership, the voting rights of such membership, and the termination of such membership shall be as set forth in the Articles.

3.2 Annual Meeting. The annual meeting of the Members shall be held at the office of the Association, or at such other place in the County as the Board may determine, at least once each calendar year on such date and at such time as designated by the Board, for the purpose of electing directors and transacting any other business authorized to be transacted by the Members. Such annual meeting shall not take place later than thirteen (13) months from the date of the preceding annual meeting.

3.3 Special Meetings. Special meetings of the Members shall be held whenever called by the President, the Vice-President, or by a majority of the Board and must be called by such officers upon receipt of a written request from at least ten percent (10%) of the voting interests of the Members. The business conducted at a special meeting of the Members shall be limited to that stated in the notice of the meeting.

3.4 Notice. Written notice of all membership meetings shall state the date, time, and location of the meeting being called and shall provide an agenda for which the meeting is called as hereinafter set forth. The notice shall be mailed, delivered, or electronically transmitted to each Member at such mailing address, electronic mailing address, or facsimile number of the Member as appears in the official records of the Association and shall be conspicuously posted on the Common Areas at least fourteen (14) days prior to the date set for such meeting, except in the event of an emergency. Proof of mailing, delivering, or electronic transmission of notice shall be given by affidavit of the person who mailed, delivered, or electronically transmitted such notice.

3.4.1. Waiver. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the official records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The attendance of any Member (or person authorized to vote for such Member) shall constitute such Member's waiver of notice of such meeting, except when the attendance of the Member (or person authorized to vote for such Member) is for the express purpose of objecting at the time the meeting is called to order to the transaction of business because the meeting is not lawfully called.

3.4.2 Electronic Transmission. Members desiring to receive notice by electronic transmission shall provide written consent to the Association to receive notice by electronic transmission and shall provide their email address to which notice shall be sent. Once a Member provides their written consent to receive notice by electronic transmission, such authority shall apply to all other communications from the Association. The electronic mailing address provided by the Member shall be accessible to any other Member who makes a lawful request to inspect the official records of the Association.

3.5 Presiding Officer. At meetings of the membership, the President or the President's designee, including, without limitation, the Association's manager or legal counsel, shall preside, or in the President's absence, the Vice-President or the Vice-President's designee, including, without limitation, the Association's manager or legal counsel, shall preside.

3.6 Order of Business. The order of business at the annual meeting of the Members and, as far as practical, at all other meetings of the Members, shall be as follows:

- (a) Call to order.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading and disposal of any unapproved minutes.
- (d) Report of officers.
- (e) Report of committees.
- (f) Election of directors.
- (g) Unfinished business.
- (h) New business.
- (i) Adjournment.

3.7 Quorum and Decisions. A quorum at meetings of the Members shall consist of Members present, in person or by proxy, entitled to cast thirty percent (30%) of the votes of the entire membership. The acts approved by a majority of the votes of the Members present at a meeting at which a quorum is present shall constitute the acts of the Members, except when approval by a greater number of Members is required. Unless otherwise prohibited, Members may vote in person, by limited proxy, or by written consent in lieu of a meeting of the Members pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

3.8 Adjourned Meetings. If any membership meeting cannot be organized because a quorum has not been attained, either a majority of the Members who are present, whether in person or by proxy, or the presiding officer of the meeting acting alone, may adjourn the meeting, from time to time, to a date, time, and location certain until a quorum is present. Any business which might have been transacted at a meeting of the Members as originally called may be transacted at any adjourned meeting thereof. Notice of the date and time of the continued meeting and place for reconvening the meeting shall be given to the Members in the manner prescribed for meetings of the Members.

3.9 Minutes. Minutes of all meetings of the Members shall be maintained in written form or in another form that can be converted into written form within a reasonable time and shall be available for inspection by the Members, after such minutes have been approved, at all reasonable times.

3.10 Proxies. A vote cast by proxy shall only be cast by limited proxy; however, general proxies may be used in order to achieve a quorum of the Members. To be valid, a proxy must (i) be in writing; (ii) state the date on which the proxy was given; (iii) state the date, time, and location of the meeting for which it was given; (iv) be signed by the Member giving the proxy or by the person designated in a voting certificate signed by the Member as the person authorized to cast the vote attributable to such Lot; and (v) be filed with the Secretary before or at the appointed time of the meeting. Limited proxies shall additionally provide the Member's vote for such specific items as are being voted upon by the Members at the meeting for which the limited proxy is given. A proxy shall be valid only for the particular meeting designated thereon, and as the meeting may lawfully be adjourned and reconvened, from time to time, and shall automatically expire ninety (90) days after the date of the meeting for which it was originally given. If the proxy form so provides, the proxy holder may appoint, in writing, a substitute to act in the proxy holder's place. The proxy holder, or substitute proxy holder, must personally attend the meeting for which such proxy is given in order for such proxy to be valid. A proxy is revocable at any time by the Member who executed it, or any other record title owner of the Lot, unless a designated voting certificate is filed with the Association and, if so, then only by the designated voter.

3.11 Voting Member. All voting certificates issued pursuant to this Section 3.11 shall be filed with the Secretary of the Association prior to the meeting at which said vote

is to be cast. In the event any such voting certificate is not filed with the Association as required below, the vote to which such Lot is entitled shall not be considered in determining whether a quorum is present, or for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed. A voting certificate shall be valid until revoked by the Members to the voting certificate, until superseded by a subsequent voting certificate, or until a transfer of title to the Lot to which the voting certificate pertains.

3.11.1 Lot Owned by One (1) Person. A Member who is the only fee simple title holder to a Lot shall cast the vote for such Lot, and no voting certificate shall be required.

3.11.2 Lot Owned by More than One (1) Person. If a Lot is owned by more than one (1) person, a voting certificate designating either Owner as the Member entitled to cast the vote for their Lot and signed by all Owners of the Lot is not required but is permitted. If such voting certificate is not provided, then any Owner may cast the vote for their Lot; however, only one (1) vote is permitted. If more than one (1) Owner votes, then all of their votes are not counted.

3.11.3 Lot Owned by an Entity. If a Lot is owned by a corporation, partnership, limited liability company, estate, trust, or other similar entity, the person of such corporation, partnership, limited liability company, estate, trust, or other similar entity entitled to cast the vote for such Lot shall be designated in a voting certificate signed by an appropriate officer or principal of the corporation, partnership, limited liability company, estate, trust, or other entity.

3.12 Member Attendance and Participation. Subject to the relevant provisions of the Homeowners' Association Act, Members have the right to attend all meetings of the Members. No other residents, tenants, or guests are permitted to attend any meeting of the Members unless otherwise specifically approved by the Board. Members in attendance at a membership meeting shall be entitled to speak for a maximum of three (3) minutes only as to the designated agenda items prior to a vote on such designated agenda items. All Member statements must be made in a respectful and businesslike manner. In the event a Member conducts himself/herself in a manner detrimental to the carrying on of a meeting, as decided by the presiding officer of the meeting in his/her absolute discretion, the Member may be expelled from the meeting by any reasonable means which may be necessary to accomplish such an expulsion. The Board may adopt such other written reasonable rules governing the frequency, duration, and other manner of Member statements as it deems appropriate. Any Member may tape record or videotape meetings of the Members; provided, however, the equipment utilized does not produce distracting sound or light emissions and subject to any rules and regulations which may be adopted by the Board regarding placement, assemblage of audio and video equipment, prior notice to record the meeting, and distraction resulting from moving about during recording of the meeting.

3.13 Electronic Meeting. Notwithstanding anything set forth to the contrary, any meeting of the Members may, at the discretion of the Board, be held on an electronic platform, such as, and for example purposes only, Zoom. In accordance with section 617.0721(3), Florida Statutes, subject to such guidelines and procedures as the Board may adopt, Members who are not physically present at a meeting may, by means of remote communication, participate in the meeting and be deemed to be present in person and vote at the meeting if the Association implements reasonable means to (i) verify that each person deemed present and authorized to vote by means of remote communication is a Member; and (ii) provide such Members with a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Members. Votes of Members taken by means of remote communication must be recorded in the minutes of such meeting to be maintained by the Association among its official records.

## **ARTICLE IV** **DIRECTORS**

4.1 Business Affairs. The property, business, and affairs of the Association shall be managed by the Board, which shall consist of not less than three (3) directors, nor more than seven (7) directors, which number shall always be odd as may be determined by the Board from time to time. All directors shall be natural persons who are eighteen (18) years of age or older and shall comply with all additional eligibility requirements set forth in the Homeowners' Association Act and the Governing Documents. Except for directors appointed by the Declarant, directors shall be Members of the Association or shall be the authorized representative, officer, or employee of corporate Members of the Association. The Board shall exclusively exercise all of the powers of the Association, unless otherwise specifically delegated to the Members.

4.2 Term. The term of each director's service shall be one (1) year commencing with the date of election until his/her successor is duly elected and qualified or until he/she resigns or is removed in the manner provided herein.

4.3 Election. Election of Directors shall be conducted in the following manner:

4.3.1 Declarant Appointment. Notwithstanding anything to the contrary contained herein, prior to Turnover, the Declarant shall have the right to appoint directors by written notice to such effect or by an announcement reflected in the minutes of the annual meeting of the Members. Further, after Turnover, the Members other than the declarant shall be entitled to elect at least a majority of the directors; provided, however, that as so long as the Declarant owns at least one (1) Lot, the Declarant shall have the continued right to appoint at least one (1) director.

4.3.2 Initial Member-Director Election. Members other than the Declarant are entitled to elect at least one (1) director (the "Initial Member-Director") if fifty percent (50%) of the Lots in the entire Community which will ultimately be operated by the Association have been conveyed to non-Declarant Members. The Initial Member-Director, and any successor to the Initial Member-Director, shall be elected by the



Members in the manner set forth in Section 4.3.3 below. In the event Turnover does not occur prior to the annual meeting of the Members held subsequent to the Initial Member-Director's election to the Board, a successor to the Initial Member-Director shall be elected to the Board at each annual meeting of the Members held after the election of the Initial Member-Director. Notwithstanding the foregoing, in the event the annual meeting of the Members held subsequent to the Initial Member-Director's election to the Board is less than six (6) months from the date of the Initial Member-Director's election to the Board, the term of the Initial Member-Director shall extend to the earlier of the next annual meeting of the Members or Turnover. In no event shall the term of the Initial Member-Director, or any successor to the Initial Member-Director, extend beyond Turnover.

4.3.3 Member Election of Directors. The director(s) elected by the Members shall be elected at the annual meeting of the Members.

4.3.3.1 First Notice of Election. At least sixty (60) days before a scheduled election, the Association shall mail, deliver, or electronically transmit to each Member a first notice of the date of the election.

4.3.3.2 Candidacy of Members. Any Member desiring to be a candidate for the Board shall provide written notice of his/her intent to be a candidate to the Association at least forty (40) days prior to the scheduled election. Such notice shall be effective upon receipt of same by the Association. No nominations shall be permitted past such date, and no nominations shall be permitted from the floor of the meeting at which the election is being conducted. Pursuant to the relevant provisions of the Homeowners' Association Act, a Member who is delinquent in the payment of any monetary obligation to the Association on the day that he/she could last nominate himself/herself or be nominated for the Board may not seek election to the Board, and his/her name shall not be listed on the "Ballot" (as such term is hereinafter defined). Additionally, a Member who has been convicted of any felony in the State of Florida or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in the State of Florida, is not eligible for candidacy unless such felon's civil rights have been restored for at least five (5) years as of the date on which such Member seeks election to the Board. The validity of any action by the Board is not affected if it is later determined that a director was ineligible for candidacy or Board membership at the time of such director's election to the Board.

4.3.3.3 Second Notice of Election. In accordance with Section 3.4 of these By-Laws, not less than fourteen (14) days prior to the scheduled election, the Association shall mail, deliver, or electronically transmit a second notice of the election to all Members, together with any candidate's information sheet(s), if any, subject to the provisions of Section 4.3.3.4 below.

4.3.3.4 Candidate Information Sheet. Upon the timely written request of a candidate, the Association shall include the information sheet of the requesting candidate along with the second notice of election. Such information sheet

shall be no larger than a single side of an eight and one half inches by eleven inches (8½" by 11") sheet of paper and shall be provided to the Association by the candidate at least thirty-five (35) days prior to the election. The information sheet may describe the candidate's educational background, employment experience, and/or any other qualifications the candidate deems relevant to his/her service on the Board. The Association shall not be liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of a sheet of paper and may do so in black and white.

4.3.3.5 Ballots. The Board shall be elected by written ballot and limited proxy only. Elections shall be decided by a plurality of votes cast. The ballot, as set forth in the written ballot and limited proxy (the "Ballot"), shall indicate in alphabetical order by surname, each and every Member who desires to be a candidate for the Board and who gave written notice to the Association not less than forty (40) days before a scheduled election, unless such Member has, prior to the mailing of the second notice of election, withdrawn his/her candidacy in writing. No Ballot shall indicate which candidates are incumbents on the Board. No write-in candidates shall be permitted. A Ballot shall not be deemed cast until delivered to the office of the Association or to the presiding officer at an annual meeting of the Members. Upon closing of balloting at an annual meeting of the Members, no Ballot may be rescinded or changed.

4.3.3.6 Conduct of the Election. At the annual meeting of the Members at which the election is held, the Association shall have available blank written ballots for distribution at the annual meeting of the Members. There shall be no quorum requirement; however, at least twenty percent (20%) of the eligible voters must cast a Ballot in order to have a valid election. At the annual meeting, ballots shall be deposited into a ballot box and collected by an "Election Committee." Upon closing of balloting, no further Ballots shall be cast. The Election Committee shall be appointed by the presiding officer during the annual meeting of the Members immediately prior to the collection of Ballots, and the members of the Election Committee shall not be the candidates, directors, officers, or the spouses of the candidates, directors, or officers. The Ballots shall be tallied in the presence of the Members in attendance at the annual meeting of the Members. All Ballots, whether disregarded or not, shall be retained with the official records of the Association. Once the Ballots have been tallied, those candidates who have been elected to the Board shall be immediately announced.

4.3.3.7 Election by Acclimation. Unless more candidates are nominated for an election than there are available positions on the Board, an election is not required. In such event, the candidates will be seated on the day of the annual meeting of the Members.

4.4 Compensation. Subject to the relevant provisions of the Homeowners' Association Act, directors shall not receive or be entitled to any compensation for services as a director, unless approved by a majority of all of the Members. Notwithstanding the foregoing, nothing herein contained shall be construed to preclude a director from serving the Association in any other capacity and receiving compensation therefor, subject to the

disclosure and approval requirements of the Florida Not For Profit Corporation Act regarding conflicts of interest. Further, directors appointed by the Declarant may be compensated by the Declarant as part of their regular employee pay. Directors shall not solicit or accept, directly or indirectly, any gifts, gratuity, favor, loan, or any other thing of monetary value from any company or individual seeking to obtain contractual or other business or financial relations with the Association, or from anyone whose intent is to influence any decision or action on any official matter, except a director may accept food and beverage to be consumed at a business meeting with a value of less than Twenty Five Dollars (\$25.00) per individual, as set forth in section 720.3033, Florida Statutes.

4.5 Organizational Meeting. The organizational meeting of the newly-elected Board shall be held immediately after the annual meeting of the Members. If the majority of the directors elected shall not be present at that time, or if the directors shall fail to elect officers, the organizational meeting shall then be held within ten (10) days after the annual meeting of the Members at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice to or by the Board of the organizational meeting shall be necessary. The singular instance in which the Board may vote by secret ballot shall be for the election of officers, but such vote shall take place in front of the Members.

4.6 Certification of Directors. All directors shall be certified pursuant to the relevant provisions of the Homeowners' Association Act. The written certification or educational certificate is valid for the uninterrupted tenure of the director and shall be kept among the Association's official records for five (5) years after such director's election or appointment. Any director who does not timely file the written certification or educational certificate shall be suspended from the Board until he/she complies with the requirement. The Board may temporarily fill the vacancy during the period of suspension.

4.7 Recall of Directors. Any Director may be removed from office at any time, as authorized by the Homeowners' Association Act, with or without cause, by the affirmative vote of a majority of the entire membership at a special meeting of the Members called for that purpose or as otherwise provided by the Homeowners' Association Act. Notice for such special meeting of the Members shall not be electronically transmitted. If less than a majority of the Board is removed, the vacancy shall be filled by the affirmative vote of a majority of the remaining directors. If a majority or more of the Board is removed, the vacancies shall be filled by the Members voting in favor of the recall. If removal is at a meeting, any vacancies shall be filled by the Members at the meeting. If the recall occurred by agreement in writing or by written ballot, Members may vote for replacement directors in the same instrument in accordance with the relevant provisions of the Homeowners' Association Act, together with procedural rules adopted by the Division of Florida Condominiums, Timeshares, and Mobile Homes. This Section 4.7 shall not apply to any director appointed by the Declarant.

4.8 Resignation and Disqualification of Directors. Directors shall have the absolute right to resign at any time by providing written notice of such resignation to the Board, delivered to the President or the Secretary. Such written notice of resignation shall

be effective upon receipt, unless a later date is provided in the written notice of resignation, then upon such later date the resignation shall become effective. Any director shall be disqualified for any manner as provided by the relevant provisions of the Homeowners' Association Act creating a vacancy in the office to be filled in the manner provided herein.

4.9 Vacancies. Except as to vacancies created by recall, vacancies on the Board occurring between annual meetings of the Members shall be filled by the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. A director elected or appointed pursuant to this Section 4.9 shall have all of the rights, privileges, duties, and obligations as a director elected at an annual meeting of the Members and shall serve for the unexpired term of the vacancy being filled. A vacancy occurring on the Board due to the resignation or disqualification of a Declarant-appointed director shall be filled by the Declarant for so long as the Declarant may have a director on the Board.

4.10 Board Meetings. Meetings of the Board may be held at such date, time, and location within the County as the Board may designate. Meetings of the Board may be called by the President and must be called by the Secretary at the written request of a majority of the directors.

4.11 Notice. Notice of Board meetings shall be conspicuously posted within the Common Areas at least forty-eight (48) hours before such meeting, except in the event of an emergency. All notices shall provide the date, time, and location of the Board meeting being called. A notice for a Board meeting at which an Assessment may be levied shall include a statement that Assessments will be considered and the nature of the Assessments. Notice of any meeting at which Special Assessments will be considered or at which amendments to rules regarding Lot use will be considered must be mailed, delivered, or electronically transmitted to the Members and conspicuously posted within the Common Areas at least fourteen (14) days prior to the Board meeting. Proof of mailing, delivering, or electronic transmission of such fourteen (14) day notice shall be given by affidavit of the person who mailed, delivered, or electronically transmitted such notice. The provisions set forth in Section 3.4.1 above, regarding waiver, and Section 3.4.2 above, regarding electronic transmission, shall apply hereto.

4.12 Order of Business. The order of business at Board meetings, as far as practical, shall be as follows:

- (a) Proof of due notice of meeting.
- (b) Reading and disposal of unapproved minutes.
- (c) Report of officers.
- (d) Report of committees.
- (e) Election of officers.
- (f) Unfinished business.
- (g) New business.
- (h) Adjournment.

4.13 Presiding Officer. At meetings of the Board, the President shall preside, or in the President's absence, the Vice-President shall preside, or in the absence of both, the directors present shall designate one of their number to preside at such meeting.

4.14 Quorum and Decisions. A quorum of the Board shall consist of a majority of the entire Board. All actions or resolutions approved by a majority of those directors present at a meeting at which a quorum is present shall constitute the acts of the Board, except when approval by a greater number of directors is required. Directors may not vote by proxy or secret ballot; provided, however, that secret ballots may be used for the election of officers. Prior to Turnover, and unless otherwise prohibited, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting by unanimous written consent in lieu of a meeting of the Board pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

4.15 Adjourned Meetings. If at any meeting of the Board there is less than a quorum present, the majority of those directors present may adjourn the meeting, from time to time, until a quorum is present. At any adjourned meeting, any business which might have been transacted at the meeting of the Board as originally called may be transacted without further notice. If for any reason a new date must be fixed for reconvening the meeting after adjournment, notice of the meeting and place for reconvening the meeting shall be given in the manner prescribed for meetings of the Board.

4.16 Member Attendance and Participation. Subject to the relevant provisions of the Homeowners' Association Act, Members have the right to attend all meetings of the Board. No other residents, tenants, or guests are permitted to attend any meeting of the Board unless otherwise specifically approved in writing by the Board. Members in attendance at a Board meeting shall be entitled to speak for a maximum of three (3) minutes only as to the designated agenda items prior to the Board's vote on such designated agenda items and in such manner as determined by the Board. All Member statements must be made in a respectful and businesslike manner and must be directed to the Board. In the event a Member conducts himself/herself in a manner detrimental to the carrying on of a meeting, the Board may, at the sole and unfettered discretion of the meeting chairperson, expel such Member from the meeting by any reasonable means which may be necessary to accomplish such an expulsion. The Board may adopt such other written reasonable rules governing the frequency, duration, and other manner of Member statements as it deems appropriate. Any Member may tape record or videotape meetings of the Board; provided, however, the equipment utilized does not produce distracting sound or light emissions and subject to any rules and regulations which may be adopted by the Board regarding placement, assemblage of audio and video equipment, prior notice to record the meeting, and distraction resulting from moving about during recording of the meeting.

4.17 Minutes. Minutes of all Board meetings shall be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote

or abstention from voting on each matter voted upon for each director present at a Board meeting shall be recorded in the minutes. Minutes shall be available for inspection by the Members, after such minutes have been approved, at all reasonable times.

4.18 Committees. The Board may, by resolution duly adopted, create one (1) or more committees and appoint persons to such committees and delegate to such committees such powers and responsibilities as the Board may deem advisable, subject to any limitations on the Board's right to delegate authority as may exist under general corporate law. Such committees shall consist of at least three (3) Members. The committee(s) shall have such name(s) as may be determined from time to time by the Board, and said committee(s) shall keep regular minutes of their proceedings and report the same to the Board as required. The provisions applicable to Board meetings, including, without limitation, notice provisions and Member attendance and participation provisions, shall be applicable to the meetings of any committee only when a final decision regarding the expenditure of Association funds will be made and for meetings of the ACC.

4.19 Electronic Meeting. Notwithstanding anything set forth to the contrary, any meeting of the Board may, at the discretion of the Board, be held on an electronic platform, such as, and for example purposes only, Zoom. Subject to such guidelines and procedures as the Board may adopt, Members may remotely attend and participate in Board meetings held on an electronic platform. The Association must implement reasonable means to provide Members who are not physically present with a reasonable opportunity to participate in the Board meeting by means of remote communication.

4.20 Master Association Director Appointment. Prior to Turnover, the Declarant shall have the right to appoint two (2) directors to serve on the Master Association's Board of Directors (the "Master Board") as the representative of the Association by written notice to the Master Association. After Turnover, upon receipt of notice from the Master Association requesting the appointment of two (2) directors to the Master Board to represent the Association, the Board shall, by majority vote, appoint two (2) of their number to serve on the Master Board. Eligibility to serve on the Master Board, the term of service on the Master Board, and other provisions governing service on the Master Board are set forth in the Master Governing Documents.

## **ARTICLE V** **OFFICERS**

5.1 The Officers. The officers of the Association shall be a President, a Vice President, a Treasurer, a Secretary, and such other officers as may be designated by the Board from time to time in the Board's sole discretion, the powers and duties of which shall be designated by the Board as the Board deems necessary, in its sole discretion, to manage the affairs of the Association. All officers shall serve at the pleasure of the Board. Except for officers appointed by the Declarant, officers shall be Members or shall be the authorized representative, officer, or employee of corporate Members. An individual officer may hold more than one (1) office; however, however, the individual serving as the President shall not also fill any other office.

5.2 Election of Officers. Officers shall be elected from time to time by the affirmative vote of a majority of the directors present at any Board meeting at which a quorum is present.

5.3 Removal, Resignation, and Disqualification of Officers. Any officer may be removed at any time by the affirmative vote of a majority of the Board present at any Board meeting at which a quorum is present. Without limitation of other lawful remedy, Section 4.8 of these By-Laws regarding the resignation and disqualification of directors shall also apply to officers.

5.4 Compensation. Subject to the relevant provisions of the Homeowners' Association Act, officers shall not directly receive any compensation from the Association for the performance of his/her duties as an officer. Notwithstanding the foregoing, nothing herein contained shall be construed to preclude an officer from serving the Association in any other capacity and receiving compensation therefor, subject to the disclosure and approval requirements of the Florida Not For Profit Corporation Act regarding conflicts of interest. Further, officers appointed by the Declarant-controlled Board may be compensated by the Declarant as part of their regular employee pay. Officers shall not solicit or accept, directly or indirectly, any gifts, gratuity, favor, loan, or any other thing of monetary value from any company or individual seeking to obtain contractual or other business or financial relations with the Association, or from anyone whose intent is to influence any decision or action on any official matter, except an officer may accept food and beverage to be consumed at a business meeting with a value of less than Twenty Five Dollars (\$25.00) per individual, as set forth in section 720.3033, Florida Statutes.

5.5 Duties of Officers. The officers shall perform the duties of such offices customarily performed by officers of like corporations, including, but not limited, to the following:

5.5.1 President. The President shall be a member of the Board and the chief executive officer of the Association. The President shall have all of the powers and duties which are usually vested in the office of a president, including, but not limited to, the responsibility to serve as presiding officer of all meetings. The President shall ensure that all orders and resolutions of the Board are carried out and shall sign all notes, checks, leases, and all other written instruments upon approval of the Board. The President shall set the agenda for all meetings of the Board and all meetings of the Members in consultation with the officers and directors.

5.5.2 Vice President. The Vice President shall be a member of the Board and shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board.

5.5.3 Secretary. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and directors at all reasonable times. The Secretary shall have custody of the seal of the Association and shall affix the same to instruments requiring a seal, when duly approved and signed by the Board. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of secretary and as may be required by the Board or the President.

5.5.4 Treasurer. The Treasurer shall have custody of all of the property of the Association, including funds, securities, and evidences of indebtedness. The Treasurer shall keep the Assessment rolls and accounts of the Members, keep the books of the Association in accordance with good accounting practices, make provision for collection of Assessments, and all other duties incident to the office of treasurer and as may be required by the Board or the President.

## **ARTICLE VI**

### **FISCAL MANAGEMENT**

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year, beginning January 1<sup>st</sup> and ending December 31<sup>st</sup> of each year; provided, however, the Board is expressly authorized to adopt a different fiscal year at such time as the Board deems advisable.

6.2 Accounting Records. The Association shall maintain accounting records in accordance with good accounting practices which shall be open to inspection by Members at reasonable times in accordance with the Homeowners' Association Act.

6.3 Budget. The initial budget prepared by the Declarant is adopted as the budget for the period of operation until adoption of the first annual budget by the Board. THE INITIAL BUDGET OF THE ASSOCIATION IS PROJECTED (NOT BASED ON HISTORICAL OPERATING FIGURES). THEREFORE, IT IS POSSIBLE THAT ACTUAL ASSESSMENTS MAY BE LESS OR GREATER THAN PROJECTED. Thereafter, all annual budgets shall be prepared and adopted by the Board. The Board shall prepare and adopt an annual budget reflecting, among other things, the estimated revenues and expenses for the forthcoming fiscal year and the estimated surplus or deficit for the end of the current fiscal year. After the budget has been adopted by the Board, a copy of the adopted budget shall be mailed, delivered, or electronically transmitted to each Member at the Member's last known address, electronic mailing address, or facsimile number as shown on the books and records of the Association. In lieu of mailing, delivering, or electronically transmitting a copy of the adopted budget, the Association shall mail, deliver, or electronically transmit to each Member at the Member's last known address, electronic mailing address, or facsimile number as shown on the books and records of the Association written notice that a copy of the adopted budget is available upon request at no charge to the Member.



6.4 Budget Deficiency. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Common Expenses not included in the budget or which exceed budgeted amounts, and no Board shall be required to engage in deficit spending. Recognizing that it is extremely difficult to adopt a budget for each fiscal year that exactly coincides with the actual expenses during the year, should there exist any deficiency which results from there being greater Common Expenses than income from Assessments, then such deficits shall be carried into the next year's budget as a deficiency or shall be the subject of a Special Assessment to be levied by the Board in accordance with the Declaration.

6.5 Financial Report. Within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year in accordance with the Homeowners' Association Act. Within twenty-one (21) days after the final financial report is completed by the Association, or received from the third party, but not later than one hundred twenty (120) days after the end of the fiscal year, the Association shall provide each Member with a copy of the annual financial report or a written notice advising that a copy of the report is available upon request at no charge to the Member.

6.6 Depositories. The depository of the Association shall be such bank(s) or other financial institution(s) as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Board. In the absence of such determination by the Board, such checks shall be signed by the Treasurer, and countersigned by the President or the Vice-President.

6.7 Fidelity Coverage. The Association shall maintain insurance or a fidelity bond for all "persons who control or disburse funds of the Association." The fidelity coverage must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this Section 6.7, the term "persons who control or disburse funds of the Association" includes, but is not limited to, persons authorized to sign checks on behalf of the Association, and the President, the Vice-President, the Secretary, and the Treasurer. The Association shall bear the cost of any such fidelity coverage. If annually approved by a majority of the voting interests present at a properly called meeting of the Association, the Association may waive the requirement of obtaining fidelity coverage for all persons who control or disburse funds of the Association.

## **ARTICLE VII**

### **RULES AND REGULATIONS**

The Board may, at a properly noticed meeting of the Board, adopt reasonable rules and regulations for the operation and use of the Community, or amend or rescind any such existing rules and regulations; provided, however, that such rules and regulations shall not be inconsistent with any of the terms or provisions of any of the Declaration, the Articles, or these By-Laws. Copies of any rules and regulations as promulgated,

amended, or rescinded by the Board shall be mailed, delivered, or electronically transmitted to all Members at the last known address, electronic mailing address, or facsimile number of the Members as shown on the books and records of the Association and shall become effective upon such mailing, delivery, or electronic transmission.

## **ARTICLE VIII**

### **PARLIAMENTARY RULES**

Robert's Rules of Order (latest edition) shall govern the conduct of meetings of the Board and meetings of the Members when not in conflict with the Governing Documents, the Homeowners' Association Act, or the Florida Not For Profit Corporation Act.

## **ARTICLE IX**

### **AMENDMENTS**

9.1 Declarant Amendment. Prior to Turnover, these By-Laws may be amended only by an instrument in writing signed by the Declarant and joined by the Association.

9.2 Membership Amendment. After Turnover, these By-Laws may be amended by the affirmative vote of two-thirds (2/3<sup>rd</sup>s) of all Members. The approval of the Members of a proposed amendment may be obtained by written consent in lieu of a membership meeting pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

9.3 Proviso. No amendment to these By-Laws shall conflict with the terms of the Declaration or the Articles. No amendment to these By-Laws shall be adopted which shall abridge, prejudice, amend, or alter the rights of the Declarant, as determined in the sole discretion of the Declarant, without the prior written consent of the Declarant. Any attempt to amend contrary to this prohibition shall be of no force or effect whatsoever.

9.4 Recording. Amendments to these By-Laws adopted pursuant to this Article IX shall be recorded among the Official Records of the County.

9.5 Notice of Amendment. Within thirty (30) days after recording an amendment to these By-Laws, the Association shall mail, deliver, or electronically transmit a copy of the amendment to the Members. However, if a copy of the proposed amendment is provided to the Members before they vote on the amendment, and the proposed amendment is not changed before the vote, the Association, in lieu of providing a copy of the amendment, may provide notice to the Members that the amendment was adopted, identifying the Official Records Book and Page number of the recorded amendment, and that a copy of the amendment is available at no charge to the Member upon written request to the Association. Notwithstanding the foregoing, the failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

**IN WITNESS WHEREOF**, these By-Laws of Lotis Palm Bay 1 Homeowner's Association, Inc. were executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

**STATE OF FLORIDA                    )**  
  **) ss:**  
**COUNTY OF PALM BEACH        )**

The foregoing By-Laws of Lotis Wellington 2 Homeowner's Association, Inc. were acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by James S. Gielda as President for **LOTIS PALM BAY 1 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

**ASSOCIATION**

**LOTIS PALM BAY 1 HOMEOWNER'S  
ASSOCIATION, INC.**  
a Florida not for profit corporation

By: \_\_\_\_\_  
James S. Gielda, its President

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

My Commission Expires:

My Commission Expires:

Prepared by and return to:

Jeffrey A. Rembaum, Esquire  
Kaye Bender Rembaum, P.L.  
9121 N. Military Trail, Suite 200  
Palm Beach Gardens, FL 33410

SPACE ABOVE THIS LINE FOR PROCESSING DATA

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
LOTIS PALM BAY 2 HOMEOWNERS ASSOCIATION**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LOTIS PALM BAY HOMEOWNERS ASSOCIATION** (this "Declaration", as such term is hereinafter further defined) is made this \_\_\_\_ day of \_\_\_\_\_, 2025 by **JKM ACQUISITIONS, LLC**, a Florida limited liability company (the "Declarant", as such term is hereinafter further defined), and is joined by **LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation (the "Association"), in acknowledgement of its duties, responsibilities, and obligations hereunder.

**WHEREAS**, the Declarant is the record title owner of the real property located in Palm Beach County, Florida, more particularly described on Exhibit "A" attached hereto and incorporated as if fully set forth herein, as may be supplemented from time to time (the "Property", as such term is hereinafter further defined), and desires to develop a planned community to be known as "**LOTIS PALM BAY 2 HOMEOWNERS**" (the "Community") on the Property; and

**WHEREAS**, in order to preserve and enhance the values and amenities of the Community, the Declarant declares, commits, and subjects the Property and the "Improvements" (as such term is hereinafter defined) now or hereafter constructed thereon to certain land use covenants, restrictions, reservations, regulations, burdens, liens, and easements, and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance, and enforcement; and

**WHEREAS**, this Declaration is a covenant running with all of the land comprising the Property, and each present and future owner of interests therein and their heirs, successors, and assigns are hereby subject to this Declaration.

**NOW THEREFORE**, in consideration of the promises and covenants contained in this Declaration, the Declarant hereby declares that every portion of the Property is to be owned, held, transferred, sold, conveyed, leased, mortgaged, improved, used, and occupied subject to the covenants, conditions, restrictions, easements, reservations, rules, regulations, charges, and liens hereinafter set forth.

## **ARTICLE I**

### **DEFINITIONS**

In addition to the terms defined elsewhere in this Declaration, all initially capitalized terms herein shall have the following meanings:

1.1 "ACC" shall mean the Association's Architectural Control Committee established pursuant to Article XII hereof.

1.2 "Architectural Guidelines" shall mean such standards of maintenance, repair, replacement, reconstruction, refurbishment, addition, alteration, improvement, or other activity, if any, established pursuant to Section 12.4 hereof.

1.3 "Articles" shall mean the Articles of Incorporation of Lotis Palm Bay 2 Homeowner's Association, Inc., attached hereto and incorporated as if fully set forth herein as Exhibit "B", as may be amended from time to time.

1.4 "Assessments" shall mean any assessments made in accordance with this Declaration and as further set forth in Article XI hereof, whether "General Assessment(s)", "Individual Assessment(s)", "Special Assessment(s)" (as such terms are hereinafter defined), or any combination thereof, and any and all other assessments and monetary fines and charges which are or may be levied by the Association in accordance with the "Governing Documents" (as such term is hereinafter defined).

1.5 "Board" shall mean the Board of Directors of the Association.

1.6 "By-Laws" shall mean the By-Laws of Lotis Palm Bay 2 Homeowner's Association, Inc., attached hereto and incorporated as if fully set forth herein as Exhibit "D", as amended from time to time.

1.7 "Common Areas" shall mean all real property interests and Improvements within the Property designated as Common Areas from time to time by the Declarant, by the "Plat" (as such term is hereinafter defined), or by recorded amendment to this Declaration and which is not included in any "Lot" (as such term is hereinafter defined) and is provided for, owned, leased by, or dedicated to, the common use and enjoyment of the "Owners" (as such term is hereinafter defined) within the Community. The Common Areas may include, without limitation, the Access Control System, the "Recreational Facilities" (as such term is hereinafter defined), the "Stormwater Management System" (as such term is hereinafter defined), private roadways, entrance features, buffer or landscaped areas, open space areas, internal buffers, perimeter buffers, perimeter walls and fences, easement areas owned by others, private rights-of-way, irrigation facilities, sidewalks, street lights, and commonly used utility facilities. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DEFINITION OF "COMMON AREAS" AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND, OBLIGATE, OR LIMIT THE DECLARANT TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET

FORTH IN SUCH DESCRIPTION, THE CONSTRUCTION OR SUPPLYING OF ANY SUCH ITEM BEING IN THE DECLARANT'S SOLE DISCRETION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY, IF ANY, AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED BY THE ASSOCIATION, EXCEPT AFTER CONSTRUCTION OF SUCH ITEM AND CONVEYANCE OF ANY SUCH ITEM TO THE ASSOCIATION.

1.8 "Common Expenses" shall mean all actual and estimated costs and expenses of the Association, including without limitation, the following: (i) all costs and expenses of ownership, maintenance, repair, replacement, reconstruction, operation, and administration of the Common Areas, any portion thereof and Improvements thereon, and all other property owned by the Association; (ii) all amounts payable by the Association under the terms of this Declaration; (iii) all costs and expenses of Community lighting, including, without limitation, up-lighting and entrance lighting; (iv) all amounts payable in connection with any private street lighting agreement between the Association and a utility provider; (v) all costs and expenses of utilities providing services for the Common Areas or to the Lots on a bulk basis (if any), such as water, gas, electricity, telephone, cable television, internet, sanitation, sewer, and any type of utility or any other type of service charge which is not separately billed to an Owner; (vi) all amounts payable to a "Telecommunications Provider" for "Telecommunications Services" (as such terms are hereinafter defined) furnished to all Owners; (vii) all taxes, assessments, and tax liens which may be assessed or levied at any and all times against the Common Areas or against any and all personal property or Improvements thereon; (viii) all costs and expenses for the maintenance, operation, management, repair, and replacement of the irrigation system throughout the Property; (ix) the premiums on policies of insurance including, but not limited to, liability and casualty insurance for the Common Areas, fidelity bonding, and liability insurance for the directors and officers of the Association; (x) salaries, management fees, professional fees, and associated costs for all employees, management firms and agents, and professionals hired or retained by the Association; (xi) all amounts payable in connection with Association sponsored social events; (xii) all costs and expenses relating to the discharge of the Association's powers and duties; (xiii) all costs and expenses as determined to be part of the Common Expenses by the Board; and (xiv) all other costs and expenses incurred and lawfully imposed by the Association.

1.8.1 Any expenses which are required by this Declaration to be the matter of Individual Assessment or Special Assessment (unless levied against all Owners) shall not be deemed to be Common Expenses. The Common Expenses with respect to the Common Areas are payable by each Owner to the Association notwithstanding the fact that the Declarant may not have as yet conveyed title to the Common Areas to the Association.

1.8.2 Notwithstanding anything to the contrary herein, Common Expenses shall not include "Reserves" (as such term is hereinafter defined). Prior to "Turnover" (as such term is hereinafter defined), use of the term "reserves" or "Reserves" in any budget

shall not be construed to mean the Declarant created "Statutory Reserves" (as such term is hereinafter defined) in accordance with the requirements of the "Homeowners' Association Act" (as such term is hereinafter defined). Pursuant to the requirements of the Homeowners' Association Act, the Association may, if it so determines by a vote of the Owners, include Statutory Reserves in the Association's annual budget, and the Board may establish "Non-Statutory Reserves" (as such term is hereinafter defined). However, through the "Community Completion Date" (as such term is hereinafter defined), no such vote to establish Statutory Reserves nor Board establishment of Non-Statutory Reserves shall be effective against the Declarant.

1.9 "Community Completion Date" shall mean the date upon which each and every "Home" (as such term is hereinafter defined) within the Community, as ultimately planned and as fully developed, have been conveyed by the Declarant to Owners.

1.10 "County" shall mean Brevard County, Florida.

1.11 Declarant" shall mean JKM ACQUISITIONS, LLC, a Florida limited liability company, and any successor or assignee who has or takes title to any portion of the Property for development and/or sale and who is designated as Declarant in a written instrument which is signed by the Declarant and recorded among the Official Records of the County or which succeeds to such rights by merger or consolidation. The Declarant shall have the right to assign all or a portion of any rights granted to the Declarant in this Declaration. The Declarant shall also have the right to assign all or a portion of any obligations of the Declarant in this Declaration. In the event of a partial assignment of some, but not all, Declarant rights and/or obligations, the assignee shall not be deemed the Declarant, but may exercise only those rights, or shall be responsible for only those obligations, of the Declarant assigned to such assignee. Additionally, any partial assignee that does not assume all of the obligations of Declarant shall not be deemed the Declarant.

1.12 "Declaration" shall mean this Declaration, together with all amendments, supplements, and modifications hereto.

1.13 "Florida Not For Profit Corporation Act" shall mean Chapter 617 of the Florida Statutes as it exists through the date of recording this Declaration.

1.14 "General Assessment(s)" shall mean and refer to Assessments levied to fund the Common Expenses of the Association as further set forth in Section 11.4 hereof.

1.15 "Governing Documents" shall mean this Declaration, the Articles, the By-Laws, the Architectural Guidelines, the "Rules and Regulations" (as such term is hereinafter defined), and any applicable "Supplemental Declaration" (as such term is hereinafter defined), all as amended from time to time.

1.16 "Home" shall mean a residential dwelling and appurtenances thereto constructed on a Lot within the Community designed and intended for use and occupancy



as a single-family residence. A Home shall be deemed created and have perpetual existence upon the issuance of a final or temporary Certificate of Occupancy for such residence; provided, however, the subsequent loss of such Certificate of Occupancy (e.g., by casualty or remodeling) shall not affect the status of a Home, or the obligation of an Owner to pay Assessments with respect to such Home. Upon completion of construction of a Home on a Lot as evidenced by issuance of a Certificate of Occupancy, the Lot and Improvements thereon, or other property appurtenant to the Home may collectively be referred to as a Home.

1.17 “Homeowners’ Association Act” shall mean Chapter 720 of the Florida Statutes as it exists through the date of recording this Declaration.

1.18 “Improvement” shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within the Property, including, but not limited to, buildings, walkways, recreation areas and facilities, parking areas, berms, fountains, sprinkler systems, gatehouse, streets, drives, roads, driveways, fences, underground footers and other foundation supports, stairs, roofs, landscaping, trees, hedges, plantings, flower pots, poles, swings, gym sets and play structures, swimming pools, spas, covered patios, screen enclosures, jogging, bicycling and walking paths, basketball backboards and hoops, signs, site and perimeter walls, gazebos, benches, mailboxes, street lights, and signs. The foregoing list of Improvements is for example purposes only and shall not create any obligation of the Declarant to construct or fund construction of same.

1.19 “Individual Assessment(s)” shall mean Assessments levied against one (1) or more Lots and/or one (1) or more Owners for such matters as set forth in this Declaration and/or as related to a specific level of service provided by the Association to a Lot and/or Owner in accordance with section 720.308, Florida Statutes, and as further set forth in Section 11.6 hereof.

1.20 “Legal Fees” shall mean all fees for attorney and paralegal services and all costs and expenses and court costs through and including all trial and appellate levels and post judgment proceedings incurred in connection with: (i) enforcement of the Governing Documents, whether or not mediation, arbitration and/or litigation is actually begun; (ii) negotiation and preparation for mediation, arbitration, and/or litigation, whether or not an action is actually begun; (iii) collection of past due Assessments including, but not limited to, preparation of notices and liens; and (iv) litigation regarding the entitlement to Legal Fees, including, without limitation, determining or quantifying the amount of Legal Fees due. Additionally, and without limitation of the foregoing, Legal Fees shall include any and all costs that are taxable pursuant to any applicable statute, rule, or guideline (including, but not limited to, the Statewide Uniform Guidelines for Taxation of Costs), as well as costs not taxable thereunder, including, without limitation, the following: (i) costs of investigation; (ii) costs of copying documents and other materials, whether for discovery, filing with the court, internal review, or any other purpose; (iii) costs for electronic discovery; (iv) Westlaw, Lexis Nexis, or other electronic research service charges; (v) telephone charges; (vi) mailing, commercial delivery service, and courier

charges; (vii) travel expenses, whether for investigation, depositions, hearings, trial, or any other purpose; (viii) information technology support charges; (ix) any and all consultant or expert witness fees, whether or not such fees are incurred in connection with a court-ordered report or testimony at a deposition, hearing, or trial; (x) court reported and transcript fees, whether for deposition, trial, or an evidentiary or non-evidentiary hearing; (xi) mediator fees; and (xii) any other reasonable cost incurred in connection with the dispute.

1.21 “Lender” shall mean (i) the institutional and licensed holder of a first mortgage encumbering a Home or (ii) the Declarant and its affiliates, to the extent the Declarant or its affiliates finances the purchase of a Home initially or by assignment of an existing mortgage.

1.21 “Lot” shall mean any platted parcel of land shown on the Plat upon which a Home is permitted to be constructed, together with the Improvements thereon or other property appurtenant to the Lot. Upon completion of construction of a Home on a Lot as evidenced by issuance of a Certificate of Occupancy, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot.

1.22 “Master Association” shall mean Lotis Palm Bay 2 Homeowner’s Association, Inc., a Florida not for profit corporation.

1.24 “Master Declaration” shall mean the Declaration of Covenants, Conditions, and Restrictions for Lotis Palm Bay, recorded in the Official Records of Brevard County, Florida, in Official Records Book \_\_\_\_\_, Page \_\_\_\_, together with all exhibits thereto, all as amended and supplemented from time to time.

1.25 “Master Governing Documents” shall mean the Master Declaration, the Articles of Incorporation and By-Laws of the Master Association, and the Master Association’s Architectural Guidelines and Rules and Regulations, all as amended and supplemented from time to time.

1.26 “Member” shall mean each person or entity holding record title to any Lot, provided that any such person or entity holding any interest merely as security for the performance of an obligation shall not be a Member, and having such voting rights as set forth in the Articles.

1.27 “Non-Residential Property” shall mean that portion of the property subject to the Master Declaration, less and except the Property, which is intended for commercial, medial, rental apartments, and institutional development and use.

1.28 “Owner(s)” shall mean the record title owner(s) (whether one (1) or more persons or entities) of fee simple interest to any Lot but excluding those having such interest merely as security for the performance of an obligation and excluding purchasers under executory contracts of sale. The term “Owner” shall not include the Declarant, even

after Turnover, unless the Declarant, in a writing addressed to the Association, elects otherwise.

1.29 "Plat" shall mean the plat of Lotis Palm Bay, recorded in the Official Records of Brevard County, Florida, in Plat Book \_\_\_\_, Page \_\_\_\_, and any replat of any portion thereof and any amendment thereto as may be recorded in the Official Records of the County from time to time, unless such replatted property is not intended to remain subjected to this Declaration. This definition shall be automatically amended to include the plat of any additional property added or removed to this Declaration and any replat of any portion thereof as may be recorded in the Official Records of the County from time to time.

1.30 "Property" shall mean the property described in Exhibit "A" hereto (including all Improvements thereon), and as may be applicable, such additions thereto as may hereafter be brought within the jurisdiction of this Declaration and such withdrawals therefrom as may be removed from the jurisdiction of this Declaration by Supplemental Declaration.

1.31 "Reserves" shall mean any reserve accounts for capital expenditures and/or deferred maintenance created in accordance with section 720.303(6)(d), Florida Statutes, and subject to the provisions of section 720.303(6), Florida Statutes ("Statutory Reserves"), and reserve accounts for capital expenditures and/or deferred maintenance established at the discretion of the Board which are not subject to the provisions of section 720.303(6) ("Non-Statutory Reserves"), or any combination thereof.

1.32 "Rules and Regulations" shall mean the rules and regulations governing the Community as adopted by the Board from time to time. The Rules and Regulations may be incorporated in the Architectural Guidelines or may be adopted separately by the Board.

1.33 "Special Assessment(s)" shall mean Assessments levied against one (1) or more Lots or one (1) or more Owners for such matters as set forth in this Declaration as further set forth in Section 11.5 hereof.

1.34 "Single-Family Lot" shall mean any Lot upon which a detached, single-family Home is constructed.

1.35 "SJRWMD" shall mean the St. Johns River Water Management District.

1.36 "SJRWMD Permit" shall mean the Individual Environmental Resource Permit No. \_\_\_\_\_ issued by SJRWMD to the Master Association regarding the Property and the Non-Residential Property, a copy of which is attached hereto and incorporated as if fully set forth herein as Exhibit "C". Copies of the SJRWMD Permit and any future permit actions of SFWMD shall be maintained by the Secretary of the Association for the benefit of the Association.

1.37 “Stormwater Management System” means a system that is designed and constructed or implemented to control discharges that are necessary by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution otherwise affecting the quantity and quality of discharges from the system, as applicable.

1.38 “Supplemental Declaration” shall mean and refer to an instrument filed in the Official Records of the County pursuant to Article VI hereof which subjects additional property to this Declaration, withdraws property from this Declaration, designates neighborhoods, creates additional classes of members, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The Declarant may, by Supplemental Declaration, create additional classes of membership, with such rights, privileges, and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

1.39 “Telecommunications Provider” shall mean any party contracting with the Association to provide Owners with one (1) or more Telecommunications Services. With respect to any particular Telecommunications Services, there may be one (1) or more Telecommunications Providers.

1.40 “Telecommunications Services” shall mean delivered entertainment services, if provided, or none at all; all services that are typically, and in the future, identified as telecommunication services; cable television services; and data transmission services. Without limiting the foregoing, such Telecommunications Services may include the development, promotion, marketing, advertisement, provision, distribution, maintenance, transmission, and servicing of any of the foregoing services. The term Telecommunications Services is to be construed as broadly as possible.

1.41 “Title Documents” shall mean, if any, certain land use and title documents recorded in the County’s Official Records to which all or a part of the Property may be subject, and upon the Community Completion Date, the Association shall assume all of the obligations of the Declarant under the Title Documents, unless otherwise provided by the Declarant by amendment to this Declaration and in the sole and absolute discretion of Declarant.

1.42 “Townhome Lot” means any Lot upon which an attached, single-family Home is constructed.

1.43 “Turnover” shall mean the transfer of operation of the Association by the Declarant to the Owners, such that the Owners are entitled to elect a majority of the Board, which occurs upon the earliest of the following events in accordance with section 720.307, Florida Statutes: (i) three (3) months after the conveyance of ninety percent (90%) of all of the Lots to Owners; (ii) the Declarant voluntarily relinquishes control of the

Association in a writing delivered to the Association; (iii) upon the Declarant abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as set forth in this Declaration as evidenced by a court order; (iv) upon the Declarant filing a petition seeking protection under Chapter 7 of the Federal Bankruptcy Code; (v) upon the Declarant losing title to the Property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of Declarant rights and responsibilities first arising after the date of such assignment; or (vi) upon a receiver for the Declarant being appointed by a circuit court and not being discharged within thirty (30) days after such appointment, unless the court determines within thirty (30) days after such appointment that transfer of control would be detrimental to the Association or its Members.

## **ARTICLE II**

### **DESCRIPTION OF THE COMMUNITY**

2.1 General Plan of Development. The Property is part of the mixed-use development, containing residential, commercial, rental apartments, and institutional uses, known as "LOTIS PALM BAY". The Property, constituting the single-family residential use of the mixed-use development, encompasses approximately one hundred fifty-six (156) Townhome Lots and Common Areas, and, in addition, lands which the Declarant may add or remove, but shall in no way be obligated to add or remove, by one (1) or more Supplemental Declarations. The Declarant makes no representations concerning development both within and outside the boundaries of the Community, including, but not limited to, the number, design, boundaries, configuration, and arrangements, prices of Lots and Homes and buildings in all other proposed forms of ownership and/or other Improvements on the Property or adjacent to or near the Property, including, but not limited to, the size, location, configuration, elevations, design, building materials, height, view, airspace, number of Lots or Homes, number of buildings, location of easements, parking and landscaped areas, and services and amenities offered. The Declarant hereby reserves the right to modify its general plan of development of the Community (including, without limitation, the right to modify the site plan of the Community and the right to supplement, change, or reduce the number of Homes, Lots, and/or Recreational Facilities (if any) to be constructed within the Community) and/or the right to add land to the Property or to withdraw land from the Property, all in the Declarant's sole and absolute discretion. Therefore, in the event the Declarant modifies its general plan of development of the Community, adds land to the Property and/or withdraws land from the Property, the number of Lots, the layout of Lots and/or the size of Lots within the Community may change and the Assessments required to be paid pursuant to this Declaration may increase or decrease, as applicable. Further, the Declarant hereby reserves the right to modify, amend, or revise the Plat or any replat thereof, from time to time, and the right to record, modify, amend, or revise, from time to time, one (1) or more additional plats or replats thereof, setting forth such information as the Declarant may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of Lots, Homes, Common Areas, additional property, roads, sidewalks, utility systems, drainage systems, and easements. The Declarant's general plan of development further contemplates that such Homes shall be whatever types of structures

the Declarant may choose which are in conformance with this Declaration. THE DECLARANT MAY PRESENT TO THE PUBLIC OR TO OWNERS RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER DOCUMENTS RESPECTING THE COMMUNITY. SUCH RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER DOCUMENTS ARE NOT A GUARANTEE OF HOW THE COMMUNITY WILL APPEAR UPON COMPLETION, AND THE DECLARANT RESERVES THE RIGHT TO CHANGE ANY AND ALL OF THE FOREGOING AT ANY TIME AS THE DECLARANT DEEMS NECESSARY IN ITS SOLE AND ABSOLUTE DISCRETION.

2.2 Absence of Obligation. The planning process for the Community is an ever-evolving one and must remain flexible in order to be responsible to and accommodate the needs of the Community. Subject to the Title Documents (if any), the Declarant may and has the right to develop the Community and adjacent property owned by the Declarant into residences, comprised of homes, villas, coach homes, townhomes, patio homes, single-family homes, estate homes, multi-family homes, condominiums, rental apartments, and other forms of residential dwellings, and/or Improvements for any form of commercial, institutional, or other non-residential uses. The existence at any point in time of walls, landscape screens, or berms is not a guaranty or promise that such items will remain or form part of the Community as finally developed. Additionally, the Declarant expressly reserves the right as to the Property to (i) commence construction and development of the Property if and when the Declarant desires; (ii) develop the Property, and each portion thereof, upon such timetable as the Declarant, without obligation and in its sole discretion, chooses; and (iii) modify the general plan of development of the Property (including, without limitation, the right to modify the site plan of the Community and the right to change the Recreational Facilities (if any) and the number of Homes to be constructed within the Community) in such manner as the Declarant, in its sole and absolute discretion, chooses. Nothing contained herein shall be construed as obligating the Declarant to construct the Community according to the present general plan of development or as obligating the Declarant to declare any additional property to be Property hereunder.

2.3 Model Homes. The Declarant hereby reserves the right to construct and operate model homes within the Community. The model homes may contain models for the Community or other communities being developed by the Declarant or affiliate(s) of the Declarant, as the Declarant and/or any of the Declarant's affiliates may so determine, in their sole discretion. The model homes may also contain parking, landscaping, and fencing, including, without limitation, across roadways and sidewalks, as the Declarant may determine in its sole discretion. In the event the Declarant and/or any of the Declarant's affiliates constructs model homes in the Community, such model homes may be used for such period of time that the Declarant and/or any of the Declarant's affiliates determine to be necessary in its or their sole discretion including, without limitation, after Turnover. Each Owner, by acceptance of a deed or title to a Lot, acknowledges and agrees that: (i) the Declarant and/or any of the Declarant's affiliates have a right to construct and/or operate model homes even after Turnover; (ii) the Declarant, its affiliates, guests, invitees, and prospective purchasers, have an easement over the Community for

ingress and egress to and from each and every model home and to use and show the model homes to prospective purchasers in the Community or other communities being developed by the Declarant and/or any of the Declarant's affiliates, for so long as such model homes exist; and (iii) the Owners, tenants, residents, guests, and invitees shall not interfere in any manner whatsoever in the sales process by the Declarant and/or any of the Declarant's affiliates, including, without limitation, the carrying of signs, the posting of signs on Lots or Homes (which the Declarant has the right to do in its unfettered discretion), or other types of demonstrations in or around the Community or any public right-of-way adjacent to the Property. Each Owner acknowledges and agrees that any sales interference by an Owner, tenant, resident, guest, or invitee shall be deemed a nuisance and therefore detrimental to: (i) the quiet enjoyment of the Community by other residents, (ii) the value of the Homes within the Community, and (iii) the Declarant's and/or any of the Declarant's affiliates' ability to conduct their business.

### **ARTICLE III** **COMMON AREAS**

3.1 Common Areas. The Declarant anticipates it will construct certain facilities and Improvements as part of the Common Areas to include whatever facilities and Improvements the Declarant considers in its sole judgment to be appropriate to the Community, as well as any changes thereto. By way of example, and not limitation, the facilities and Improvements may include, without creating any obligation to provide same: private streets, roads, rights-of-way, and sidewalks; streets, roads, and rights-of-way dedicated to the public; the Stormwater Management System; water collection, treatment, and distribution facilities; sewage collection facilities and related wastewater treatment and disposal facilities (including, but not limited to, an irrigation system utilizing treated effluent from the Stormwater Management System); mailbox facilities; and utility and maintenance buildings. The description of the Common Areas on the Plat is subject to change and the notes on a Plat are not a guarantee of what Improvements and facilities will be constructed as Common Areas. Site plans, the Plat, and renderings used by the Declarant in its marketing efforts may illustrate the types of Improvements and facilities that may be constructed as Common Areas but such site plans, the Plat, and renderings are not a guarantee of what Improvements will actually be constructed. Each Owner should not rely on the Plat or any site plans or renderings used for illustration purposes as this Declaration governs the rights and obligations of the Declarant and Owners with respect to the Common Areas. The Owners shall have no right in or to any Common Areas referred to in this Declaration unless and until same are actually constructed, completed, and conveyed to the Association. Prior to the Community Completion Date, the Declarant reserves the absolute right to add to, delete from, or modify any of the Common Areas at its discretion without notice and to dedicate and/or transfer any portion of the Common Areas for various public purposes, or to make any portions of the Property part of the Common Areas. SALES BROCHURES, SITE PLANS, AND MARKETING MATERIALS ARE CURRENT CONCEPTUAL REPRESENTATIONS AS TO WHAT IMPROVEMENTS, IF ANY, WILL BE INCLUDED WITHIN THE COMMON AREAS. THE DECLARANT SPECIFICALLY RESERVES THE RIGHT TO CHANGE THE LAYOUT,

COMPOSITION, AND DESIGN OF ANY AND ALL COMMON AREAS, AT ANY TIME, WITHOUT NOTICE AND AT ITS SOLE AND UNFETTERED DISCRETION.

3.2 Recreational Facilities. Certain of the Common Areas may be intended for recreational activities (collectively, the "Recreational Facilities"). The Declarant shall be the sole judge of the composition of any Common Area Improvements constructed by the Declarant, including, without limitation, the Recreational Facilities. Prior to the Community Completion Date, the Declarant reserves the absolute right to construct additional Improvements on the Common Areas within the Community, from time to time, in its sole discretion, and to remove, add to, modify, and change the boundaries, facilities, and Improvements now or then part of the Common Areas. The Declarant is not obligated to, nor has it represented that it will, construct any Common Area Improvements, including, without limitation, the Recreational Facilities. The Declarant is the sole judge of the Common Area Improvements constructed by the Declarant, including, without limitation, the plans, specifications, design, location, completion schedule, materials, size, and contents of the facilities, Improvements, appurtenances, personal property, color, textures, finishes, or changes or modifications to any of them. Notwithstanding anything contained herein, neither the Declarant nor the Association makes any representations whatsoever to commence, complete, or construct any of the Recreational Facilities within any specific time period.

3.3 Public Facilities. The Community may include one (1) or more public facilities, including, without limitation, a lift station dedicated to the County and/or the City as part of the waste water treatment system.

3.4 Mailboxes. Owners hereby acknowledge that the United States Postal Service has sole discretion to determine the form of mail delivery for the Community and may require cluster boxes to be installed and utilized at one (1) or more delivery points within the Property. Curbside delivery may not be available within the Property. Mailbox sites, equipment type, and method of delivery may change from time to time in the sole discretion of the United States Postal Service.

3.5 Retention/Detention Areas. Any retention/detention areas may be a part of the Common Areas, and if a part of the Common Areas, shall be maintained, administered, and operated by the Master Association in accordance with the Master Declaration as part of the Stormwater Management System. In furtherance of the foregoing, the Declarant hereby reserves and grants an easement in favor of the Master Association throughout all portions of the Property as may be necessary for the purpose of constructing, accessing, maintaining, and administering the retention/detention areas, and no Owner, tenant, resident, guest, or invitee, nor the Association, shall do any act which may interfere with the performance by the Declarant or the Master Association of its obligations hereunder.

THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION MAKE NO REPRESENTATIONS CONCERNING THE CURRENT OR FUTURE WATER LEVELS IN ANY OF THE RETENTION/DETENTION AREAS IN THE COMMUNITY;



PROVIDED, FURTHER, THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION BEAR NO RESPONSIBILITY TO ATTEMPT TO ADJUST OR MODIFY THE WATER LEVELS SINCE SUCH LEVELS ARE SUBJECT TO SEASONAL GROUNDWATER, SUN EXPOSURE, AND RAINFALL FLUCTUATIONS THAT ARE BEYOND THE CONTROL OF THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION. THERE IS NO GUARANTEE BY THE DECLARANT, THE MASTER ASSOCIATION, OR THE ASSOCIATION THAT WATER LEVELS OR RETENTION/DETENTION AREAS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME; AT TIMES, WATER LEVELS MAY BE NONEXISTENT. EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO SUCH OWNER'S LOT, HEREBY ACKNOWLEDGES THE WATER LEVELS OF ALL RETENTION/DETENTION AREAS MAY VARY AND HEREBY RELEASES THE DECLARANT, THE MASTER ASSOCIATION, THE ASSOCIATION, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, COMMITTEE MEMBERS, EMPLOYEES, MANAGERS, MANAGEMENT AGENTS, CONTRACTORS, AND SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, LIABILITIES, DAMAGES, COSTS, AND EXPENSES OF WHATEVER NATURE OR KIND (INCLUDING, WITHOUT LIMITATION, LEGAL FEES, RELATED TO, ARISING OUT OF AND/OR RESULTING FROM WATER LEVELS IN THE RETENTION/DETENTION AREAS REGARDLESS OF THE CAUSE THEREOF.

EACH OWNER, BY THE ACCEPTANCE OF A DEED OR TITLE TO A LOT, AGREES THAT NONE OF THE LISTED PARTIES SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY OR WATER QUALITY OF ANY RETENTION/DETENTION AREAS WITHIN OR AROUND THE COMMUNITY. THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO ERECT FENCES, GATES, OR WALLS AROUND OR ADJACENT TO ANY RETENTION/DETENTION AREAS WITHIN OR AROUND THE COMMUNITY. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE OR RESPONSIBLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY RETENTION/DETENTION AREAS. ALL PERSONS USING RETENTION/DETENTION AREAS DO SO AT THEIR OWN RISK. ALL OWNERS AND USERS OF ANY RETENTION/DETENTION AREAS SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF A DEED OR TITLE TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO RELEASE AND HOLD HARMLESS THE LISTED PARTIES FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, LIABILITIES, DAMAGES, COSTS, AND EXPENSES OF WHATEVER NATURE OR KIND (INCLUDING, WITHOUT LIMITATION, LEGAL FEES, RELATED TO, ARISING OUT OF AND/OR RESULTING FROM ANY AND ALL OF THE FOREGOING IN THIS PARAGRAPH INCLUDING, WITHOUT LIMITATION, CHANGES IN THE SAFETY OR QUALITY OF WATER IN RETENTION/DETENTION AREAS. ALL PERSONS ARE HEREBY NOTIFIED THAT, FROM TIME TO TIME, WILDLIFE MAY INHABIT OR ENTER INTO RETENTION/DETENTION AREAS WITHIN OR NEARBY THE COMMUNITY AND MAY POSE A THREAT TO PERSONS, PETS, AND PROPERTY, BUT THAT THE LISTED

PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY, OR DAMAGE CAUSED BY SUCH WILDLIFE.

3.6 Special Taxing Districts. Prior to Turnover, the Declarant shall have the right, but not the obligation, to dedicate or transfer or cause the dedication or transfer of all or portions of the Common Areas to a special taxing district, or a public agency or authority under such terms as the Declarant deems appropriate in order to create or contract with special taxing districts and community development districts (or others) for lighting, perimeter walls, entrance features, roads, landscaping, irrigation areas, ponds, surface water management systems, wetlands mitigation areas, parks, recreational or other services, security or communications, or other similar purposes deemed appropriate by the Declarant, including, without limitation, the maintenance and/or operation of any of the foregoing. As hereinafter provided, the Declarant may sign any taxing district petition as attorney-in-fact for each Owner. Each Owner's obligation to pay taxes associated with such district shall be in addition to such Owner's obligation to pay Assessments. Any special taxing district shall be created pursuant to all applicable ordinances of County and all other applicable governing entities having jurisdiction with respect to the same.

3.7 Access Control Systems and Services. The Declarant may provide and/or install access control systems, monitoring systems, or other security/safety system, including, without limitation, a gatehouse, entry and exit gates, camera monitoring systems, and perimeter walls/fences, within the Property, including within any Tract and/or within the Common Areas, and contract for the service for same (collectively, "Access Control Systems and Services"). Additionally, the Association shall have the right, but not the obligation, to contract for the installation of additional Access Control Systems and Services for the Community. If provided, all costs associated with any Access Control Systems and Services shall be part of the Common Expenses. The Declarant hereby reserves for itself and the Master Association, and their respective contractors, suppliers, agents, and employees, and any prospective purchasers of Homes or Lots from the Declarant, an easement for free and unimpeded access through any such Access Control Systems and Services, subject only to such controls and restrictions as are agreed to in writing by the Declarant and/or the Master Association, as applicable. If the Association attempts to restrict or control access into the Community through means not approved by the Declarant and/or the Master Association, as applicable, the Declarant and the Master Association may take any and all measures necessary to eliminate same, including, without limitation, disabling any entry system during any hours desired by the Declarant or the Master Association, and the Declarant and the Master Association shall have no liability in this regard.

Additionally, the Declarant may install a fire protection system, burglar alarm system, or other security/safety system within the Common Areas and/or within Homes and contract for service for same. Thereafter, the Association shall have the right, but not the obligation, to contract for the service of any fire protection system, burglar alarm system, or other security/safety system to the Homes on a bulk basis and to the Common Areas as Common Expenses.

THE OWNERS ACKNOWLEDGE THAT THE ACCESS CONTROL SYSTEMS AND SERVICES WILL NOT BE ABLE TO PREVENT CRIME. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER THE DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER TO COMMENCE, COMPLETE, CONSTRUCT, OR STAFF ANY ACCESS CONTROL SYSTEMS AND SERVICES WITHIN ANY SPECIFIC TIME PERIOD, IF AT ALL.

ALL OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES ACKNOWLEDGE THAT THE DECLARANT AND THE ASSOCIATION DO NOT REPRESENT OR WARRANT THAT: (i) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OTHER SECURITY/SAFETY SYSTEM, OR ANY ACCESS CONTROL SYSTEMS AND SERVICES RECOMMENDED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ASSOCIATION MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR (ii) THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OTHER SECURITY/SAFETY SYSTEM, OR ANY ACCESS CONTROL SYSTEMS AND SERVICES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEMS OR SERVICES ARE DESIGNED OR INTENDED.

NEITHER THE DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATION WHATSOEVER AS TO THE SECURITY OF THE PROPERTY OR THE ADEQUACY OR EFFECTIVENESS OF ANY ACCESS CONTROL SYSTEMS AND SERVICES. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY, EVEN IF CAUSED BY THE NEGLIGENCE OF THE DECLARANT AND/OR THE ASSOCIATION.

NEITHER THE DECLARANT NOR THE ASSOCIATION GUARANTEES OR WARRANTS, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH ACCESS CONTROL SYSTEMS AND SERVICES OR THAT ANY SUCH ACCESS CONTROL SYSTEMS AND SERVICES WILL PREVENT INTRUSION, THEFT, FIRE, DAMAGE, INJURY, DEATH, OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT SUCH ACCESS CONTROL SYSTEMS AND SERVICES ARE DESIGNED TO MONITOR SAME. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY OR OF THE HEALTH, SAFETY, OR WELFARE OF ANY OWNER, TENANT, RESIDENT, GUEST, OR INVITEE, OF THE LOT OR THE HOME, OR OF ANY PROPERTY, REAL OR PERSONAL, LOCATED WITHIN THE LOT OR HOME. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY CASUALTY OR INTRUSION INTO A LOT OR HOME.

EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO A LOT, AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING A USE OF, ANY PORTION OF THE PROPERTY, BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE, SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS, DAMAGES, LOSSES, AND CAUSES OF ACTION AGAINST THE DECLARANT AND THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE DECLARANT AND THE ASSOCIATION HAS BEEN DISCLAIMED. ALL OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES AGREE TO HOLD THE DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM (INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY AND/OR DEATH) ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT.

AS USED IN THIS SECTION 3.7, "DECLARANT" AND "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE DECLARANT'S AND THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, AND ASSIGNS.

3.8 Road Drainage. EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO A LOT, HEREBY ACKNOWLEDGES THAT THE ROAD(S) WITHIN THE COMMUNITY ARE DESIGNED AS A SECONDARY RESERVOIR FOR STORMWATER AND SURFACE WATER. THEREFORE, THE ROAD(S) ARE DESIGNED TO FLOOD IN THE EVENT THE PRIMARY RESERVOIR SYSTEM FAILS OR EXCEEDS CAPACITY. THE DECLARANT, NOR THE ASSOCIATION, SHALL BE RESPONSIBLE FOR ANY DAMAGE TO OR LOSS OF ANY LOT, HOME, IMPROVEMENT, OR PERSONAL PROPERTY OF ANY OWNER, TENANT, RESIDENT, GUEST, OR INVITEE IN THE EVENT THE ROAD(S) BECOME FLOODED.

3.9 Conveyance. Upon Turnover, all Common Areas shall be owned by the Association as if specifically deeded to the Association as follows: the Declarant shall convey to the Association the fee simple title to the Common Areas, and the Association shall be obligated to accept such conveyance, including responsibility for (i) all real estate taxes and assessments due with respect to the Common Areas from and after the date of recording of this Declaration; (ii) subject to all laws, ordinances, regulations, restrictions, prohibitions, and other requirements imposed by governmental authorities, including, without limitation, all building, zoning, land use and environmental laws, ordinances, codes, and regulations; (iii) matters which would be disclosed by an accurate survey of the Common Areas; (iv) easements, covenants, conditions, restrictions, reservations, limitations, and other matters of record; and (v) the terms and provisions of this Declaration.

The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance, and administration of the Common Areas. The Association shall, and does hereby, indemnify and hold the Declarant, its directors, officers, members, managers, shareholders, agents, employees, affiliates, successors, and assigns

(collectively, the "Declarant Parties") harmless on account thereof. The Association, by its joinder to this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. The Association shall accept any and all transfer of permits from the Declarant, or any other permittee, of any permit required by a governmental agency in connection with the development of the Community, as modified and/or amended. The Association shall cooperate with the Declarant, or any other permittee of such permits, as modified and/or amended, with any applications, certifications, documents, or consents required to effectuate any such transfer of permits to the Association.

The Association shall also accept the Common Areas and the personal property and Improvements appurtenant thereto in "AS IS" "WHERE IS" condition, with all faults, and without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Common Areas or any portion thereof, and the personal property and Improvements appurtenant thereto being conveyed. TO THE FULL EXTENT PERMITTED BY LAW (INCLUDING, WITHOUT LIMITATION SECTION 553.835, FLORIDA STATUTES), THE ASSOCIATION AND EACH OWNER KNOWINGLY AND VOLUNTARILY RELINQUISHES AND WAIVES, AND THE DECLARANT EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED) AS TO THE LOTS, THE HOMES, THE COMMON AREAS, PERSONAL PROPERTY, AND OTHER IMPROVEMENTS ON OR UNDER THE PROPERTY WHETHER ARISING FROM CUSTOM, USAGE, OR TRADE, COURSE OF CONDUCT, COURSE OF DEALING, CASE LAW, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR ANY IMPLIED WARRANTY OF FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. TO THE EXTENT THAT BY LAW OR OTHERWISE ANY OF THE WARRANTIES RELINQUISHED, WAIVED, OR DISCLAIMED CANNOT BE RELINQUISHED, WAIVED, OR DISCLAIMED, IN WHOLE OR IN PART, ALL SECONDARY, INCIDENTAL, AND CONSEQUENTIAL DAMAGES ARE SPECIFICALLY EXCLUDED AND DISCLAIMED (INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM CLAIMS OF PROPERTY DAMAGE, LOSS OF USE, PERSONAL INJURY, OR EMOTIONAL DISTRESS).

The Declarant hereby reserves the right, until the Community Completion Date, to require the Association to reconvey all or a portion of the Common Areas by quitclaim deed in favor of the Declarant in the event that such property is required to be owned by the Declarant for any purpose, including, without limitation, the reconfiguration of any adjacent property by replatting or otherwise. To the extent legally required, each Owner shall be deemed to have granted to the Declarant, and thereafter the Association, an irrevocable power of attorney, coupled with an interest, for the purposes herein expressed.

3.10 Mortgaging the Common Areas by the Declarant. Subject to Section 3.9, the Declarant may mortgage any part or all of the Common Areas to finance construction and development provided the mortgagee recognizes the rights of Owners under this Declaration and neither the Association nor the Owners shall be personally liable for

paying the mortgage. Neither the Association nor the Owners shall be required to join in or be entitled to consent to such mortgage.

3.11 Operation after Conveyance. Except as to the Association's right to grant easements and other interests as provided in this Declaration and except as to the taking of any Common Areas or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas to a third party without (i) if prior to Turnover, the approval of (a) a majority of the Board and (b) the written consent of the Declarant, or (ii) after Turnover, approval of (a) a majority of the Board and (b) sixty percent (60%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained.

3.12 Assumption of Risk. All persons using the Common Areas do so at their own risk. Without limiting any other provision herein, each Owner, tenant, resident, guest, and invitee accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupancy of any portion of the Common Areas, including, without limitation: (i) noise from maintenance equipment; (ii) use of pesticides, herbicides, and fertilizers; (iii) view restrictions and impairment caused by the construction of any structures and/or the maturation of trees and shrubbery; (iv) reduction in privacy caused by the removal or pruning of shrubbery or trees within the Property; and (v) design of any portion of the Property. Each Owner expressly indemnifies and agrees to hold harmless the Declarant Parties and the Association and its directors, officers, committee members, managers, agents, and employees (collectively, the "Association Parties"), from any and all actions, injuries, deaths, claims, losses, liabilities, damages (whether actual, consequential, incidental, or otherwise), judgments, orders, fines, liens, encumbrances, penalties, costs, and expenses of any kind or nature whatsoever, including, without limitation, Legal Fees (collectively, "Losses"), arising from or related to the person's use of the Common Areas, including, without limitation, the Recreational Facilities. BY THE ACCEPTANCE OF A DEED OR TITLE TO A LOT, EACH OWNER ACKNOWLEDGES THE COMMON AREAS AND AREAS IN THE VICINITY OF THE COMMON AREAS MAY CONTAIN WILDLIFE, SUCH AS, BUT NOT LIMITED TO, INSECTS, ALLIGATORS, COYOTES, RACCOONS, SNAKES, DUCKS, DEER, SWINE, TURKEYS, AND FOXES. THE DECLARANT AND THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE IS RESPONSIBLE FOR THEIR OWN SAFETY.

3.13 Obligation to Indemnify. Each Owner agrees to indemnify and hold harmless the Association Parties against any and all Losses incurred by or asserted against any of the Association Parties, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of the Common Areas by Owners, tenants, residents, guests, or invitees. Should any Owner bring suit against any of the Association Parties for any claim or matter and fail to obtain judgment therein against such Association Parties, such Owner shall be liable to such parties for all Losses incurred by the Association Parties in the defense of such suit.

Additionally, the Association and each Owner covenant and agree, jointly and severally, to indemnify, defend, and hold harmless the Declarant Parties from and against any and all Losses incurred by or asserted against any of the Declarant Parties, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of the Common Areas by the Association, the Owners, tenants, residents, guests, or invitees, or to other property serving the Association and the Owners, and Improvements thereon, or resulting from or arising out of activities or operations of the Association or the Owners within the Property. The costs of fulfilling the Association's indemnification, defense, and hold harmless obligations in this Section 3.13 shall be Common Expenses to the extent such matters are not covered by insurance maintained by the Association. Notwithstanding the foregoing, the indemnification and defense obligations in this Section 3.13 shall not apply to: (i) any damage claim directly asserted by the Association against the Declarant for defects in construction of Improvements constructed by the Declarant on the Common Areas provided such claim does not arise out of or result from any third-party claim, and/or (ii) any gross negligence or willful misconduct by the indemnified parties.

#### **ARTICLE IV**

#### **OPERATION OF COMMUNITY PRIOR TO CONVEYANCE**

After development of the Property, the Declarant may own all Lots within the Community until such time as the Declarant determines to sell and convey Lots to Owners. As such, the Declarant shall be the sole owner of all Lots and the sole member of the Association as set forth in the Articles. During such time, in addition to the rights and privileges granted to and reserved for the Declarant, the Declarant shall enjoy all the rights and privileges of an Owner under this Declaration as if the Declarant were deemed an Owner, including, without limitation, the easement rights set forth in Article V of this Declaration; provided, however, the Declarant shall not be subject to any duties or obligations of an Owner under this Declaration, including, without limitation, the restrictions set forth in Article VIII and Article XII of this Declaration. Notwithstanding the foregoing, the Declarant shall be responsible to maintain, repair, and replace all Lots and the Improvements thereon in the manner set forth in Section 7.4 and Section 7.5 of this Declaration for so long as the Declarant owns such Lots at the Declarant's expense.

#### **ARTICLE V**

#### **PROPERTY RIGHTS AND EASEMENTS**

5.1 Owners' Easement of Enjoyment. As long as this Declaration is in effect, each Owner, tenant, resident, guest, and invitee shall have, except as otherwise may be provided in this Declaration, a permanent and perpetual, non-exclusive easement for ingress and egress over, enjoyment in, and use of the Common Areas in common with all other Owners, tenants, residents, guests, and invitees. This easement shall be appurtenant to, shall pass with title to that Owner's Lot, and shall be subject to the following:

(i) The right of the Declarant, prior to the Community Completion Date, and thereafter, of the Association, at any and all times, and from time to time, to further additionally provide and make the Common Areas available to other individuals, persons, firms, or corporations, as it deems appropriate. The granting of such rights shall not invalidate this Declaration, reduce or abate any Owner's obligations pursuant to this Declaration, or give any Owner the right to avoid any of the covenants, agreements, or obligations to be performed hereunder.

(ii) The right of the Declarant and/or the Association to enter into easement agreements or other use or possession agreements whereby the Owners, Telecommunications Providers, the Association, and/or others may obtain the use, possession of, or other rights regarding certain property, on an exclusive or non-exclusive basis, for certain specified purposes. The Association may agree to maintain and pay the taxes, insurance, administration, upkeep, repair, and replacement of such property, the expenses of which shall be a part of the Common Expenses. Any such agreement by the Association prior to the Community Completion Date shall require the prior written consent of the Declarant. Thereafter, any such agreement shall require the approval of the majority of the Board, which consent shall not be unreasonably withheld or delayed.

(iii) The right of the Association to reasonably limit the number of guests or invitees of an Owner, resident, or tenant who may use the Common Areas and to prohibit such use of the Common Areas upon failure to abide by the provisions of the Governing Documents.

(iv) The right and duty of the Association to levy Assessments against each Lot for the purpose of operating, maintaining, repairing, and replacing the Common Areas in compliance with the provisions of this Declaration and the restrictions on portions of the Property from time to time recorded by the Declarant.

(v) The right of the Association in accordance with the Governing Documents to borrow money for the purpose of maintaining, repairing, replacing, and improving the Common Areas and, in aid thereof, to mortgage, pledge, or hypothecate the right of assessment and/or any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners in the Common Areas.

(vi) The right of the Association to dedicate, release, alienate, or transfer all or any part of the Common Areas owned by the Association to any public agency, authority, or utility; and to grant any covenant, restriction, or reservation against the Common Areas in favor of any such public agency, authority, or utility subject to the approval required in accordance with Section 3.11 hereof, except for such circumstances where the government is condemning the property through eminent domain.

(vii) The right of the Association, without any vote of the Owners, to grant easements and rights-of-way where necessary or desirable, for utilities, water, and sewer



facilities, cable television, and other services over the Common Areas to serve the Common Areas and any other portions of the Property.

(viii) The right of the Declarant and its officers, directors, managers, partners, employees, agents, licensees, and invitees to the non-exclusive access and use of the Common Areas, and any portion thereof, without charge and without notice, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes or for any other purpose deemed appropriate by the Declarant without interference from any Owner or any other person or entity whatsoever, and to grant (without consent of the Association and/or vote of the Owners) easements and rights-of-way as provided in this Declaration until the Community Completion Date.

(ix) The easements, restrictions, reservations, conditions, limitations, and rights provided elsewhere in this Declaration and as designated on the Plat.

(x) The right of the Association, the Declarant, and their respective officers, directors, managers, employees, agents, licensees, and invitees to come upon the Property (including, without limitation, a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient for the Association and/or the Declarant to carry on their respective duties, obligations, and responsibilities hereunder, and all other work reasonably inferred therefrom (including, without limitation, the Declarant's development and construction of the Community and Homes therein).

(xi) The right of the Declarant to access and enter the Common Areas at any time, even after the Community Completion Date, for the purposes of inspection and testing of the Common Areas. The Association and each Owner shall give the Declarant unfettered access, ingress, and egress to the Common Areas so the Declarant and/or its agents can perform all tests and inspections deemed necessary by the Declarant. In the event the Declarant exercises the rights in this Paragraph (xi), it is acknowledged by the Association and all Owners that the Declarant is performing any such rights for its own benefit and not for the benefit of the Association or the Owners and further, the Declarant shall have no obligation to inform the Association and/or the Owners of the result of any such inspection or testing. The Declarant shall have the right to make all repairs and replacements deemed necessary by the Declarant. At no time shall the Association or any Owner prevent, prohibit, or interfere with any testing, repair, or replacement deemed necessary by the Declarant relative to any portion of the Common Areas.

(xii) The right of the Association to promulgate, amend, and abolish Rules and Regulations governing the use of the Property, including, without limitation, the Common Areas and the Lots.

(xiii) The right of the Association, in addition to all other remedies available to the Association, to suspend the rights of Owners, tenants, residents, guests, and invitees to use the Common Areas and Recreational Facilities in accordance with Article XIV of this Declaration.

(xiv) The rights and duties of the Master Association under and in accordance with the SFWMD Permit for the purposes of operating, maintaining, repairing, replacing, and improving the Stormwater Management System in accordance with the SFWMD Permit and the rights and duties of the Master Association under and in accordance with the Master Declaration.

(xv) All of the provisions of the Master Governing Documents.

5.2 Ingress and Egress Easement. A perpetual and non-exclusive ingress and egress easement is hereby created and reserved by the Declarant for itself, the Master Association, the Association, and the Owners, tenants, residents, guests, and invitees, for pedestrian and vehicular traffic over, through, and across all sidewalks, paths, walkways, driveways, passageways, roadways, streets, and lanes as the same may exist upon, or be designed as part of, the Common Areas.

5.3 Public Easements. All of the Property shall be subject to a permanent and perpetual easement to provide for governmental services, including, without limitation, fire, police, school sponsored transportation, mail, health, sanitation, emergency services, and other public service personnel for the purpose of performing their appropriate functions, including, without limitation, ingress and egress over, through, and upon the Property and reasonable rights of access for persons and equipment necessary for such purposes.

5.4 Utilities Easement. A blanket easement upon, across, through, and under the Property is hereby created and reserved by the Declarant for the ingress, egress, installation, service, maintenance, repair, replacement, relocation, expansion, and operation of any and all utilities and other service lines, facilities, and systems (including, without limitation, those for supplying electricity, gas, cable television, internet, wireless nodes, and telephone service, for collecting, treating, and distributing water and for collecting, treating, and disposing of sewage and wastewater) servicing or intended to service any one (1) or more Improvements on the Property. A blanket easement upon, across, through, and under the Common Areas is hereby created for the disposal, through an irrigation system or otherwise, of treated effluent from any sewage and wastewater collection and disposal system servicing or intended to service one (1) or more Improvements. Without limiting the generality of the foregoing, the Declarant or any party providing any such utilities or other service may, by virtue of the easements created by this Section 5.4, install, maintain, repair, and replace on the Property any and all facilities that are necessary or useful for providing the utilities or service, may perform whatever excavations it considers necessary or helpful in doing so, and may perform whatever meter installations and meter reading it considers necessary or helpful in operating the utilities or service. The Declarant is hereby authorized to execute and record whatever instruments it deems necessary or desirable to effect or evidence the easements created by this Section 5.4, and shall be considered and deemed an agent of each Owner for purposes of executing and recording any such instrument with respect to the Lots owned by the Owner.

5.5 Development Easement. In addition to the rights reserved elsewhere herein, the Declarant reserves an easement for itself and the Declarant's affiliates over, upon, across, through, and under the Property as may be required or convenient in connection with the development of the Property, the development of the Non-Residential Property, and/or other lands designated by the Declarant, and to promote or otherwise facilitate the development, construction, and sale and/or leasing of Lots and Homes, any portion of the Property, any portion of the Non-Residential Property, and/or any other lands designated by the Declarant. Without limiting the generality of the foregoing, the Declarant specifically reserves the right to use all streets, roads, and rights of way within the Property for vehicular and pedestrian ingress and egress to and from construction sites. Each Owner acknowledges construction vehicles and trucks may use portions of the Common Areas. The Declarant shall have no liability or obligation to repave, restore, or repair any portion of the Common Areas as a result of the use of the same by construction traffic, and all maintenance and repair of such Common Areas shall be deemed ordinary maintenance of the Association payable by all Owners as part of the Common Expenses. Without limiting the foregoing, at no time shall the Declarant be obligated to pay any amount to the Association on account of the Declarant's use of the Common Areas. The Declarant has the right to use all portions of the Common Areas in connection with its marketing activities, including, without limitation, allowing members of the general public to inspect model homes, installing signs and displays, holding promotional parties and outings, and using the Common Areas for every other type of promotional or sales activity that may be employed in the marketing of residential homes. The easements created by this Section 5.5, and the rights reserved herein in favor of the Declarant, shall be construed as broadly as possible and supplement the rights of the Declarant set forth in this Declaration. At no time shall the Declarant incur any expense whatsoever in connection with its use and enjoyment of such rights and easements.

5.6 Easement for Encroachments. In the event that any Improvement upon the Common Areas as originally constructed, shall encroach upon any other property or Improvements thereon, or for any reason, then an easement appurtenant to the encroachment shall exist for so long as the encroachment shall naturally exist. If any building or Improvement upon a Lot shall encroach upon another Lot or upon the Common Areas by reason of original construction by the Declarant, then an easement for such encroachment shall exist so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvement and for any natural water runoff from roof overhangs, eaves, and other protrusions onto an adjacent Lot.

5.7 Support Easement. An easement is hereby created for the existence and maintenance, repair, and replacement of supporting structures in favor of the person or entity required to maintain same.

5.8 Drainage Easement. A non-exclusive easement shall exist in favor of the Declarant, the Master Association, the Association, SJRWMD, the County, the City, and/or any governmental agency having jurisdiction over, across, through, under, and upon the Property for drainage, irrigation, and water management purposes and in order

to construct, maintain, inspect, record data on, monitor, test, or repair, as necessary, any water management areas, conservation areas, mitigation areas, irrigation systems and facilities thereon and appurtenances thereto. Such drainage easement shall not be removed from its intended use by any Owners or others. No structure, landscaping, or other material or Improvement shall be placed or be permitted to remain which may damage or interfere with the drainage or irrigation of the Property and/or installation or maintenance of utilities or which may obstruct or retard the flow of water through the Property and/or water management areas and facilities or otherwise interfere with any drainage, irrigation, and/or easement provided for in this Section 5.8 or the use rights set forth elsewhere in this Declaration. Any such drainage easement shall not contain permanent Improvements, including, but not limited to, sidewalks, driveways, impervious surfaces, patios, decks, pools, air conditioners, structures, utility sheds, poles, fences, irrigation systems, trees, shrubs, hedges, or landscaping other than grass, except for (i) Improvements installed by the Declarant, (ii) initial landscaping of the Stormwater Management System, (iii) as required by the County, the Village, or the SJRWMD Permit, and/or (iv) Improvements approved by the Association and the Master Association. Additionally, a non-exclusive easement is hereby granted to all Owners, the Association, the Master Association, and all owners of the Non-Residential Property over, across, through, under, and upon the Property, including, without limitation, the Lots, for surface water drainage purposes.

5.9 Association Easement. The Association is hereby granted an easement over, across, through, under, and upon all of the Property for the purposes of: (i) inspecting, constructing, maintaining, repairing, replacing, improving, and operating all Common Areas; (ii) performing any obligation the Association is obligated to perform under this Declaration; and (iii) performing any obligation of an Owner for which the Association intends to impose an Individual Assessment, including, without limitation, entering a Lot for the purpose of inspecting, maintaining, repairing, and replacing the Lot and Improvements thereon in the event the Owner thereof fails to do so. Any entry into a Lot by the Association, its directors, officers, committee members, managers, agents, and employees, in accordance with the Association's rights set forth in this Declaration shall not be deemed a trespass.

5.10 Emergency Access Easement. The Association shall have the right, without obligation, to enter upon any Lot for emergency, security, and safety reasons, as determined in the discretion of the Board, and to perform any act deemed necessary by the Board, including, without limitation, shutting off water or electricity and conducting any necessary maintenance, repairs, and replacements. The fees, costs, and expenses incurred by the Association in accordance with the foregoing shall be assessable against the Owner and the Lot as an Individual Assessment. Any entry into a Lot by the Association, its directors, officers, committee members, managers, agents, and employees, in accordance with the Association's rights set forth in this Declaration shall not be deemed a trespass.

5.11 Master Association Easement. The Master Association is hereby granted an easement over, across, through, under, and upon all of the Property for the purposes

of performing any obligation or exercising any right the Master Association is obligated or entitled to perform under this Declaration and/or under the Master Declaration. Any entry into a Lot by the Master Association, its directors, officers, committee members, managers, agents, and employees, in accordance with the Master Association's rights set forth in this Declaration and/or the Master Declaration shall not be deemed a trespass.

5.12 Assignments and Additional Easements. Until the Community Completion Date, the Declarant reserves the exclusive right to grant, modify, amend, relocate, and terminate, in its sole discretion, easements, permits, and/or licenses for ingress and egress, drainage, utilities, maintenance, Telecommunications Services, and other purposes over, under, through, upon and across the Property so long as any said easements do not materially and adversely interfere with the intended use of Homes previously conveyed to the Owners. All easements necessary for such purposes are reserved in favor of the Declarant, in perpetuity, for such purposes. The Declarant shall have the sole right to any fees of any nature associated therewith, including, without limitation, license or similar fees on account thereof. The Association and the Owners shall, without charge, collect and remit fees associated with any easement, license, or permit, received, if any, to the Declarant. The Association will not grant any easements or licenses to any other entity providing the same services as those granted by the Declarant, nor will it grant any such easement or license prior to the Community Completion Date without the prior written consent of the Declarant, which may be granted or denied in the Declarant's sole discretion. After the Community Completion Date, the Association shall have the rights of the Declarant only as set forth in this Section 5.12. The Owners hereby authorize the Declarant and the Association to execute, on their behalf and without any further authorization, such grants of easement or other instruments as may from time to time be necessary in accordance with the provisions of this Declaration and/or requirements of prevailing law.

5.13 Duration. All easements created herein or pursuant to the provisions hereof shall be perpetual unless stated to the contrary. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

5.14 Non-Interference with Easement Rights. No portion of the Common Areas may be obstructed, encumbered, or used by any Owner, tenant, resident, guest, or invitee for any purpose other than as permitted by the Declarant or the Association. No Owner, tenant, resident, guest, or invitee shall place any Improvements, material, or obstacle in, under, or over any easement area which would unreasonably interfere with the rights of the owner of the easement. Any such Improvement, material, or obstacle shall be promptly removed by the Owner at the Owner's sole cost and expense when requested by the owner of the easement, the Declarant, the Master Association, or the Association notwithstanding any lapse of time since such Improvement, material, or other obstacle was placed in or over the easement area. In the event an Owner fails to remove such Improvement, material, or obstacle, then the Declarant, the Master Association, or the Association may remove same and the expense of such removal shall be charged to the Lot and collected as an Individual Assessment levied by the Association under this

Declaration or as an individual assessment levied by the Master Association under the Master Declaration. The Declarant's or the Association's installation of any traffic calming devices shall not be considered an obstruction or unreasonable impediment to any use of the Common Areas, easements, or rights-of-way.

## **ARTICLE VI**

### **ANNEXATION TO AND WITHDRAWALS FROM THE PROPERTY**

6.1 Annexation by the Declarant. Prior to the Community Completion Date, the Declarant may, from time to time, without obligation and in its sole discretion, add any real property, including any Improvements thereon, to the Property by recording a Supplemental Declaration to this Declaration in the Official Records of the County. Except for applicable governmental approvals (if any), no consent to such annexation shall be required from any other party, including, without limitation, the Association, the Owners, or any Lenders; provided, however, the Association shall join in the execution of any such Supplemental Declaration at the request of the Declarant, but the absence of such joinder shall not affect the validity of the Supplemental Declaration. The Supplemental Declaration shall subject the annexed property to the covenants, conditions, and restrictions contained in this Declaration as though the annexed property were described herein as a portion of the Property. Such Supplemental Declaration may contain additions to, modifications of, or omissions from the covenants, conditions, and restrictions contained in this Declaration as deemed appropriate by the Declarant and as may be necessary to reflect the different character, if any, of the annexed property. The Declarant may designate any annexed property as Common Areas or Lots as set forth in the Supplemental Declaration annexing such property. Except as otherwise provided herein, prior to the Community Completion Date, only the Declarant may add additional lands to the Property. Nothing in this Declaration shall be construed to require the Declarant to add any real property to the Property or to require the Declarant to declare any portion of any properties added to the Property to be Common Areas or Lots.

6.2 Annexation by the Association. After the Community Completion Date, and subject to applicable governmental approvals (if any), additional property may be annexed with the approval of (i) a majority of the Board; and (ii) fifty-one percent (51%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained.

6.3 Withdrawal. Prior to the Community Completion Date, any portions of the Property, or any additions thereto, may be withdrawn by the Declarant from the provisions and applicability of this Declaration by recording a Supplemental Declaration to this Declaration in the Official Records of the County. The right of the Declarant to withdraw portions of the Property, or any additions thereto, shall not apply to any Lot that has been conveyed to an Owner unless that right is specifically reserved in the instrument of conveyance or the prior written consent of the Owner is obtained. The withdrawal of any portion of the Property, or any additions thereto, shall not require the consent or joinder of any other party, including, without limitation, the Association, the Owners (except as set forth above), or any Lenders; provided, however, the Association shall join in the

execution of any such Supplemental Declaration at the request of the Declarant, but the absence of such joinder shall not affect the validity of the Supplemental Declaration. If the Declarant withdraws portions of the Property, or any additions thereto, from the operation of this Declaration, the Declarant may, but is not required to, subject to governmental approvals (if any), create other forms of residential property ownership or other Improvements of any nature on the property not subjected to or withdrawn from the operation of this Declaration. The Declarant shall not be liable or responsible to any person or entity on account of its decision to do so or to provide, or fail to provide, the amenities and/or facilities which were originally planned to be included in such areas. If so designated by the Declarant, owners or tenants of such other forms of housing or improvements upon their creation may share in the use of all or some of the Common Areas and other facilities and/or roadways that remain subject to this Declaration. The expense of the operation of such facilities shall be allocated to the various users thereof, if at all, as determined by Declarant. The Association shall have no right to withdraw land from the Property.

6.4 Effect of Filing Supplemental Declaration. Any Supplemental Declaration filed pursuant to this Article VI shall be effective upon recording in the Official Records of the County, unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and Assessment liability in accordance with the provisions of the Supplemental Declaration and this Declaration.

## **ARTICLE VII**

### **MAINTENANCE AND IMPROVEMENT OF THE PROPERTY**

7.1 Common Areas. Except as otherwise specifically provided in this Declaration to the contrary, the Association shall at all times maintain, repair, replace, and operate the Common Areas in a continuous and satisfactory manner. The Association shall also be responsible for the payment of property taxes and governmental assessments levied against the Common Areas. The Association shall have the right, but not the obligation, to arrange for periodic inspections of the Common Areas by a licensed contractor and/or engineer and to determine the parameters of such inspection from time to time, if any. The fees, costs, and expenses incurred by the Association to inspect, maintain, repair, replace, and operate the Common Areas shall be Common Expenses. Notwithstanding the foregoing, the fees, costs, and expenses incurred by the Association for any maintenance, repair, or replacement of any portion of the Common Areas occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents shall be borne solely by such Owner and the Lot owned by such Owner shall be subject to an Individual Assessment for all such fees, costs, and expenses.

7.2 Irrigation System. The Association shall also maintain, repair, and replace the irrigation system throughout the Property as part of the Common Expenses. Notwithstanding the foregoing, the Association shall be responsible for the replacement

of any landscaping upon any Lot occasioned by insufficient watering or poor water quality. Due to water quality, the irrigation system may cause staining on Homes, fences, or other Improvements or paved areas upon the Property. The cleaning and removal of any such staining within an Owner's Lot shall be performed in accordance with the exterior maintenance responsibilities as to Townhome Lots and Single-Family Lots as further set forth herein. In the event any portion of the irrigation system is adversely affected by an Owner's Improvements to a Lot (including, without limitation, landscaping, fences, or concrete or brick pavers), the cost to correct, repair, and replace such portion of the irrigation system shall be the responsibility of the Owner and shall be assessable against the Owner and the Lot as an Individual Assessment. Further, the Owner shall be responsible for all fees, costs, and expenses of maintenance, repair, or replacement of any portion of the irrigation system located on such Owner's Lot if such maintenance, repair, or replacement is occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents.

7.3 Lot Landscaping. The Association shall maintain landscaping within the Lots as initially installed by the Declarant, including the following: (i) trimming trees and shrubs; (ii) mowing, trimming, edging, and fertilizing lawns; (iii) weeding, by chemical treatment or otherwise, in curb joints, expansion joints, and driveways; and (iv) weeding and mulching of flower beds. The Board shall determine the need for such landscaping maintenance from time to time and at its sole discretion. Notwithstanding the Association's responsibility to maintain landscaping in accordance with this Section 7.3, neither the Declarant, nor the Association shall be responsible to maintain, prevent, or redirect natural root growth or be liable for any damage, or repair thereof, to any property cause by any tree, or the root system thereof, planted within a Lot or the Common Areas. All fees, costs, and expenses incurred by the Association in carrying out its landscaping maintenance shall be Common Expenses; provided, however, due to the specific level of landscaping maintenance services provided to Single-Family Lots and Townhome Lots, these Common Expenses shall be allocated among the Single-Family Lots and the Townhome Lots based upon the specific level of landscaping maintenance services received by each respective Lot type as reasonably determined by the Board. Each Lot within each respective Lot type shall share equally the landscaping maintenance costs allocated to such respective Lot type. Notwithstanding the foregoing, the fees, costs, and expenses incurred by the Association for any landscaping maintenance occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents shall be borne solely by such Owner and the Lot owned by such Owner shall be subject to an Individual Assessment for all such fees, costs, and expenses.

7.3.1 Replacements. Notwithstanding the Association's responsibility to maintain landscaping in accordance with this Section 7.3, the Association shall be responsible to replace landscaping within the Lots in the event any such landscaping becomes diseased, is dead or dying, or is destroyed by natural occurrences. In such event, such landscaping shall be replaced with landscaping of the same or substantially similar type and size, unless otherwise approved by the ACC. No other objects or



landscaping may be installed in place of any such landscaping, unless otherwise approved by the ACC.

7.3.2 Street Trees. Each Owner acknowledges that the Declarant may provide trees within the Lots along rights-of-way throughout the Property ("Street Trees"). The Street Trees are not to meet Lot requirements and are dedicated to the Association in perpetuity. As such, notwithstanding anything set forth herein to the contrary, the Association shall maintain and replace the Street Trees as and when deemed necessary by the Board at its sole discretion which determination shall be final and binding. Certain types of trees specimens' root structure can potentially cause damage to Improvements, including, but not limited to, driveways, sidewalks, irrigation systems, Homes, and utilities installations. Notwithstanding the Declarant's installation of Street Trees and the Association's responsibility to maintain and replace Street Trees, neither the Declarant, nor the Association shall be liable for any damage, or repair thereof, to any Improvement upon a Lot caused by any Street Tree, or the root system thereof.

7.3.3 Alterations. In the event an Owner alters, improves, or otherwise changes any landscaping upon the Owner's Lot (subject to approval obtained in accordance with this Declaration) which increases the landscaping maintenance, and cost therefor, to be performed by the Association, the increase in landscaping maintenance costs incurred, or to be incurred, by the Association shall be assessable against the Owner and the Lot as an Individual Assessment.

7.3.4 Association Access. Under no circumstances shall the Association be responsible for maintaining any inaccessible areas within fences or walls that form a part of a Lot. In the event any landscaped areas to be maintained by the Association are not readily accessible, including, without limitation, due to the failure to include a gate of adequate size within a fence or wall enclosing any portion of a Lot, the Owner shall be deemed to have voluntarily and knowingly assumed the responsibility to perform, at the Owner's sole cost and expense, all landscaping maintenance as to the landscaped areas for which access is denied or not readily available to the same standards as performed by the Association. No Owner shall be exempt from such Owner's share of Common Expenses attributable to landscape maintenance by refusal or inability to provide the Association with access to the Owner's Lot for the purpose of performing maintenance upon such Lot in accordance with this Declaration or by voluntarily undertaking any maintenance upon such Lot which is otherwise the responsibility of the Association in accordance with this Declaration.

7.4 Townhome Lots. Except as otherwise set forth in this Declaration, each Owner of a Townhome Lot shall maintain, repair, and replace all portions of the Townhome Lot, including, without limitation, the Home and the contents therein, in a first class, safe, clean, neat, and attractive condition at such Owner's sole cost and expense.

7.4.1 Party Walls. The Homes constructed upon Townhome Lots are attached by a common wall, known as a "Party Wall," between each Home that adjoins another Home upon the neighboring Townhome Lot. The center line of a Party Wall is the

common boundary of the adjoining Home. The cost of maintaining each side of a Party Wall shall be borne by the Owner using said side, except as otherwise provided herein. Each adjoining Owner of a Party Wall, and such Owner's heirs, successors, and assigns, shall have the right to use same jointly with the other Owner to said Party Wall as herein set forth. The term "use" shall and does include normal interior usage such as paneling, plastering, decoration, erection of tangent walls, and shelving but prohibits any form of alteration which would cause an aperture, hole, conduit, break, or other displacement of the original concrete forming said Party Wall. Repairs or replacement of any Party Wall shall be to its original construction. Structural changes to Party Walls are prohibited. Each Owner shall have right to file a lien against the adjoining Townhome Lot(s) and the Owner(s) thereof for repair costs.

7.4.2 Shared Roofing. The entire roof of each building containing Homes constructed on Townhome Lots, any and all roof structure support, and any and all appurtenances to such structures, including, without limitation, the roof covering, fascia, soffit, and roof drainage fixtures, shall be collectively referred to as "Shared Roofing." The Association shall maintain, repair, and replace the Shared Roofing. Alteration and improvement of the Shared Roofing by anyone other than the Declarant or the Association are prohibited.

7.4.3 Exterior Maintenance. The Association shall be responsible for normal and routine pressure cleaning and painting of the exterior of the Homes constructed on Townhome Lots and shall maintain, repair, and replace the driveways serving the Homes constructed on Townhome Lots. The Board shall determine the need for such maintenance, repair, or replacement from time to time and at its sole discretion. The Board shall determine, from time to time and at its sole discretion, the paint color scheme of the buildings containing Homes constructed on Townhome Lots. Alteration and improvement of any driveway serving any Home constructed on a Townhome Lot by anyone other than the Declarant or the Association are prohibited.

7.4.4 Association Expenses. All fees, costs, and expenses incurred by the Association in carrying out its obligations related to the Townhome Lots in this Section 7.4 shall be Common Expenses of the Association allocated among the Townhome Lots only, and all Owners of Townhome Lots within each building containing Homes constructed on Townhome Lots shall share the cost of such maintenance, repair, or replacement equally as reasonably determined by the Board. Notwithstanding the foregoing, the fees, costs, and expenses incurred by the Association for any such maintenance, repair, or replacement occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents shall be borne solely by such Owner and the Townhome Lot owned by such Owner shall be subject to an Individual Assessment for all such fees, costs, and expenses.

7.5 Single-Family Lots. Except as otherwise set forth in this Declaration, each Owner of a Single-Family Lot shall maintain, repair, and replace all portions of the Single-

Family Lot, including, without limitation, the Home and the contents therein, in a first class, safe, clean, neat, and attractive condition at such Owner's sole cost and expense.

7.5.1 Exterior Maintenance. Without limitation, each Owner is solely responsible for the proper cleaning, maintenance, repair, and replacement of the exterior of the Owner's Home, including, without limitation, the roof and the exterior walls of the Home.

7.5.2 Paved and Concrete Surfaces. Each Owner shall be responsible to maintain, repair, and replace the driveways and walkways, including, without limitation, concrete or brick pavers, and other paved and concrete surfaces comprising part of the Owner's Lot and that portion of the driveway serving the Owner's Single-Family Lot located within the right-of-way immediately adjacent to such Owner's Single-Family Lot between such Owner's Single-Family Lot and the private Common Area roadway. If the Village, the County, or any of their respective subdivisions, agencies, and/or divisions must remove any portion of the paved or concrete surfaces located for which the Owner of the Single-Family Lot is responsible for the installation, repair, replacement, or maintenance of utilities, then the Owner of the applicable Single-Family Lot shall be responsible to replace or repair the paved or concrete surfaces at such Owner's expense, if such expenses are not paid for by the Village or the County, as applicable.

7.6 Maintenance of Property Owned by Others. The Association shall, if designated by the Declarant (or by the Board after Turnover), maintain vegetation, landscaping, irrigation systems, community identification/features, infrastructure, and/or other areas or elements designated by the Declarant (or by the Board after Turnover) upon areas that are within or outside of the Property. Such areas may abut, or be proximate to, the Property, and may be owned by, or be dedicated to, others including, but not limited to, a utility, governmental or quasi-governmental entity, or a property owners' association. These areas may include, for example purposes only and not limited to, parks, swale areas, landscape buffer areas, berm areas or median areas within the right-of-way of public streets, roads, drainage areas, community identification or entrance features, and/or community signage or other identification. The Association shall have the right to enter into new agreements or arrangements from time to time for improvements and facilities serving the Members or to amend such agreements or arrangements if the Board deems the same reasonable and appropriate for the continued use and benefit of any part of the Common Areas.

7.7 Alterations and Improvements. The Association, by and through the Board, may make alterations and Improvements to the Common Areas, any portion thereof and any Improvements thereon, costing, in the aggregate, equal to or less than of Twenty Thousand Dollars (\$20,000.00) without the approval of the Owners. Alterations and Improvements costing, in the aggregate, in excess of Twenty Thousand Dollars (\$20,000.00) must first be approved by a majority of the Owners present, in person or by proxy, at a meeting of the Members at which a quorum is attained.

7.8 Stormwater Management System. The Stormwater Management System, including, without limitation, swales, pipes, pumps, and/or retention/detention areas, as may be part of the Common Areas and/or Lots, shall be maintained, repaired, replaced, and operated by the Master Association in accordance with the Master Declaration. The Association has the right to utilize the Stormwater Management System. All fees, costs, and expenses regarding the Stormwater Management System shall be assessed and collected through the Master Association assessments. Notwithstanding the foregoing, in the event the Stormwater Management System is adversely affected by Owner's Improvements to the Lot (including, without limitation, landscaping, fences, or concrete or brick pavers), the cost to correct, repair, or replace the Stormwater Management System shall be the responsibility of the Owner and such costs shall be assessable against the Owner and the Lot as an individual assessment levied by the Master Association in accordance with the Master Declaration. No Improvement shall be constructed, installed, placed, or maintained in any manner that would obstruct, interfere with, or adversely affect the Stormwater Management System. NOTWITHSTANDING THE FOREGOING, THE MASTER ASSOCIATION, THE ASSOCIATION, AND THE DECLARANT SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DRAINAGE ISSUES OF ANY TYPE WHATSOEVER RESULTING FROM AN OWNER'S IMPROVEMENT TO OR ALTERATION OF THE LOT.

7.9 Exterior Finish and Water Intrusion. Exterior walls may be improved with a finish material composed of stucco or cementitious coating (collectively, the "Exterior Finish"). If so, then while the Exterior Finish is high in compressive or impact strength, it is not of sufficient tensile strength to resist building movement. It is the nature of the Exterior Finish to experience some cracking and it will expand and contract in response to temperature, sometimes creating minor hairline cracks in the outer layer of the Exterior Finish application. This is normal behavior and considered a routine maintenance item for the Owner. Each Owner is responsible to inspect the Exterior Finish to the exterior walls for cracking and engage a qualified professional to seal those cracks and repair the affected area. In addition, each Owner is responsible for inspecting the caulk material in the exterior wall system openings (i.e., windows, doors, hose bibs, etc.) for peeling, cracking, or separating. If the inspection reveals any such items, the Owner is responsible for engaging a qualified professional to clean, repair, re-caulk, and repaint those areas of the Home to ensure the Owner's Home remains watertight. All of the foregoing shall be completed by the Owner in a timely fashion to prevent any damage to the Home, particularly given that Florida experiences heavy rainfall and humidity on a regular basis. Each Owner acknowledges that running air conditioning machinery with windows and/or doors open in humid conditions can result in condensation, mold, and/or water intrusion. The Declarant and the Association shall not have liability under such circumstances for any damage or loss that may occur in the event an Owner fails to maintain their Home in accordance with this provision. FURTHER, GIVEN THE CLIMATE AND HUMID CONDITIONS IN FLORIDA, MOLDS, MILDEW, TOXINS, AND FUNGI MAY EXIST AND/OR DEVELOP WITHIN HOMES. EACH OWNER IS HEREBY ADVISED THAT CERTAIN MOLDS, MILDEW, TOXINS, AND/OR FUNGI MAY BE, OR IF ALLOWED TO REMAIN FOR A SUFFICIENT PERIOD MAY BECOME, TOXIC AND POTENTIALLY POSE A HEALTH RISK. BY ACQUIRING TITLE TO A LOT, EACH OWNER SHALL BE

DEEMED TO HAVE ASSUMED THE RISKS ASSOCIATED WITH MOLDS, MILDEW, TOXINS, AND/OR FUNGI AND TO HAVE RELEASED THE DECLARANT PARTIES AND THE ASSOCIATION PARTIES FROM ANY AND ALL LIABILITY RESULTING FROM SAME.

7.10 Declarant Indemnification. The Association, being the entity responsible for the ownership, operation, maintenance, repair, and replacement of the Common Areas and other portions of the Property as set forth in this Article VII, hereby agrees to indemnify, defend, and hold the Declarant Parties harmless from and against any and all Losses arising out of or in any way resulting from or in any way connected with: (i) any acts or omissions of the Association Parties and their respective heirs, successors, and assigns; (ii) personal injury, loss of life, or damage to property sustained on or about the Common Areas, or other property serving the Association, and Improvements thereon; and/or (iii) activities or operations of the Association or the Owners. The Association's obligation to defend the Declarant Parties shall be triggered upon any allegation or claim being asserted that, in whole or in part, is to be indemnified or defended pursuant to this Section 7.10. If any indemnified party is compelled to enforce the Association's obligations in this Section 7.10, such indemnified party shall recover any and all Legal Fees incurred in prosecuting such enforcement action in addition to Legal Fees incurred in defending the underlying allegations or claims. The costs of fulfilling the Association's indemnification, defense, and hold harmless obligations in this Section 7.10 shall be Common Expenses to the extent such matters are not covered by insurance maintained by the Association. Notwithstanding the foregoing, the indemnification and defense obligations in this Section 7.10 shall not apply to: (i) any damage claim directly asserted by the Association against the Declarant for defects in construction of Improvements constructed by the Declarant on the Common Areas provided such claim does not arise out of or result from any third-party claim, and/or (ii) any gross negligence or willful misconduct by the indemnified parties.

7.11 Right of the Association to Enforce. In addition to all other remedies available to the Association, in the event the Owner fails to comply with any of its obligations as set forth in this Article VII, including, without limitation, failing to properly maintain, repair, and replace the Owner's Lot, or any Improvements thereon, the Association shall have the right, without obligation, to enter the Lot, as applicable, for the purpose of performing the maintenance, repair, and replacement obligations on behalf of the Owner. The costs and expenses incurred by the Association in performance thereof shall be assessable against the Lot and the Owner as an Individual Assessment. The determination of whether an Owner is failing to properly maintain, repair, and replace the Lot, or any Improvements thereon, shall be determined in the sole discretion of the Board. Without limitation, the Declarant hereby grants the Association an easement over all portions of the Property for the purpose of ensuring compliance with the requirements of this Article VII.

## **ARTICLE VIII**

### **USE RESTRICTIONS**

Except as to the Declarant and any portion of the Property owned by the Declarant, all of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions, the Architectural Guidelines, the Rules and Regulations, and any and all additional rules and regulations which may, from time to time, be adopted by the Declarant, prior to Turnover, and thereafter, by the Board:

8.1 Use of Lots. Each Lot is restricted to residential use as a residence by the Owner, tenants, residents, guests, and invitees thereof. Except as to the Declarant, no trade, business, profession, or commercial activity, or any other nonresidential use, shall be conducted upon any portion of the Property or within any Lot or Home by any Owner, tenant, resident, or guest, except that a home office is permitted so long as no customers or excessive deliveries are caused thereby, as determined in the sole discretion of the Board, and subject to applicable statutes and ordinances. No Owner, tenant, resident, guest, or invitee may actively engage in any solicitations for commercial purposes within the Property. No garage sales are permitted, except as approved by the Board in writing. Prior to the Community Completion Date, the Association shall not permit any garage sales without the prior written consent of the Declarant.

8.2 Subdivision and Regulation of Land. No portion of any Lot shall be divided or subdivided or its boundaries changed without the prior written approval of the Declarant, prior to the Community Completion Date, and thereafter, the prior written approval of the Board, which may be granted or denied in the Declarant's or the Board's sole discretion. No Owner shall inaugurate or implement any variation from, modification to, or amendment of governmental regulations, land use plans, land development regulations, zoning, or any other development orders or development permits applicable to the Property, without the prior written approval of Declarant, prior to the Community Completion Date, and thereafter, the prior written approval of the Board, which may be granted or denied in the Declarant's or the Board's sole discretion.

8.3 Nuisances. No nuisance, as determined by the Board, nor any use or practice that is the source of unreasonable annoyance to others within the Property or which interferes with the peaceful possession and proper use of the Property, as determined by the Board, is permitted. Nothing shall be done or kept within the Property which may reasonably be expected to increase the rate of insurance maintained by the Association. No loud noises or noxious odors, as determined by the Board, shall be permitted within the Property.

8.4 Lawful Use. No immoral, improper, offensive, unlawful, or obnoxious use shall be made of any portion of the Property, as determined by the Board. All laws, zoning ordinances, and regulations of all governmental entities having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental entities for maintenance, modification, or repair of a portion of the Property shall be the same as the responsibility for maintenance and repair of the property concerned.

8.5 Animals. No animals of any kind shall be raised, bred, or kept within the Property for commercial or breeding purposes. Only common domesticated household

pets, including dogs or cats, may reside within a Home. No other animals, livestock, horses, swine (but specifically excluding miniature domesticated pigs), or poultry of any kind shall be kept, raised, bred, or maintained on any portion of the Property. No more than three (3) animals are permitted to be kept on any Lot. All animals shall be maintained and kept in accordance with all applicable County ordinances and the Rules and Regulations. No animal shall be permitted outside a Home unless such animal is kept on a leash, carried by hand, or within an enclosed portion of the Lot. No animal may be left unattended outside a Home. No dog runs or enclosures shall be permitted on any Lot. All solid animal waste deposited by an animal on the Property shall be immediately picked up and properly disposed of in a sanitary manner. Owners are responsible for the cost of repair or replacement of any Common Areas or property of the Association or for which the Association is responsible damaged by their animal. No animal shall become a nuisance, as determined by the Board, which nuisance activities include, without limitation, barking, growling, biting, jumping on others, lunging at others, or other obnoxious or aggressive behaviors. A determination by the Board that an animal kept or harbored in a Home is a nuisance shall be conclusive and binding on all parties. The Board shall have the right, without obligation, to demand permanent removal of any animal deemed to be a nuisance by the Board. When notice of permanent removal of any animal is given by the Board, the animal shall be removed within forty-eight (48) hours of the receipt of such notice. Each Owner shall be responsible for all the activities of the animal. Each Owner who determines to keep an animal or permits an animal to be kept within the Owner's Home hereby agrees to indemnify and hold harmless the Association Parties and the Declarant Parties against any Losses arising from or related to such Owner having any animal or permitting any animal on and within the Property.

8.6 Vehicle Restrictions and Parking. No commercial vehicle, limousine, dually truck, monster truck, recreational vehicle, golf cart, scooter, mini motorcycle, all-terrain vehicle (ATV), boat (or other watercraft), trailer (including, without limitation, boat trailers, house trailers, mobile homes, and trailers of every other type, kind, or description), or camper, may be kept within the Property except within the enclosed garage of a Home. The term "commercial vehicle" shall not be deemed to include law enforcement vehicles, sport utility vehicles (SUVs), or clean personal use vehicles, such as, and for example purposes only, pick-up trucks, vans, or cars if they are used on a daily basis for normal personal transportation; provided, however, vehicles with commercial lettering and/or images and/or ladders, racks, and hooks or such other equipment attached to such vehicles shall be "commercial vehicles" prohibited by this Section 8.6. The term "monster truck" shall be deemed to include pickup trucks modified with large suspension and large tires resulting in a lifted truck body. No vehicles bearing a "for sale" sign or with tarpaulin covers shall be parked anywhere within the Property within the view of others. Vehicles without a valid license plate and current registration are not permitted within the Property. No vehicle shall be used as a domicile or residence, either temporarily or permanently. No Owner, tenant, resident, or guest shall keep any vehicle on any Lot which is deemed to be a nuisance by the Board. No vehicle which cannot operate on its own power shall remain within the Property for more than twelve (12) hours, except within the enclosed garage of a Home. No repair or maintenance of vehicles, except emergency repair, shall be made within the Property, except in the garage of a Home. No vehicles shall be stored

on blocks. No ATVs, scooters, or mini motorcycles are permitted to be used at any time on the Common Areas. Vehicles shall be parked in the garage or driveway of the respective Lot and shall not block the sidewalk. No vehicles of any nature shall be parked on any portion of the Property except on the paved or concrete surfaced parking area thereof. Vehicles shall not park on the paved or concrete surfaces comprising the Common Areas, including, without limitation, the private roadways, except in designated parking areas, if any. To the extent the Property has any guest parking, Owners, residents, and tenants are prohibited from parking in such guest parking spaces. No vehicles used in business for the purpose of transporting goods, equipment, and the like, shall be parked in the Property except during the delivery of goods or during the provision of services. Subject to applicable laws and ordinances, any vehicle parked in violation of this Section 8.6 and/or the Rules and Regulations may be towed by the Association at the sole expense of the owner of such vehicle. Each Owner, by acceptance of title to a Lot, irrevocably grants to the Association and its designated towing service the right to enter a Lot and tow vehicles in violation of this Section 8.6 and/or the Rules and Regulations. Neither the Association nor the towing company shall be liable to the Owner or the owner of such vehicle for trespass, conversion, or otherwise, nor guilty of any criminal act, by reason of such towing or removal, and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind.

8.7 Oil and Mining Operations No oil, drilling development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or on any Lot, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon or on any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Lot.

8.8 Hazardous Substances. No flammable, combustible, or explosive fuel, fluid, chemical, hazardous waste, or substance shall be kept on any portion of the Property, except those which are required for normal household use. No fuel storage shall be permitted within the Property, except as may be necessary or reasonably used for swimming pools, spas, barbecues, fireplaces, or similar household devices. Any such permitted fuel storage must be installed underground or in a manner to be screened from view by landscaping or other materials approved by the ACC.

8.9 Ownership by Entity. In the event that an Owner is other than a natural person, that Owner shall, prior to any occupancy of the Home, designate, in writing signed by an officer, director, or managing member of the entity, one (1) or more persons who are to be the occupants of the Home and register such persons with the Association. All provisions of the Governing Documents shall apply to both such Owner and the designated occupants.

8.10 Leases. Homes may be leased only in their entirety, and no room or portion of a Home may be leased. No Home or portion thereof shall be leased to transient tenants or for hotel-like rental. No Owner may list the Owner's Home on any website (e.g., AirBnB, VRBO, or HomeAway), print, or online publication advertising the Home for short term,



“hotel-like” rental. No Homes owned by a single entity or related entities shall be subject to any bulk lease agreement. No Home shall be subleased or subject to an assignment of lease. Occupancy within a leased Home shall only be by the tenant(s) and those individuals listed as occupants in the lease agreement. No lease shall be for a term of less than three (3) months nor more than one (1) year, and no Home may be leased more than two (2) times in any calendar year. All lease agreements shall be in writing. Within five (5) days following execution of a lease agreement, but in no event later than occupancy of the Home by the tenant(s), the Owner shall: (i) notify the Association in writing with the name of the tenant(s) and all others that will be occupying the Home; and (ii) provide the Association with a true, correct, and complete copy of the executed lease agreement. In the event Owner fails to timely comply with the foregoing, such lease shall be null and void and of no further force or effect. The provisions of this Section 8.10 shall also apply to renewals and extensions of lease agreements.

No Owner may lease a Home if such Owner is delinquent in the payment of any monetary obligation to the Association. In the event an Owner whose Home is leased is delinquent in the payment of any monetary obligation to the Association, the Association may, without limitation of other lawful remedies, make written demand to such Owner and such Owner's tenant(s) for payment of rent to be remitted to the Association in accordance with the relevant provisions of the Homeowners' Association Act. All leases are hereby made subordinate to any lien filed by the Association, whether prior or subsequent to such lease.

No Owner may lease a Home where such Owner is, at the time the Owner desires to lease a Home, in violation of any of the covenants, terms, conditions, and restrictions of the Governing Documents. Every lease shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the full compliance by the tenant(s) and the occupant(s) with the covenants, terms, conditions, and restrictions of the Governing Documents.

By acceptance of title to a Home, the Owner hereby agrees, at the Owner's sole expense, to remove by legal means, including, without limitation, eviction, the tenant(s) and occupant(s) in the event of any violation of any provision of the Governing Documents by the tenant(s) or occupant(s). Notwithstanding the foregoing, should the Owner fail to remove the tenant(s) and occupant(s) from the Home, the Association shall have the right, but not the obligation, to terminate the lease agreement and to evict/eject such tenant(s) and occupant(s) and exercise all such other legal remedies as may be available to the Association on behalf of the Owner. All Legal Fees associated with such eviction/ejectment and/or action for other legal remedies as may be available to the Association shall be assessable against the Owner and the Lot as an Individual Assessment.

Every Owner shall be deemed to have delegated its right of enjoyment to the Common Areas to the Owner's tenant(s) and occupant(s) of the leased Home, subject to the provisions of the Governing Documents. Any such delegation shall not relieve any Owner from its responsibilities and obligations provided herein.

The Owner shall be jointly and severally liable with the tenant(s) to the Association for any amount which is required by the Association to repair any damage to the Common Areas or any other property for which the Association is responsible resulting from acts or omissions of tenant(s) and/or occupant(s) of the leased Home (as determined in the sole discretion of the Board) and to pay any claim for injury or damage to property caused by the negligence of the tenant(s) and/or occupant(s) of the leased Home, the costs and expenses of which shall be assessable against the Owner and the Lot as an Individual Assessment.

Each Owner shall collect from the tenant(s) and remit to the Association, no later than the date of occupancy of the Home by the tenant(s), a security deposit in the amount one (1) month's rental which may be used by the Association to cover expenses related to the maintenance and repairs of the Common Areas or any other property for which the Association is responsible resulting from acts or omissions of tenant(s) or occupant(s) (as determined in the sole discretion of the Board). Payment of interest, claims against the security deposit, refunds, and disputes regarding the disposition of the security deposit shall be handled in the same fashion as provided in Part II of Chapter 83, Florida Statutes. In the event that the Owner does not properly remit the security deposit to the Association, the Association may charge the security deposit to the Owner as an Individual Assessment. Notwithstanding anything to the contrary herein, the leasing of a Home and the collection of the deposit referred to herein from an Owner shall not reduce or abate any Owner's obligations pursuant to the Governing Documents or give any Owner the right to avoid any of the covenants, agreements, or obligations to be performed pursuant to the Governing Documents.

**8.11 Personal Property Storage and Storage Structures.** All personal property of Owners, tenants, residents, and guests shall be stored within the Homes, except for tasteful and typical patio furniture (as determined by the Board). No temporary or permanent utility or storage shed, storage building, tent, shack, or other structure or building shall be permitted within the Property. Water softeners, trash containers, propane tanks, and other similar devices shall be properly screened from view in a manner approved by the ACC.

**8.12 Decorations.** No decorative items, including, without limitation, birdbaths, light fixtures, sculptures, statues, or weather vanes, shall be installed or placed within or upon any portion of a Lot without the prior written approval of the ACC. Notwithstanding the foregoing, holiday lighting and decorations shall be permitted to be placed upon the Lot commencing the month in which the holiday is celebrated and removed not later than two (2) weeks after the passing of the holiday (e.g., Halloween decorations and lighting may be displayed commencing October 1<sup>st</sup> and must be removed by November 14<sup>th</sup>, and Christmas decorations and lighting may be displayed commencing December 1<sup>st</sup> and must be removed by January 8<sup>th</sup>). The Association may require the removal of any holiday lighting that creates a nuisance, as determined by the Board (e.g., unacceptable spillover to an adjacent Home or excessive travel through the Property).

8.13 Extended Vacation and Absences. In the event a Home will be unoccupied for an extended period, the Home must be prepared prior to departure by: (i) removing all movable furniture, plants, and other objects from outside the Home; and (ii) designating a responsible firm or individual to care for the Home, should the Home suffer damage or require attention, and providing a key to that firm or individual. Neither the Association nor the Declarant shall have any responsibility of any nature relating to any unoccupied Home.

8.14 Fences and Walls. No walls or fences shall be erected, constructed, or installed without the prior written consent of the ACC. In the event that any planned wall or fence is to be erected, constructed, or installed within an easement area or to cross any easement area, such ACC approval shall be subject to the Owner first receiving written approval from the easement holder(s) and all other applicable governmental authorities. In the event any wall or fence is installed within any easement area or blocks access to any easement area, the Owner shall be solely responsible for the prompt removal of the wall or fence and shall repair or replace the wall or fence once the easement holder completes work within the easement area and/or if the need for access to the easement area is no longer required at such time. No chain link or wood fencing of any kind is permitted. All walls and fences must be in compliance with the Architectural Guidelines. Fences shall not be installed flush to the ground so that drainage will be blocked in any way. Walls shall be constructed in such a manner as to permit proper drainage. Notwithstanding that an Owner has obtained the approval of the ACC to erect, construct, or install a wall or fence, doing so shall be at the Owner's sole risk so long as the Declarant has not yet begun or is engaged in development of on an adjacent Lot. The Declarant shall have the right, without obligation and in its sole discretion, to temporarily remove the wall or fence if deemed necessary by the Declarant in order to complete development on the adjacent Lot. In the event such development activity on an adjacent Lot or the Declarant's temporary removal of the wall or fence causes damage to or destruction of such Owner's wall or fence or any part thereof, the Owner on whose Lot the wall or fence has been damaged shall be required, at the Owner's expense, to repair or replace such wall or fence in conformance with the requirements of the ACC's initial approval of wall or fence, and the Declarant shall have no liability for any such damage or destruction. Such repair or replacement shall commence as soon as development of the adjacent Lot has been completed and shall be pursued to completion with due diligence.

8.15 Screened Enclosures. All screening, screened enclosures, and enclosure of balconies or patios, including, without limitation, with vinyl windows, shall have the prior written approval of the ACC and shall be in compliance with the Architectural Guidelines. No rear yard screen enclosure shall extend beyond the boundary created by the side walls of the Home and cannot be higher than the roofline of the Home. No screen enclosure shall be constructed, installed, or maintained in the front portion of any Home, including, without limitation, any front porch or covered entryway.

8.16 Garages. No garage shall be converted into a living area unless approved the Board and the ACC, as applicable. Garage doors shall remain closed at all times

except when vehicular or pedestrian access is required. No Owner shall store any items, materials, or other personal property in the garage of such Owner's Home to the extent such storage would limit or prohibit the use of the garage for the parking of vehicles.

8.17 Garbage Containers. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on any portion of the Lot, except in clean and sanitary garbage containers. Each Owner shall be responsible for properly depositing garbage and trash in garbage containers sufficient for pick-up by the appropriate collection agencies in accordance with the requirements of any such agency. No garbage containers, supplies, or other similar articles shall be maintained on any Lot so as to be visible from another Lot or the Common Areas, except for proper garbage removal. Garbage containers shall not be placed outside the Home for removal earlier than 7:00 p.m. on the day preceding scheduled removal and shall be removed the day of scheduled removal. No outside burning of trash or garbage is permitted. No odor shall be permitted to arise from a garbage container so as to render the Property or any portion thereof unsanitary, offensive, detrimental, or a nuisance to Owners, tenants, residents, or guests or to any other property in the vicinity thereof or to its occupants.

8.18 Hurricane Shutters. Any hurricane shutters or other protective devices visible from outside a Home shall be of a type as approved in writing by the ACC, shall match the color or trim of a Home and be of a neutral color. Any approval by the ACC shall not be deemed an endorsement of the effectiveness of hurricane shutters or other protective devices. Panel, accordion, and roll-up style hurricane shutters may not be installed or closed except forty-eight (48) hours prior to the expected arrival of a hurricane and must be removed or opened within seventy-two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise.

8.19 Artificial Vegetation. Except as otherwise permitted by Florida law, no artificial grass, plants, or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Lot, unless approved by the ACC.

8.20 Laundry. Subject to the provisions of section 163.04, Florida Statutes, to the extent applicable, no rugs, mops, or laundry of any kind, or any other similar type article, shall be shaken, hung, or exposed so as to be visible outside the Home or Lot. Clotheslines or clothes poles may be installed in the rear of a Lot so long as it is not visible from the Common Areas or an adjoining Lot; provided, that, any such clothesline or clothes pole shall be removed when it is not in use as a clothesline or clothes pole.

8.21 Satellite Dishes and Antennae. Except as may be installed by the Declarant or the Association, no antennas, satellite dishes, aerials, or other devices for communication or transmission of current shall be placed on any portion of the Common Areas or any property owned by the Association. Subject to the Federal Telecommunications Act of 1996, as amended from time to time, satellite dishes approved by the ACC to be installed on a Lot or other area in the exclusive control of the Owner shall be no greater than one (1) meter in diameter. In no event, however, shall

lines or wires for communication or the transmission of current be constructed, placed, or permitted to be placed within the Common Areas unless the same shall be installed by the Declarant or the Association for the common use of all Owners. Any installation of communication equipment by an Owner shall not relieve such Owner from payment of any portion of Assessments. The ACC may, from time to time, adopt reasonable standards regarding the visibility and location of permissible antennas, satellite dishes, or any other communication equipment to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation.

8.22 Signs and Flags. Except as otherwise provided in section 720.304(2), Florida Statutes, no flags or flag poles are permitted without the prior written approval of the ACC. No sign, display, poster, banner, advertisement, notice, or other lettering shall be exhibited, displayed, inscribed, painted, hung, or affixed in or upon any Home, Lot, or vehicle, that is visible from the Common Areas or another Lot.

8.23 Sports Equipment. No recreational, playground, or sports equipment, either permanent or temporary, including, without limitation, basketball backboards and hoops, skateboard ramps, or play structures, shall be installed, constructed, or placed within or about any portion of a Lot without the prior written consent of the ACC. Such approved equipment shall be located at the rear of the Lots or on the inside portion of corner Lots within the setback lines. Tree houses or platforms of a similar nature shall not be constructed on any part of a Lot. The Board may adopt, amend, or rescind reasonable rules and regulations regarding the use of any recreational, playground, or sports equipment, including, without limitation, times during which basketball hoops and/or play structures may be used.

8.24 Swimming Pools. No above-ground pools shall be permitted on any Lot. All in-ground pools, hot tubs, spas, and appurtenances installed shall require the prior written approval of the ACC. The design must incorporate, at a minimum, the following: (i) the composition of the material must be thoroughly tested and accepted by the industry for such construction; (ii) any swimming pool constructed on any Lot shall have an elevation at the top of the pool of not over two feet (2') above the natural grade unless otherwise approved by the ACC; (iii) any swimming pool constructed on any Lot must be constructed with the necessary safety barriers and barrier gates as required by Florida law. Unless installed by the Declarant, no diving boards, slides, or platforms shall be permitted without ACC approval. All pools shall be adequately maintained and chlorinated (or cleaned with similar treatment). Under no circumstances may chlorinated water be discharged onto adjacent Lots, streets, roadways, or into any retention/detention areas within the Property or adjoining properties.

8.25 Visibility on Corners. Notwithstanding anything to the contrary, no obstruction to visibility at street intersections shall be permitted and such visibility clearances shall be maintained as required by the Board and governmental agencies. No vehicles, objects, fences, walls, hedges, shrubs, plantings, or other Improvements shall

be placed or permitted on a corner Lot where such obstruction would create a traffic problem.

8.26 Wells and Septic Tanks. No individual wells or septic tanks are permitted on any Lot.

8.27 Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window coverings, as determined by the Board, and no newspaper, aluminum foil, sheets, cardboard, towels, or other temporary window treatments are permitted. No security bars shall be placed on the windows of any Home without prior written approval of the ACC. No awnings, canopies, or shutters shall be affixed to the exterior of a Home without the prior written approval of the ACC. No reflective tinting or mirror finishes on windows shall be permitted without the prior written approval of the ACC.

8.28 Solar Panels. To the extent not prohibited by law, solar collectors shall not be visible from the road on which the Home is situated. The ACC may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within forty-five degrees (45°) east or west of due south if such determination does not impair the effective operation of the solar collectors.

8.29 Air Conditioning Units. Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are permitted. All exterior air conditioning units, pumps, electric, mechanical, and all other equipment must be screened from view by landscaping or other materials as approved in writing by the ACC, and in any event, no exterior air conditioning units or other equipment shall be placed in the front of a Home.

8.30 Control of Contractors. Except for direct services which may be offered to the Owners (and then only according to the Rules and Regulations relating thereto as adopted from time to time), no person other than an Association director or officer or the Association's manager shall direct, supervise, or in any manner attempt to assert any control over any contractor of the Association.

8.31 Cooking. No cooking shall be permitted, nor shall any goods or beverages be consumed, on the Common Areas, except in areas designated for those purposes by the Association. The Board shall have the right to prohibit or restrict the use of grills or barbecue facilities throughout the Property.

8.32 Responsibility for Personal Property and Persons. Each Owner assumes sole responsibility for the health, safety, and welfare of such Owner and the residents, tenants, guests, and invitees of the Owner's Lot, including, without limitation, minors, and the personal property of all of the foregoing. No person shall cause or permit any damage to the Common Areas or any other property for which the Association is responsible or interfere with the rights of other Owners hereunder. Neither the Declarant nor the Association shall be responsible for any loss or damage to any personal property brought

into, used, placed, or left within or upon the Common Areas, including, without limitation, the Recreational Facilities (if any). Any person using the Common Areas, including, without limitation, engaging in any contest, game, function, exercise, competition, or other activity, shall do so at their own risk. By the use of the Common Areas, each Owner, tenant, resident, guest, and invitee agrees to indemnify and hold harmless the Association Parties and the Declarant Parties from and against all Losses incurred by or asserted against any of the Association Parties or the Declarant Parties as a result of or in any way related to use of the Common Areas by such persons. Should any Owner, tenant, resident, guest, or invitee bring suit against any of the Association Parties or the Declarant Parties for any Losses and fail to obtain judgment therein against the Association Parties or the Declarant Parties, the Owner, tenant, resident, guest, or invitee, as applicable, shall be liable to the Association Parties or the Declarant Parties, as applicable, for all Legal Fees incurred by the Association Parties or the Declarant Parties, as applicable, in the defense of such suit.

8.33 Activities. The Common Areas shall not be used by Owners, tenants, residents, guests, or invitees for any society, party, religious, political, charitable, fraternal, civil, fund-raising, or other purposes without the prior written consent of the Board, which consent may be withheld for any reason.

8.34 Association Personal Property. Personal property of the Association used in connection with the Community and/or the Common Areas shall not be removed from the location in which it is placed or from the Common Areas without the prior written consent of the Board.

8.35 Master Association Rules and Regulations. The Owners, tenants, residents, guests, and invitees shall additionally abide by the use restrictions, rules, and regulations as set out in the Master Governing Documents.

8.36 Declarant Exemption. The use restrictions and limitations set forth in this Article VIII, the Architectural Guidelines, and the Rules and Regulations shall not apply to the Declarant or to any property owned by the Declarant and shall not be applied in a manner that would prohibit or restrict the development or operation of the Property by the Declaration or adversely affect the interests of the Declarant. The Declarant shall specifically be exempt from any rules, restrictions, resolutions, or other actions of the Board or of the Members which interfere in any manner whatsoever with the Declarant's plans for development, construction, sale, lease, or use of the Property and to the Improvements thereon. The Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Article VIII in addition to whatever remedies at law to which it might be entitled. Without limiting the foregoing, the Declarant shall have the right to: (i) develop and construct Lots, Homes, Common Areas, and Improvements thereon within the Property, and make any additions, alterations, or changes thereto; (ii) maintain sales offices for the sale, re-sale, and/or lease of Lots and of properties located outside of the Property, general offices, and construction operations within the Property; (iii) place, erect, or construct portable, temporary, or accessory buildings or structures within the Property for sales, construction storage, or other

purposes deemed suitable by the Declarant; (iv) temporarily deposit, dump, or accumulate materials, trash, refuse, debris, and rubbish in connection with the development or construction of any portion of the Property; (v) post, display, inscribe, or affix to any portion of the Property, signs and other materials used in developing, constructing, selling, or promoting the sale of any portion of the Property; (vi) excavate fill from any retention/detention areas or water bodies within and/or contiguous to the Property by dredge or dragline, store fill within the Property, and remove and/or sell excess fill; (vii) grow or store plants and trees within, or contiguous to, the Property and use and/or sell excess plants and trees; (viii) use construction vehicles in connection with construction, improvement, installation, or repair by the Declarant, or its agents, within the Property; and (ix) undertake all activities which, in the sole opinion of the Declarant, are necessary or convenient for the development and sale of any portion of the Property.

## **ARTICLE IX** **INSURANCE**

### **9.1     Common Areas.**

9.3.1 Coverages. The Association shall purchase and maintain the following insurance coverages subject to the following provisions:

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

(ii)    Liability Insurance. General liability insurance coverage insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance, repair, replacement, and use of the Common Areas and any Improvements thereon, and for any other risks insured against by such policies with such limits deemed appropriate by the Board. Such policies must provide that they may not be cancelled or substantially modified by any party, without at least thirty (30) days' prior written notice to the Declarant (until the Community Completion Date) and the Association.

(iii)   Flood Insurance. If the Common Areas are located within an area which has special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Association may maintain insurance coverage in appropriate amounts, available under NFIP, for all buildings and other insurable property within any portion of the Common Areas located within a designated flood hazard area.



(iv) Fidelity Coverage. Adequate fidelity coverage shall be maintained in accordance with the By-Laws.

(v) Directors and Officers Liability Insurance. Adequate directors' and officers' liability insurance in such amounts and with such provisions as approved by the Board.

(vi) Additional Insurance. Such other insurance coverage as deemed appropriate by the Board, from time to time, including, without limitation, worker's compensation insurance and insurance for lawsuits related to employment contracts in which the Association is a party, in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Common Areas and any Improvements now or hereafter located thereon or in the best interests of the Association and/or its officers and directors. All coverage obtained by the Association shall cover all activities of the Association and all properties maintained by the Association, whether or not the Association owns title thereto.

9.3.2 Cost of Payment of Premiums and Deductibles. Except as otherwise provided herein, the costs of all insurance maintained by the Association, and any other fees or expenses incurred that may be necessary or incidental to carry out the provisions hereof, are Common Expenses.

9.3.3 Condemnation. In the event the Association receives any award or payment arising from the taking of any Common Areas or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and Improvements thereon to the extent deemed advisable by the Board, and the remaining balance thereof, if any, shall then be distributed pro rata to the Owners and Lenders as their respective interests may appear.

9.2 Single-Family Lot Insurance. Each Owner of a Single-Family Lot shall be required to obtain and maintain insurance in an amount equal to the then full replacement cost of all insurable Improvements on such Owner's Single-Family Lot, less a reasonable deductible. Such insurance shall be sufficient for necessary repair or reconstruction work and shall cover the costs to demolish a damaged Home, as applicable, remove the debris, and to re-sod and landscape land comprising the Single-Family Lot. Upon the request of the Association, each Owner of a Single-Family Lot shall be required to supply the Board with evidence of insurance coverage on such Owner's Single-Family Lot and Home which complies with the provisions of this Section 9.2. Without limiting any other provision of this Declaration or the powers of the Association, the Association shall specifically have the right, without obligation, to bring an action to require an Owner to comply with the Owner's obligations hereunder. The Association, its directors, officers, committee members, agents, and employees, shall not be liable to any Owner should an Owner fail for any reason whatsoever to obtain insurance coverage on the Owner's Single-Family Lot and Home.

9.3 Townhome Lot Insurance. As may be reasonably determined by the Board, from time to time not less than one hundred twenty (120) days prior to the expiration of then-existing coverage, due to coverage availability, market conditions, and other relevant factors, insurance upon Townhome Lots shall be obtained in either manner set forth below. Any change in the manner of obtaining insurance coverage for Townhome Lots shall become effective sixty (60) days after the recording of a certificate in the Official Records of the County providing notice of such change under this Section. Within thirty (30) days after recording said certificate, the Association shall provide each Owner with written notice of such change to provide a reasonable amount of time for the Owners to comply with such change. Upon the request of the Association, each Owner of a Townhome Lot shall be required to supply the Board with evidence of insurance coverage on such Owner's Townhome Lot and Home which complies with the provisions of this Section 9.3. Without limiting any other provision of this Declaration or the powers of the Association, the Association shall specifically have the right, without obligation, to bring an action to require an Owner to comply with the Owner's obligations hereunder. The Association, its directors, officers, committee members, agents, and employees, shall not be liable to any Owner should an Owner fail for any reason whatsoever to obtain insurance coverage on the Owner's Townhome Lot and Home. The costs of all insurance maintained by the Association in accordance with this Section 9.3, and any other fees or expenses incurred that may be necessary or incidental to carry out the provisions hereof, are Common Expenses of the Association allocated among the Townhome Lots only, and all Owners of Townhome Lots within each building containing Homes constructed on Townhome Lots shall share said fees, costs, and expenses equally as reasonably determined by the Board.

9.3.1 Coverage Option One. The Association shall purchase and maintain property and casualty insurance in an amount equal to the then full replacement cost, exclusive of items normally excluded from such coverage, of all Shared Roofing now or hereafter located upon the Townhome Lots, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Shared Roofing in developments similar to the Community in construction, location, and use. Each Owner of a Townhome Lot shall be required to obtain and maintain insurance in an amount equal to the then full replacement cost of all other insurable Improvements on such Owner's Townhome Lot, less a reasonable deductible. Such insurance shall be sufficient for necessary repair or reconstruction work and shall cover the costs to demolish a damaged Home, as applicable, remove the debris, and to re-sod and landscape land comprising the Townhome Lot.

9.3.2 Coverage Option Two. The Association shall purchase and maintain property and casualty insurance in an amount equal to the then full replacement cost, exclusive of items normally excluded from such coverage, of all Improvements located upon the Townhome Lots, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to said Improvements in developments similar to the Community in construction, location, and use. Such insurance shall be sufficient for necessary repair or reconstruction work and shall cover the costs to demolish a damaged Home, as applicable, remove the debris, and to re-sod

and landscape land comprising the Townhome Lot. Notwithstanding the foregoing, the coverage purchased and maintained by the Association shall exclude all personal property within the Townhouse Lot, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the Townhouse Lot. Each Owner of a Townhome Lot shall be required to obtain and maintain insurance in an amount equal to the then full replacement cost of all the foregoing items, less a reasonable deductible.

9.4 Declarant. Prior to Turnover, the Declarant shall have the right, at the Association's expense, to provide insurance coverage under its master insurance policy in lieu of any of the foregoing. Until the Community Completion Date, the Declarant shall be named as "additional insured" by endorsement on all policies obtained by the Association. Notwithstanding anything to the contrary, the Declarant Parties shall not be liable to any Owner or any other person should the Association fail for any reason whatsoever to obtain insurance coverage for the Common Areas or should the Owner fail for any reason whatsoever to obtain insurance coverage for their Lot.

9.5 Insurance Trustee. The Board may, in its sole discretion, appoint itself, a Florida or national bank with trust powers, or such other person or entity, in the Board's sole discretion, as insurance trustee hereunder. If the Board fails or elects not to appoint an insurance trustee, the Association will perform directly all obligations imposed upon the insurance trustee by this Declaration. Fees and expenses of any insurance trustee shall be Common Expenses.

9.6 Association as Agent. The Association is irrevocably appointed agent for each Owner of any interest relating to the Common Areas to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

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

**ARTICLE X**  
**DAMAGE TO OR DESTRUCTION OF THE PROPERTY**

10.1 Damage to or Destruction of a Lot. In the event a Lot, or any portion thereof, is damaged or destroyed by fire, flood, or other casualty, the Owner of such Lot shall do one (1) of the following: (i) the Owner shall commence reconstruction and/or repair of the Lot ("Required Repair"), or (ii) the Owner shall, to the extent permitted by law, tear the Home on the Lot down, remove all the debris, and re-sod and landscape the Lot as required by the ACC ("Required Demolition"). The Required Repair or the Required Demolition must be: (i) approved by the ACC; (ii) commenced within ninety (90) days after damage or destruction of the Improvements on the Single-Family Lot; and (iii) conducted in a continuous, diligent, and timely manner.

10.1.1 Each Owner acknowledges that the issuance of a building permit or a demolition permit in no way shall be deemed to satisfy the requirements set forth herein, which are independent of, and in addition to, any requirements for completion of work or progress requirements set forth in applicable statutes, zoning codes, and/or building codes.

10.1.2 Notwithstanding anything to the contrary herein, to the extent that insurance coverage obtained and maintained by the Association covers casualty damage to or destruction of a Lot or any Improvement thereon, the Owner of such damaged or destroyed Lot shall not perform any activities that would negate such coverage or impair the availability of such coverage. Any insurance proceeds received by the Association for such casualty damage to or destruction of a Lot or any Improvement thereon shall be applied to the repair or replacement of the property so covered if the Required Repair is undertaken by the Owner of the Lot or shall be applied to the tear down and removal of the property so covered if the Required Demolition is undertaken by the Owner of the Lot.

10.1.3 The Association shall have the right to inspect the progress of the Required Repair or the Required Demolition, as applicable. In addition to all other remedies available to the Association, the Association shall have the right, without obligation, to bring an action against an Owner who fails to comply with the requirements of this Section 10.1. Without limitation, if an Owner refuses or fails, for any reason, to perform the Required Repair or the Required Demolition, then the Association, in the Board's sole and absolute discretion, is hereby irrevocably authorized by such Owner to perform the Required Repair or the Required Demolition on such Owner's behalf. The Association shall have the absolute right to perform the Required Demolition to a Home pursuant to this Section 10.1.3 if any contractor certifies in writing to the Association that such Home cannot be rebuilt or repaired without demolition. The costs and expenses of any Required Repair or the Required Demolition, as applicable, conducted by the Association in accordance with this Section 10.1.3, including, without limitation, any costs and expenses incurred with the management and oversight of any such Required Repair or Required Demolition performed by the Association, shall be levied against the Lot and the Owner thereof as an Individual Assessment. The Association Parties shall not be

liable to any person if the Association does not enforce the rights given to the Association in this Section 10.1.

10.2 Damage to or Destruction of the Common Areas. In the event of damage to or destruction of the Common Areas, or any portion thereof, the Association shall be responsible for repair and reconstruction after casualty and shall be commenced within ninety (90) days after damage or destruction of the Improvements on the Common Areas. Any repair or reconstruction of improvements hereunder shall be substantially in accordance with the plans and specifications of the original Improvement, or as the Improvement was last constructed, subject to modification to conform to the then current governmental regulation(s). In the event insurance proceeds are insufficient to effect total repair or reconstruction of the Common Areas, or any portion thereof, damaged or destroyed by casualty, the Association may raise the necessary funds in excess of insurance proceeds by levying Special Assessments against all Owners.

10.3 Standard of Work. The standard for all demolition, reconstruction, and other work performed as required by this Article X shall be in accordance with the Architectural Guidelines and any other standards established by the Board with respect to any casualty that affects all or a portion of the Property.

## **ARTICLE XI**

### **ASSESSMENTS AND COLLECTION**

11.1 Covenant to Pay Assessments. In order to fulfill the terms, provisions, covenants, conditions, restrictions, reservations, regulations, burdens, liens, and easements herein contained and to maintain, operate, and preserve the Common Areas for the use and benefit of the Owners, tenants, residents, guests, and invitees, there is hereby imposed upon each Lot and each Owner, the affirmative covenant and obligation to pay to the Association, commencing from and after the first conveyance of a Lot from the Declarant as evidenced by the recordation of a deed in the County's Official Records, all Assessments as set forth herein, which Assessments include, without limitation, General Assessments, Special Assessments, and Individual Assessments. Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title in any manner (whether or not so expressed in the deed), including, without limitation, any purchaser at a judicial sale, shall be deemed to have covenanted and agreed to pay to the Association all Assessments or charges as are fixed, established, and collected from time to time by the Association and that each Lot and the Owners thereof are jointly and severally liable for their portion of Assessments. Any individual or entity, unless otherwise set out herein, acquiring title to a Lot shall be personally liable, jointly and severally, for any unpaid sums due and payable to the Association that are attributed to the Lot, including, without limitation, any unpaid Assessments, late fees, interest, and any Legal Fees with respect to such Lot. Each Owner is jointly and severally liable with the previous owner of the Lot for all unpaid Assessments that came due up to the time of transfer of title.

11.2 Establishment of Lien. Each Assessment, and other charges and fees set forth herein, together with interest thereon, administrative late fees, and costs of collection, including, without limitation, all Legal Fees, shall be a charge and continuing lien in favor of the Association encumbering the Lot and all personal property located thereon owned by the Owner against whom each such Assessment is made. The lien established by this Section 11.2 shall relate back to the date of recording this Declaration among the County's Official Records.

11.3 Master Association Assessments. Assessments levied and imposed upon the Owners and the Lots by the Master Association in accordance with the Master Declaration shall be collected by the Association, on behalf of all Owners and all Lots. The Association shall thereafter remit such Master Association assessments to the Master Association. The duty of the Association to pay the Master Association assessments on behalf of all Owners and all Lots shall not be deferred or relieved by any non-payment of Master Association assessments by any Owner. Any Master Association assessment for which the Association is required to pay in the event of Owner non-payment shall be assessable against such non-paying Owner and such Owner's Lot as an Individual Assessment.

11.4 General Assessments. General Assessments levied by the Association shall be used for, among other things, the purpose of operating and maintaining the Association and the Property, including, without limitation, the Common Expenses. General Assessments shall be established by the adoption of the annual budget as further set forth in the By-Laws and subject to this Section 11.4. The Board may, from time to time, determine when General Assessments will be collected by the Association (i.e., monthly, quarterly, or annually). Unless otherwise established by the Board, General Assessments shall be collected in advance on a monthly basis. The Board shall fix the date of commencement and the amount of General Assessments for each fiscal year of the Association at least thirty (30) days in advance of the commencement of the fiscal year for which the annual budget is adopted. Written notice of General Assessments shall thereupon be sent to every Owner subject thereto at least fifteen (15) days prior to payment of the first installment thereof. In the event no such notice of a change in General Assessments for the upcoming fiscal year is given, the amount payable shall continue to be the same as the amount payable for the previous fiscal year, until changed in the manner provided for herein. The amount of General Assessments (and applicable installments) may be changed at any time by the Board from that originally stipulated or from any other General Assessments that are in the future adopted. The General Assessments for any year shall be levied for the fiscal year (to be reconsidered and amended, as necessary), but the amount of any revised General Assessment to be levied during any period shorter than a full fiscal year shall be in proportion to the number of months (or other appropriate installments) remaining in such fiscal year.

11.4.1 Reserves. The Declarant does not and will not create Statutory Reserves. The Board may, but shall have no obligation to, include in the annual budget Non-Statutory Reserves, including, without limitation, reserves for maintenance, repair, and replacement of the Recreational Facilities. Reserves shall be payable in such manner

and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Reserves are established. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Reserves or any portion thereof through the Community Completion Date. Therefore, in the event Statutory Reserves are later created by the Owners in accordance with section 720.303(6)(d), Florida Statutes, or in the event the Board creates Non-Statutory Reserves, the Declarant shall not be responsible for the payment of any such Reserves through the Community Completion Date or to such other date provided by law, whichever is longer.

11.4.2 Allocation. Except as provided herein with respect to “Vacant Lots” and “Spec Lots” (as such terms are hereinafter defined) and with respect to the costs to be incurred by the Association to maintain certain Improvements on the Lots, as further set forth below, General Assessments imposed by the Association shall be imposed against all Lots equally.

11.4.2.1 Vacant Lots and Spec Lots. Subject to the rights of the Declarant pursuant to Section 11.11 below, any Lot that does not have a Home constructed thereon as evidenced by a Certificate of Occupancy (a “Vacant Lot”) and any Lot that has a Home constructed thereon but is owned by the Declarant (a “Spec Lot”) shall be assessed at ten percent (10%) of the General Assessment, less Reserves (if any), assessed to Lots with Homes constructed thereon and owned by Owners. In accordance with section 720.308(1)(a), Florida Statutes, this lesser General Assessment amount reflects that Vacant Lots and Spec Lots will not benefit from maintenance and other services provided by the Association. At such time as a Home is conveyed by the Declarant to an Owner, then the Spec Lot shall be deemed a fully assessed Lot and shall be responsible for one hundred percent (100%) of General Assessments, except as otherwise provided herein. Notwithstanding any other provision to the contrary, Vacant Lots and Spec Lots shall not be responsible for Reserves or Individual Assessments and to the extent permitted by law, Special Assessments, as further set forth below. Assessments shall commence as to each Owner on the day of the conveyance of title of a Home to such Owner. Each Owner agrees that so long as it does not pay more than the required amount, they shall have no grounds upon which to object to either the method of payment or nonpayment by other Owners or the Declarant of any sums due.

11.4.2.2 Lot Maintenance. Due to the specific level of maintenance and other services provided by the Association to Single-Family Lots and to Townhome Lots in accordance with Article VII of this Declaration, the costs to be incurred by the Association to maintain the Single-Family Lots and Townhome Lots will differ. Therefore, in accordance with section 720.308, Florida Statutes, the costs to be incurred by the Association for maintenance upon the Lots shall be allocated among the Single-Family Lots and Townhome Lots based upon the specific level of maintenance services received by each respective Lot type. Each Lot within each respective Lot type shall share equally the landscaping maintenance costs allocated to such respective Lot type.

**11.5 Special Assessments.** The Association, by and through the Board, shall have the right to levy Special Assessments, from time to time, against all Owners and Lots or one (1) or more Lots or one (1) or more Owners to the exclusion of other Lots and Owners for any of the following purposes: (i) the cost of reconstructing, replacing, or improving the Common Areas, or any portion thereof or Improvements thereon, or any other portion of the Property for which the Association is responsible; (ii) any casualty loss affecting the Association, the Common Areas, or any portion thereof or Improvements thereon, or any other portion of the Property for which the Association is responsible to the extent such loss exceeds the insurance proceeds, if any, receivable by the Association as a result of such loss; (iii) any judgment against the Association (or against any director or officer if and to the extent such director or officer is entitled to be indemnified by the Association therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Association as a result of such judgment, or an agreement by the Association (or such director or officer to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such director or officer) to the extent such settlement exceeds the insurance proceeds, if any, received by the Association as a result of such settlement agreement; (iv) Legal Fees incurred by the Association in connection with litigation (whether incurred for the preparation, filing, prosecution, or settlement thereof or otherwise), except those Legal Fees incurred by the Association in connection with the collection of Assessments or as may be the subject of an Individual Assessment; and (v) in the event of a deficit in the Association's operating account(s) resulting from inadequate payment of General Assessments or the Association's expenditures exceed the amount(s) budgeted for the then-current fiscal year. Prior to Turnover, Special Assessments may be levied by the Association with the approval of (i) a majority of the entire Board; and (ii) fifty-one percent (51%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained. After Turnover, no vote of the Owners shall be required for the levy of Special Assessments, unless such Special Assessment is made for a nonessential, discretionary Improvement. Until the Community Completion Date, no Special Assessments shall be imposed without the written consent of the Declarant. Special Assessments levied hereunder shall be due within the time specified and in the amount specified by the Board in the action levying such Special Assessment. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Special Assessments through the Community Completion Date to the extent permitted by law. If, however, the Declarant is held responsible for payment of any Special Assessment prior to the Community Completion Date, the Developer shall only be responsible for payment of such Special Assessment on Vacant Lots and Spec Lots at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. Special Assessments shall be subject to all of the applicable provisions of this Article XI including, without limitation, interest charges, administrative late fees, lien filing, and foreclosure procedures.

**11.6 Individual Assessments.** The Association, by and through the Board, shall have the right to levy Individual Assessments, from time to time, against one (1) or more Lots or one (1) or more Owners to the exclusion of other Lots and Owners for any of the following purposes: (i) the costs, fees, and expenses incurred by the Association for the



repair or replacement of damage to the Common Areas, or any portion thereof or Improvements thereon, or any other portion of the Property for which the Association is responsible caused by the misuse, negligence, or other action or inaction of an Owner, resident, tenant, guest, or invitee; (ii) the costs, fees, and expenses incurred by the Association for the maintenance, repair, or replacement to a Lot and/or Home conducted by the Association in the event an Owner fails to properly maintain, repair, or replace their Lot or Home in a manner required by this Declaration; (iii) charges for costs and expenses of the Association which are not Common Expenses but which are attributable to a specific Lot or Lots and which are designated as a special charge, including, but not limited to, Legal Fees attributable to a specific Lot or Lots and non-payment of Master Association assessments; (iv) "Use Fees" (as such term is hereinafter defined); and (v) other fines, expenses, and charges incurred against particular Lots and/or Owners to the exclusion of others as may be contemplated in this Declaration. Individual Assessments levied hereunder shall be due within the time specified and in the amount specified by the Board in the action levying such Individual Assessment. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Individual Assessments through the Community Completion Date. Individual Assessments shall be subject to all of the applicable provisions of this Article XI, including, without limitation, interest charges, administrative late fees, lien filing, and foreclosure procedures.

11.7 Use Fees. The Association shall have the authority to charge any specific fees, dues, or charges to be paid for any special services, for any special or personal use of the Common Areas, or to reimburse the Association for the expenses incurred in connection with such service or use ("Use Fees"). Use Fees are assessable against the Lot and the Owner as an Individual Assessment. The Association may establish, from time to time, by resolution, rule or regulation, or by delegation to an officer or agent, including, a professional management company, Use Fees. The sums established shall be payable by the Owner utilizing the service or facility as determined by the Association.

11.8 Designation of Assessments. The designation of Assessment type and amount shall be made by the Board. Prior to the Community Completion Date, any such designation must be approved in writing by the Declarant. Such designation may be made on the budget prepared by the Board. The designation shall be binding upon all Owners.

11.9 Initial Contribution. The first purchaser of each Home from the Declarant, at the time of closing of the conveyance from the Declarant to the purchaser, shall pay to the Declarant an initial contribution in the amount of one (1) quarter's General Assessments at the time of closing (the "Initial Contribution"). The funds derived from the Initial Contributions shall be used at the discretion of the Declarant for any purpose, including, without limitation, to offset and lessen the Declarant's funding obligations, support costs, and start-up costs.

11.10 Resale Contribution. For each conveyance of a Home by an Owner to a purchaser after the Home has been conveyed by the Declarant, there shall be collected from the purchaser at the time of closing of the conveyance from the Owner to the

purchaser a resale contribution in the amount of one (1) quarter's General Assessments at the time of closing payable to the Association (the "Resale Contribution"). The funds derived from the Resale Contributions are income to the Association and shall be used at the sole discretion of Board for any purpose, including, without limitation, future and existing capital improvements, Common Expenses, support costs, and start-up costs. The Resale Contribution shall not be deemed advance payment of Assessments, nor shall Resale Contribution have any effect on future Assessments. The Resale Contribution shall not be applicable to conveyances from the Declarant.

11.11 Declarant's Funding Obligations. Each Owner acknowledges and agrees that because General Assessments, Special Assessments, and Reserves (if any) are allocated in accordance with this Article XI, it is possible the Association may collect more or less than the amount budgeted for Common Expenses. Prior to Turnover, the Declarant shall have the option, in its sole discretion, to: (i) pay any Common Expenses incurred by the Association that exceed the Assessments received from Owners and other receivables and income of the Association, including, without limitation, the Initial Contributions and Resale Contributions, late fees, and interest charges as set out in section 720.308(1)b), Florida Statutes (the "Deficit"), or (ii) pay General Assessments on Vacant Lots and Spec Lots at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. Notwithstanding any other provision of this Declaration to the contrary, the Declarant shall never be required to (i) pay Assessments if the Declarant has elected to fund the Deficit instead of paying Assessments on Vacant Lots or Spec Lots; (ii) pay Special Assessments, Individual Assessments, or Reserves; and/or (iii) fund any deficit caused by Owners who have failed to pay Assessments and/or any other monetary obligation due to the Association and/or the Master Association. The Declarant shall elect annually whether it will pay General Assessments or fund the Deficit. Notwithstanding the foregoing, the Declarant may at any time give thirty (30) days' prior written notice to the Association changing its funding obligation election. Any of the Declarant's funding obligations to the Association may be satisfied in the form of monetary payment or by "in kind" contributions of services or materials, or by any combination of the foregoing. The Deficit, if any, to be paid by the Declarant pursuant to this Section 11.11 shall be determined by looking at the Declarant control period as a whole, without regard to quarterly, annual, or any other accounting or fiscal periods and without regard to intraperiod allocations. In that regard, in the event it is determined at Turnover that there is a Deficit and the Declarant has previously advanced funds to the Association in excess of the Deficit during the Declarant control period, the Declarant shall be entitled to the immediate repayment from the Association of the amount of funds advanced by the Declarant in excess of the Deficit. After Turnover, the Declarant shall pay General Assessments on Vacant Lots and Spec Lots at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. To the extent not prohibited by law, the Declarant shall not be responsible for any Reserves, Special Assessments, or Individual Assessments, even after Turnover; but, if the Declarant is held responsible for any of the foregoing prior to the Community Completion Date, the Developer shall only be responsible for payment of same at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. Upon transfer of title of a Lot owned by the Declarant, the Lot shall be assessed in the amount established for Lots owned by Owners other than the

Declarant, prorated as of and commencing with, the month following the date of transfer of title. THE DECLARANT DOES NOT PROVIDE A GUARANTEE OF THE LEVEL OF ASSESSMENTS. AS SUCH, THERE IS NO MAXIMUM GUARANTEED LEVEL OF ASSESSMENTS DUE FROM OWNERS. AS SUCH, THE PROVISIONS OF SECTIONS 720.308(2) THROUGH 720.308(6), FLORIDA STATUTES, ARE NOT APPLICABLE TO THE DECLARANT OR THE CALCULATION OF THE DEFICIT OR OTHER AMOUNTS DUE FROM THE DECLARANT.

11.12 Declarant Subsidy of the Association's Budget. Prior to the Community Completion Date and/or based on the number of Lots owned by Owners, the Declarant may seek to keep Assessments lower than they otherwise may be by subsidizing the Association's budget by making voluntary contributions in amounts determined in the Declarant's sole discretion. The amount of any such voluntary contributions may vary from time to time or may be discontinued and recommenced by the Declarant from time to time. The determination to subsidize the Association's budget, the amount of any such voluntary contribution, the discontinuance and/or commencement of any such voluntary contributions shall all be made by the Declarant, without obligation and in the Declarant's sole discretion. Each Owner shall be solely responsible to review the Association's budget then in effect to determine if and to what extent the Declarant is making any voluntary contributions to subsidize the budget and thus lower the Assessments payable by the Owners that would otherwise be higher based on the Common Expenses. Any voluntary contribution made by the Declarant may be applied to offset the Deficit remaining at Turnover.

11.13 Surplus. Any surplus Assessments collected by the Association may be allocated towards the next year's Common Expenses or, in the Board's sole and absolute discretion, to the funding of Reserves, whether or not budgeted. Under no circumstances shall the Association be required to pay surplus Assessments to Owners.

11.14 Estoppel Certificates. No Owner shall sell or convey such Owner's interest in a Lot unless all sums due to the Association have been paid in full and an estoppel certificate shall have been received from the Association by such Owner. The Association shall prepare and maintain a ledger noting Assessments due from each Owner. The party requesting the estoppel certificate shall be required to pay the Association a reasonable fee for the preparation and delivery of such estoppel certificate in accordance with section 720.30851, Florida Statutes.

11.15 Non-Use. No Owner may be exempt from personal liability for Assessments duly levied by the Association. No Owner may release the Lot owned by such Owner from the liens and charges hereof either by waiver or suspension of the use and enjoyment of the Common Areas and Improvements thereon or by abandonment of such Owner's Lot, by refusal to provide the Association with access to the Owner's Lot for the purpose of performing maintenance upon such Lot in accordance with this Declaration, or by voluntarily undertaking any maintenance upon such Lot which is otherwise the responsibility of the Association in accordance with this Declaration.

11.16 Payment of Other Obligations. Each Owner shall pay all taxes and obligations relating to its Lot which, if not paid, could become a lien against the Lot that is superior to the lien for Assessments created by this Declaration. A Lender shall give written notice to the Association if the mortgage held by such Lender is in default. The Association shall have the right, but not the obligation, to cure such default within the time periods provided in the mortgage held by such Lender. In the event the Association makes such payment on behalf of an Owner, the Association shall, in addition to all other rights reserved herein, be subrogated to all of the rights of the Lender. All amounts advanced on behalf of an Owner pursuant to this Section 11.16 shall be assessable against the Owner and the Lot as an Individual Assessment.

11.17 Subordination of the Lien to Mortgages. The lien for Assessments shall be subordinate to a bona fide first mortgage held by a Lender on any Lot recorded in the County's Official Records prior to the recordation of a claim of lien for unpaid Assessments hereunder. A Lender having a bona fide first mortgage, its successor or assignee, obtaining title to a Lot as a result of the foreclosure of its first mortgage or by deed in lieu of such foreclosure, shall hold title subject to the liability and lien of any Assessment becoming due after such foreclosure or deed in lieu of foreclosure. Further, any such Lender who acquires title to a Lot as the result of the foreclosure of its first mortgage or by deed in lieu of such foreclosure shall be liable for any past due Assessments or any other unpaid sums due and payable to the Association that are attributed to the Lot in such amounts as provided for in section 720.3085, Florida Statutes, so long as such Lender initially named the Association as a defendant in its foreclosure action. Any unpaid Assessments for which such Lender, its successor or assignee, obtaining title is not liable shall be reallocated and assessed to all Owners (including such Lender, its successor or assignee) as a part of the Common Expenses. Any other person or entity acquiring title to the Lot through the foreclosure of the first mortgage (or deed in lieu of such foreclosure) shall owe all sums due on the Lot, including, but not limited to, interest charges, administrative late fees, and Legal Fees, as any subsequent Owner owes in accordance with section 720.3085, Florida Statutes. Any sale or transfer pursuant to a foreclosure (or by deed in lieu of foreclosure) shall not relieve the Owner from liability for, nor the Lot from, the lien of any Assessments made thereafter.

11.18 Non-Payment of Assessments. If any Assessment is not paid within ten (10) days (or such other period of time established by the Board from time to time) after the due date, then the Association, by and through the Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

(i) Charge an administrative late fee in the maximum amount permitted by the Homeowners' Association Act.

(ii) Charge interest at the highest rate permitted by law on such Assessment from the date it becomes due until the date it is paid.

(iii) Accelerate Assessments then due for up to the next ensuing twelve (12) month period based upon the then existing amount and frequency of Assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the General Assessments, for all Special Assessments, Individual Assessments, and/or for all other amounts payable to the Association, even if levied after acceleration.

(iv) Suspend the rights to use the Common Areas and/or to vote on any matter on which Owners have the right to vote in accordance with Article XIV of this Declaration.

(v) Record a claim of lien against the Lot and file an action in equity to foreclose its lien at any time after the effective date thereof in the name of the Association and in like manner as a foreclosure of a mortgage on real property.

(vi) File an action at law to collect said Assessments, interest charges, administrative late fees, and all costs of collection thereof, including, without limitation, Legal Fees, without waiving any lien rights or rights of foreclosure of the Association.

(vii) Collect any monetary obligation due to the Association from the rents paid by any tenant occupying the Home if the Owner has leased the Home in accordance with section 720.3085, Florida Statutes.

11.19 Application of Payments. All payments received and applied by the Association on accounts shall be first applied to any interest charges accrued, then to any administrative late fees, then to any costs incurred in collection, including, without limitation, all Legal Fees, and then to the delinquent Assessment. The foregoing allocation of payments shall apply notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment, or any purported accord and satisfaction in any amount less than the total amount due to the Association.

11.20 Exemption. Notwithstanding anything to the contrary herein, governmental entities shall not be responsible for the payment of Assessments. Additionally, the Board shall have the right to exempt any portion of the Property from Assessments, provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes: (i) any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; and (ii) any of the Property exempted from ad valorem taxation by the laws of the State of Florida or exempted from Assessments by other provisions of this Declaration.

11.21 Collection by Declarant. If for any reason the Association shall fail or be unable to levy or collect Assessments, then in such event, the Declarant shall at all times have the right, but not the obligation, to: (i) advance such sums as a loan to the Association to bear interest and to be repaid as hereinafter set forth; and/or (ii) to levy and collect such Assessments by using the remedies available as set forth above, including, but not limited to, recovery of the costs of collection, including, without

limitation, Legal Fees. Such remedies shall be deemed assigned to the Declarant for such purposes. If the Declarant advances sums, it shall be entitled to immediate reimbursement, upon written demand, from the Association for such amounts so paid, plus interest thereon at the then-applicable Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection, including, without limitation, Legal Fees.

11.22 Rights to Pay Assessments and Receive Reimbursement. The Association, the Declarant, and any Lender shall have the right, but not the obligation, jointly and severally, and at their sole option, to pay any Assessments or other charges which are in default and which may or have become a lien or charge against any Lot or Home. If so paid, the party paying the same shall be subrogated to the enforcement rights of the Association with regard to the amounts due. If paid by the Declarant and/or a Lender, the Declarant and/or Lender, as applicable, will be entitled to immediate reimbursement, upon written demand, from the Association for such amounts so paid, plus interest thereon at the then-applicable Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection, including, without limitation, Legal Fees.

11.23 Mortgagee Right. Each Lender may request in writing to the Association that the Association notify such Lender of any default of the Owner of the Lot subject to the Lender's mortgage which default is not cured within thirty (30) days after the Association learns of such default. A failure by the Association to furnish notice to any Lender shall not result in liability of the Association because such notice is given as a courtesy to the Lender and the furnishing of such notice is not an obligation of the Association to the Lender.

## **ARTICLE XII**

### **ARCHITECTURAL CONTROL**

12.1 ACC Membership. The ACC shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions relating to the Community. The ACC shall be the Declarant, until the Community Completion Date. From and after the Community Completion Date, the ACC shall consist of a minimum of three (3) members, who must be Owners, appointed by the Board, and who shall serve at the pleasure of the Board. From and after the Community Completion Date, the Board shall have the right to change the number of members on the ACC, and to appoint, remove, and replace all members of the ACC.

12.2 ACC Authority. The ACC shall have the authority to approve or disapprove all Improvements and alterations and additions thereto throughout the Property conducted by Owners. The ACC shall have the right to evaluate all plans and specifications as to harmony of exterior design, landscaping, location of any proposed Improvements, relationship to surrounding structures, topography, and conformity with such other reasonable requirements as shall be adopted by the ACC. The ACC may condition its approval of plans and specifications as it deems appropriate and may require submission of additional plans and specifications or other information prior to approving or disapproving any plans and specifications submitted by an Owner. The ACC shall have

the power to promulgate such architectural guidelines, standards, rules, and regulations, including, without limitation, establishment of fees, as it deems necessary to carry out the provisions and intent of this Article XII. The ACC may impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning, or other local governmental codes. The ACC may, from time to time, adopt standards governing the performance or conduct of Owners, contractors, subcontractors, and their respective employees within the Community. The ACC may also promulgate requirements to be inserted in all contracts relating to construction within the Community, and each Owner shall include same therein. Prior to the Community Completion Date, any additional standards or modification of existing standards shall require the consent of the Declarant, which may be granted or denied in the Declarant's sole discretion.

12.3 Approval Required. No Improvements of any type or kind whatsoever shall be constructed, installed, erected, placed, removed, planted, painted, altered, modified, replaced, or changed on a Lot visible from the exterior of the Home until the plans and specifications showing the nature, kind, shape, height, materials, plans, color scheme, and location of the proposed work have been submitted to and approved in writing by the ACC. The ACC shall not, however, be responsible for reviewing any plans, specifications, or designs as to structural safety or conformance with building or other codes. Each Owner is solely responsible for compliance with all applicable building or other codes and ordinances of the Village, the County and any other governmental agency having jurisdiction and shall obtain all required building and other permits from all governmental authorities having jurisdiction. Nothing in this Declaration shall be interpreted as an exemption from compliance with all applicable building or other codes and ordinances of the Village, the County, and any other governmental agency having jurisdiction.

12.4 Architectural Guidelines. Each Owner and its contractors, subcontractors, and their employees shall observe, and comply with, the Architectural Guidelines that now or may hereafter be promulgated by the Declarant or the ACC. The Architectural Guidelines shall be effective from the date of adoption, shall be specifically enforceable by injunction or otherwise in addition to all other available remedies, and shall have the effect of covenants as if specifically set forth herein. The Architectural Guidelines shall not require any Owner to alter the Improvements approved by the ACC and previously constructed unless such Improvement is to be altered, changed, or modified by a subsequent request. Until the Community Completion Date, the Declarant shall have the right to approve and amend the Architectural Guidelines prior to their effectiveness, which approval, may be granted in its sole discretion. In accordance with section 720.3035, Florida Statutes, proposed architectural plans, Improvements, and such other similar requests, plans, specifications, and designs submitted by, or on behalf of, an Owner and, to the extent the Association has not adopted Architectural Guidelines or other published architectural guidelines and standards, then the standards to be used by the ACC in reviewing any such request shall be in accordance with the location, size, and appearance as already existing in the Property.

12.5 ACC Meetings. The ACC shall meet from time to time as may be necessary to perform its duties hereunder. The ACC may from time to time, by resolution unanimously adopted in writing, designate a 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 ACC, except the granting of variances pursuant to Section 12.8 below. In the absence of such a designation, a majority of the ACC shall constitute a quorum to transact business at any meeting, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ACC.

12.6 ACC Procedure. An Owner desiring to obtain the approval of the ACC shall observe the following:

12.6.1 The Owner shall submit an application to the ACC with respect to any proposed Improvement or alteration, modification, or change to an Improvement, together with the required application(s) and other fee(s) as established by the ACC, including, without limitation, a security deposit as set forth in Section 12.7 below. The applications shall include such information as may be required by the application form adopted by the ACC. The ACC may also require submission of samples of building materials and colors proposed to be used. At the time of such submissions, the Owner shall, if requested, submit to the ACC, such site plans and/or plans and specifications for the proposed Improvement, prepared and stamped by a registered Florida architect or residential designer, and landscaping and irrigation plans, prepared by a registered landscape architect or designer showing all existing trees and major vegetation stands and surface water drainage plan showing existing and proposed design grades, contours relating to the predetermined ground floor finish elevation, pool plans and specifications, and the times scheduled for completion, all as reasonably specified by the ACC.

12.6.2 In the event the information submitted to the ACC is, in the ACC's opinion, incomplete or insufficient in any manner, the ACC may request and require the submission of additional or supplemental information. The Owner shall, within fifteen (15) days thereafter, comply with the request. The ACC shall not review any application submitted for approval until all plans and specifications and all other information as may be required by the ACC has been properly submitted to the ACC.

12.6.3 No later than thirty (30) days after receipt of all information required by the ACC for final review, the ACC shall approve or deny the application in writing. The ACC shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in the ACC's sole discretion, for aesthetic or any other reasons or to impose qualifications and conditions thereon. In approving or disapproving such plans and specifications, the ACC shall consider the suitability of the proposed Improvements, the materials of which the Improvements are to be built, the site upon which the Improvements are proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the ACC fails to respond within said thirty (30) day period, the plans and specifications shall be deemed disapproved by the ACC.



12.6.4 In the event that the ACC disapproves any plans and specifications, the Owner may request a rehearing by the ACC for additional review of the disapproved plans and specifications. The meeting shall take place no later than thirty (30) days after written request for such meeting is received by the ACC, unless the Owner waives this time requirement in writing. The ACC shall make a final written decision no later than thirty (30) days after such meeting. In the event the ACC fails to provide such written decision within said thirty (30) days, the plans and specifications shall be deemed disapproved.

12.6.5 Upon final disapproval (even if the members of the Board and the ACC are the same), the Owner may appeal the decision of the ACC to the Board within thirty (30) days of the ACC's written review and final disapproval. Review by the Board shall take place no later than thirty (30) days subsequent to the receipt by the Board of the Owner's request therefor. If the Board fails to hold such a meeting within thirty (30) days after receipt of request for such meeting, then the plans and specifications shall be deemed disapproved. The Board shall make a final decision no later than sixty (60) days after such meeting. In the event the Board fails to provide such written decision within said sixty (60) days after such meeting, such plans and specifications shall be deemed disapproved. The decision of the ACC, or, if appealed, the Board, shall be final and binding upon the Owner and the Owner's heirs, legal representatives, successors, and assigns.

12.7 Security Deposit. An Owner desiring to make Improvements may be required by the ACC, in its sole and absolute discretion, depending upon the Improvements being requested and the manner of installation of such Improvements, to provide to the ACC, at the time of the Owner's submission of plans and specifications for review and approval by the ACC, a security deposit to: (i) cover all or any part of the costs of incidental damage caused to the Common Areas, an adjacent Home or Lot, or any other property (whether real or personal) by virtue of such Owner's work, and (ii) to pay for the review and inspection fees if and to the extent not paid by the Owner. The security deposit shall initially be One Thousand Dollars (\$1,000.00) and may be changed by the ACC from time to time without need to amend this Declaration. The Association shall not be obligated to place the security deposit in an interest-bearing account.

12.7.1 The Owner shall be entitled to the return of the security deposit upon: (i) such Owner's written notice to the ACC that the Improvements covered by the security deposit have been completed in accordance with the plans and specifications approved by the ACC; (ii) the ACC's inspection of such Improvements confirming completion; provided, however, should any incidental damage be caused by virtue of such Owner's construction of Improvements to the Common Areas or any other portion of the Property for which the Association is responsible, the security deposit shall not be returned to the Owner until such damages have been repaired; and (iii) the Owner's payment of all review and inspection fees. In the event that the Owner has not repaired damages to the Common Areas or any other portion of the Property for which the Association is responsible to the satisfaction of the ACC, the Association shall have the right, without obligation, after five (5) days' notice to the offending Owner, to repair such incidental damage and to use so much of the security deposit held by the Association to reimburse

itself for the costs of such work. Further, the offending Owner hereby agrees to indemnify and reimburse the Association for all reasonable costs expended by the Association that exceed the security deposit, including, without limitation, Legal Fees, incurred in connection therewith. All amounts incurred or paid by the Association to repair damages caused by and not repaired by an Owner as set forth in this Section 12.7 shall, in addition to the other rights of the Association, be subject to an Individual Assessment levied by the Association against such Owner, which Individual Assessment shall be collectible in the same manner as other Assessments as set forth in this Declaration.

12.7.2 Should any incidental damage be caused to an adjacent Lot or Home by virtue of such Owner's work, the Owner of the adjacent Lot (the "Adjacent Lot Owner") may, at such Adjacent Lot Owner's sole option: (a) remedy such damage and submit to the Association a receipt, invoice, or statement therefor for reimbursement from the offending Owner's security deposit; or (b) allow the offending Owner to repair such incidental damage to the Adjacent Lot Owner's Lot or Home, at the offending Owner's sole cost and expense, and upon receipt by the Association of written notice from the Adjacent Lot Owner that such incidental damage has been repaired, the offending Owner shall be entitled to a return of the balance of the security deposit being held by the Association, if any.

12.7.3 The Association's return of the security deposit does not and shall not be construed to constitute a determination by members and representatives of the ACC, the Declarant, and/or the Association of the structural safety, approval or integrity of any Improvement, conformance with building or other codes or standards, the proper issuance of governmental permits and approvals for any Improvement, or compliance with this Declaration.

12.7.4 The ACC, the Declarant, and the Association shall not be liable or responsible to anyone for any damages, losses, or expenses resulting from the Association's holding of the security deposit or disbursement thereof. In the event of any disagreement relating to the security deposit held by the Association or the disbursement thereof, the Association shall be entitled (but not obligated) to refuse to disburse the security deposit (or any portion thereof) as long as such disagreement may continue, and the Association shall not become liable in any way for such refusal. The Association shall have the right at any time, after a dispute has arisen, to pay the security deposit (or any portion thereof) held by it into any court of competent jurisdiction for payment to the appropriate party, whereupon the Association's obligations hereunder shall terminate, and the Association shall be automatically released of any and all obligations.

12.8 Variances. The ACC shall have the power to grant variances from any requirements set forth in this Declaration or from the Architectural Guidelines, on a case-by-case basis, provided that the variance sought is reasonable and results from a hardship upon the Owner. The granting of a variance shall not nullify or otherwise affect the right to require strict compliance with the requirements set forth in this Declaration or in the Architectural Guidelines on any other occasion, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the

Owner's use of the Lot, including, but not limited to, zoning ordinances, easements, set-back lines, or requirements imposed by any governmental or municipal authority.

12.9 Construction Activities. Work regarding all Improvements by Owners shall be completed within the time period set forth in the application as approved by the ACC. Each Owner shall deliver to the ACC, if requested, copies of all construction and building permits as and when received by the Owner. Each construction site in the Community shall be maintained in a neat and orderly condition throughout construction. Construction activities shall be performed on a diligent, workmanlike and continuous basis. Roadways, easements, swales, Common Areas and other such areas in the Property shall be kept clear of construction vehicles and construction materials and debris at all times. All refuse and debris shall be removed or deposited in a dumpster on a daily basis. No materials shall be deposited or permitted to be deposited in any Common Areas or other Lots or be placed anywhere outside of the Lot upon which the construction is taking place. No hazardous waste or toxic materials shall be stored, handled, and used, including, without limitation, gasoline and petroleum products, except in compliance with all applicable federal, state, and local statutes, regulations, and ordinances, and shall not be deposited in any manner on, in, or within the construction site or adjacent property. All construction activities shall comply with the Architectural Guidelines. There shall be provided to the ACC, if requested, a list (name, address, telephone number and identity of contact person), of all contractors, subcontractors, materialmen, and suppliers and changes to the list as they occur working within the Property. Contractors, subcontractors, and their employees shall utilize those roadways and entrances into the Property as are designated by the ACC for construction activities. The ACC shall have the right to require that contractors, subcontractors, and their employees check in at the designated construction entrances and to refuse entrance to persons and parties whose names are not registered with the ACC.

12.10 Inspection. There is specifically reserved to the Association and the ACC and to any agent or member of either of them, the right of entry and inspection upon any portion of the Property at any time, within reasonable daytime hours, and without notice for the purpose of determining whether there exists any violation of the terms of any approval or the terms of this Declaration or the Architectural Guidelines. Upon the completion of any work approved by the ACC, the applicant shall give the ACC written notice of such completion. Within forty-five (45) days of receipt of the written notice of completion, the ACC, or its authorized representative, may inspect the work. If the ACC finds the work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of the noncompliance specifying the particulars of the noncompliance. Within thirty (30) days of such noncompliance notice, the Owner shall remedy the noncompliance to the satisfaction of the ACC. If the Owner fails to comply, the ACC shall have the right, without obligation, to enter the Lot and remove the noncompliant Improvement or remedy the noncompliance, at the ACC's sole option. All costs, expenses, and fees incurred by the ACC in removing the noncompliant Improvement or remedying the noncompliance, including, without limitation, Legal Fees, shall be taken from the security deposit (if any) and/or shall be assessable against the Owner and the Lot as an Individual Assessment.

12.11 Violation. Without limitation of any other remedies available to the Association, if work is performed in violation of this Article XII, the Owner, shall, upon demand of the Association or the ACC, cause such Improvement to be removed, and/or restored to its preexisting condition until approval is obtained or in order to comply with the plans and specifications originally approved by the ACC. In the event the Owner fails to comply with such demand within the time specified therein, the Association shall have the right, without obligation, to enter the Lot, restore the noncompliant Improvement to its preexisting condition, and/or remove the noncompliant Improvement or remedy the noncompliance, at the Association's sole option. All costs, expenses, and fees incurred by the Association in removing the noncompliant Improvement, restoring the noncompliant Improvement to its preexisting condition, and/or remedying the noncompliance, including, without limitation, Legal Fees, shall be taken from the security deposit (if any) and/or shall be assessable against the Owner and the Lot as an Individual Assessment. Additionally, each Owner is responsible for ensuring compliance with all terms and conditions of these provisions and of the Architectural Guidelines by all of the Owner's contractors, subcontractors, and their employees. In the event of any violation of any such terms or conditions by any of the foregoing, the ACC shall have, in addition to all other remedies available to the ACC, the right to prohibit the violating contractor, subcontractor, and/or employee from entering the Property and/or performing any further services within the Property.

12.12 Exemption. Notwithstanding anything to the contrary contained in the Governing Documents, Improvements of any kind made on behalf of or by the Declarant, its contractors, subcontractors, employees, agents, and assigns, within the Property shall not be subject to the Governing Documents or review and approval by the ACC, the Association, or the Owners. Further, the Architectural Guidelines shall not be applicable to any property owned by the Declarant, including, without limitation, Vacant Lots and Spec Lots.

12.13 No Waiver of Future Approvals. The approval of the ACC of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that Owner or another Owner. Similarly, the denial by the ACC of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to approve or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that Owner or another Owner.

12.14 Exculpation. By submitting a request for review and approval by the ACC, the Owner, individually and on behalf of the Owner's heirs, successors, and assigns, shall be deemed to have and does automatically agree to indemnify, defend, and hold harmless the ACC and its members and representatives, the Association Parties, and the Declarant Parties from and against any and all Losses arising from, relating to, or in any way connected with the Improvement or alteration to an Improvement for which such

request was submitted and/or the security deposit therefor. The ACC and its members and representatives, the Association Parties, and the Declarant Parties shall not be liable for any cost or damages incurred by any Owner or any other party whatsoever, due to any mistakes in judgment, negligence, or any action of the ACC or its members or representatives, the Association Parties, or the Declarant Parties in connection with the approval or disapproval of plans and specifications. Each Owner agrees, by acquiring title to a Lot, that it shall not bring any action or suit against the Declarant Parties, the Association Parties, or the ACC or its members or representatives in order to recover any damages caused by the actions of the Declarant Parties, the Association Parties, or the ACC or its members or representatives in connection with the provisions of this Article XII. The Association does hereby indemnify, defend, and hold the Declarant Parties and the ACC and its members and representatives, harmless from all Losses of all nature resulting by virtue of the acts of the Owners, the Association Parties, the ACC or its members or representatives. The Declarant Parties, the Association Parties, the ACC and its members and representatives, and any person acting on behalf of any of them, shall not be liable for the safety, soundness, workmanship, materials, or usefulness for any purpose of any Improvement or alteration to any Improvement proposed by plans or specifications and shall not be responsible for any defects in any plans or specifications or the failure of same to comply with applicable laws or code nor for any defects in any Improvement or alteration to any Improvement constructed pursuant thereto. Each Owner submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

### **ARTICLE XIII** **AMENDMENTS**

13.1 Declarant Amendment. Prior to Turnover, this Declaration may be amended only by an instrument in writing signed by the Declarant and joined by the Association, except as limited by applicable law or except as expressly set forth herein.

13.2 Membership Amendment. After Turnover, this Declaration may be amended by the affirmative vote of two-thirds (2/3<sup>rd</sup>s) of all Members, except as otherwise required by applicable law as it exists on the date this Declaration is recorded in the County's Official Records or except as expressly set forth herein.

13.3 Scrivener's Errors. Amendments to this Declaration for correction of scrivener's errors or other nonmaterial changes may be made by the Board after Turnover without the consent of the Owners.

13.4 Compliance with Governmental and Lender Requirements. Notwithstanding any provision of this Declaration to the contrary, prior to Turnover, the Declarant shall have the right to amend this Declaration, from time to time, to make such changes, modifications, and additions herein and hereto as may be requested or required by any Lender, SJRWMD, or any other governmental agency or body as a condition to, or in connection with such agency's or body's regulatory requirements or agreement to make, purchase, accept, insure, guaranty, or otherwise approve loans secured by mortgages on

Lots. No approval or joinder of the Association, the Owners, or any other party shall be required or necessary to such amendment. After Turnover, but subject to Section 13.5 below, the Board shall have the right to amend this Declaration, from time to time, to make such changes, modifications, and additions herein and hereto as may be requested or required by any Lender, SJRWMD, or any other governmental agency or body as a condition to, or in connection with such agency's or body's regulatory requirements or agreement to make, purchase, accept, insure, guaranty, or otherwise approve loans secured by mortgages on Lots. No approval or joinder of the Owners, or any other party shall be required or necessary to any such amendments by the Board. Any such amendments by the Board shall only require the approval of a majority of the entire Board.

13.5 General Restrictions on Amendments. No amendment to this Declaration shall abridge, prejudice, amend, alter, or otherwise affect the rights of the Declarant or the Master Association without the prior written consent of the Declarant or the Master Association, respectively, which consent may be withheld for any reason whatsoever. Any attempt to amend contrary to this prohibition shall be of no force or effect whatsoever. No amendment shall alter the provisions of this Declaration benefiting Lenders without the prior approval of the Lender(s) enjoying the benefit of such provisions. Any proposed amendment to this Declaration which would affect the Stormwater Management System, affect the operation and maintenance of the Stormwater Management System, or water management portions of the Common Areas shall be submitted to the Master Association and SJRWMD for review and approval prior to finalization of the amendment. SJRWMD shall determine if the proposed amendment will require modification of the SJRWMD Permit. If a permit modification is necessary, SJRWMD will so advise the permittee. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to this Declaration, then the prior written consent of such entity or agency must also be obtained. No amendment that withdraws property from the terms of this Declaration shall be recorded unless approved in writing by the Village Attorney's office. Nothing contained herein shall create an obligation on the part of the Village Attorney's Office to approve any amendment.

13.6 Recording. Amendments to this Declaration adopted pursuant to this Article XIII shall be recorded among the Official Records of the County.

13.7 Notice of Amendment. Within thirty (30) days after recording an amendment to this Declaration, the Association shall mail, deliver, or electronically transmit a copy of the amendment to the Members. However, if a copy of the proposed amendment is provided to the Members before the amendment's adoption consistent with this Article XIII, and the proposed amendment is not changed before the vote, the Association, in lieu of providing a copy of the amendment, may provide notice to the Members that the amendment was adopted, identifying the Official Records Book and Page number of the recorded amendment, and that a copy of the amendment is available at no charge to the Member upon written request to the Association. Notwithstanding the foregoing, the failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

13.8 No Vested Rights. Each Owner, by acceptance of a deed to a Lot, irrevocably waives any claim that such Owner has any vested rights pursuant to case law or statute with respect to this Declaration or any of the other Governing Documents. It is expressly intended that the Declarant and the Association have the broad right to amend this Declaration and the other Governing Documents, except as limited by applicable law as it exists on the date this Declaration is recorded in the County's Official Records or except as expressly set forth herein.

#### **ARTICLE XIV** **ENFORCEMENT**

14.1 Enforcement. All Owners, tenants, residents, guests, and invitees shall be governed by and shall comply with the Governing Documents, all of which may be enforced by the Declarant until the Community Completion Date, the Association, any Owner, and any Lender in any action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. In the event the Declarant and/or the Association engages the services of an attorney to seek enforcement of any of the provisions of the Governing Documents, the Declarant and the Association shall be entitled to reimbursement of their Legal Fees incurred to bring about compliance, regardless of whether litigation is necessary or commenced for the enforcement. The prevailing party in any such litigation shall be entitled to reimbursement of all costs thereof including, but not limited to, Legal Fees, from the non-prevailing party. The Legal Fees incurred by the Declarant and/or the Association to bring about compliance and/or to obtain a judgment should litigation be necessary shall be levied as an Individual Assessment and collectible in the same fashion as any other Assessment as provided in this Declaration.

14.2 Default by Owners. No default by any Owner in the performance of the covenants and promises contained in the Governing Documents shall be construed or considered to be (i) a breach by the Declarant or the Association of any of their promises or covenants in the Governing Documents; (ii) an actual, implied, or constructive dispossession of another Owner from the Common Areas; or (iii) an excuse, justification, waiver, or variance of the covenants and promises contained in the Governing Documents.

14.3 Voting Right Suspension. Pursuant to section 720.305, Florida Statutes, if an Owner is more than ninety (90) days delinquent in the payment of any monetary obligation due to the Association, the Board may suspend the voting rights of the Owner for such nonpayment. A voting rights suspension shall be approved by the Board at a properly noticed Board meeting. Once approved by the Board, the Board shall notify the Owner of the voting rights suspension in writing. A voting interest which has been suspended may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action pursuant to the Governing Documents. The voting rights suspension shall end upon full payment of all monetary

obligations then due to the Association. Notwithstanding the foregoing, no voting right suspension shall be imposed against the Declarant through and until the Community Completion Date.

14.4 Use Rights Suspension for Nonpayment. Pursuant to section 720.305, Florida Statutes, if an Owner is more than ninety (90) days delinquent in the payment of any monetary obligation due to the Association, the Board may suspend the rights of the Owner, the Owner's tenants, residents, guests, and invitees, to use Common Areas for such nonpayment. A use rights suspension due to nonpayment shall be approved by the Board at a properly noticed Board meeting. Once approved by the Board, the Board shall notify the Owner of the use rights suspension due to nonpayment in writing. The suspension of the right of an Owner, the Owner's tenants, residents, guests, and invitees, to use the Common Areas shall not apply to that portion of the Common Areas used to provide vehicular and pedestrian access or utility services to such Owner's Lot. Notwithstanding the foregoing, no use right suspension for nonpayment shall be imposed against the Declarant through and until the Community Completion Date.

14.5 Use Rights Suspension and Fines. Pursuant to section 720.305, Florida Statute, the Board may suspend, for a reasonable period of time, the rights of any Owner, the Owner's tenants, residents, guests, and invitees, to use the Common Areas and/or may levy a reasonable fine, which may exceed One Hundred Dollars and No Cents (\$100.00) per violation, against any Owner, the Owner's tenants, residents, guests, and invitees, for any violation of the Governing Documents. Each day of a continuing violation shall be deemed a separate violation, and the fine shall continue to accrue per day per violation, which may exceed One Thousand Dollars and No Cents (\$1,000.00), until the violation(s) are brought into compliance. Fines shall be assessable against the Owner and the Lot as an Individual Assessment and collectible in the same manner as all other Assessments, including, without limitation, the filing of a claim of lien and foreclosure. The rights of an Owner, the Owner's tenants, residents, guests, and invitees, to use the Common Areas may be suspended and/or a fine may be levied against such Owner, the Owner's tenants, residents, guests, and invitees, by the Board at a properly noticed meeting of the Board. However, the suspension and/or fine may not be imposed until the individual sought to be suspended and/or fined has had a hearing before a compliance committee (the "Compliance Committee"), which shall take place not sooner than fourteen (14) days from the date the notice of the hearing is mailed to the violating individual. The notice must include a description of the alleged violation; the specific action required to cure such violation, if applicable; and the date and location of the hearing. The Compliance Committee shall consist of other Owners appointed by the Board, who are not directors, officers, or employees of the Association, or the spouse, parent, child, brother, or sister of a director, officer, or employee of the Association. Only if the Compliance Committee, by majority vote, approves the proposed suspension and/or fine at such hearing can the suspension and/or fine be imposed. After the hearing, the Compliance Committee shall provide written notice to the Owner and to the Owner's tenants, residents, guests, employees, invitees, and agents, if applicable, of the Compliance Committee's findings related to the violation, including any applicable fines or suspensions that the Compliance Committee approved or rejected, and how the



violation may be cured, if applicable. The fine is effective upon providing written notice to the violating individual of the fine or such earlier date as set out in the written notice which fine shall not commence earlier than the date of the Board's levy of the fine. The use rights suspension is effective upon providing written notice to the violating individual of the use rights suspension. The suspension of the right of an Owner, the Owner's tenants, residents, guests, and invitees, to use the Common Areas shall not apply to that portion of the Common Areas used to provide vehicular and pedestrian access or utility services to such Owner's Lot. Notwithstanding the foregoing, no use right suspension or fine shall be imposed against the Declarant through and until the Community Completion Date.

14.6 No Waiver. The failure to enforce any right, provision, covenant, or condition in the Governing Documents, shall not constitute a waiver of the right to enforce such right, provision, covenant, or condition in the future.

14.7 Rights Cumulative. All rights, remedies, and privileges granted to the Declarant, the Association, and the ACC pursuant to the Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude any of them from pursuing such additional remedies, rights, or privileges as may be granted or as it might have by law.

## **ARTICLE XV**

### **ADDITIONAL RIGHTS OF DECLARANT**

15.1 Construction and Sales Offices. The Declarant shall have the perpetual right to take such action reasonably necessary to transact any business necessary to consummate the development of the Property and sales, re-sales, leases, or encumbrances of Lots, Homes, and/or other properties owned by the Declarant or others outside of the Property. This right shall include, without limitation, the right to maintain models, sales/leasing offices and parking associated therewith, have signs on any portion of the Property, have employees in the models and offices without the payment of rent or any other fee, maintain offices in models and use of the Common Areas, to show Lots or Homes to prospective purchasers of Lots, Homes, or other properties owned by the Declarant outside of the Community. The sales/leasing office, signs, and all items pertaining to development and sales shall remain the property of the Declarant shall not be considered a part of the Common Areas. The Declarant further reserves the right to make repairs to the Common Areas and to carry on construction activity for the benefit of the Property. The Declarant shall have all of the foregoing rights without charge or expense and without notice to the Association or the Owners. The rights reserved hereunder shall extend beyond Turnover. In the event a clubhouse is constructed by the Declarant, the Declarant shall have the right to use one (1) or more offices of the Declarant's choosing within the clubhouse for sales/leasing purposes and shall have the right to use a location within the entry area for display of sales/leasing materials through Turnover. After Turnover, the Declarant shall have the right to use one (1) office of the Declarant's choosing within the clubhouse for sales/leasing purposes for a fee of One Hundred Dollars and No Cents (\$100.00) per month and shall have the right to use a location within the entry area for display of sales/leasing materials until the Declarant

abandons such right in writing to the Association or until the Community Completion Date, whichever is later.

ALL OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES OF THE PROPERTY ARE HEREBY PLACED ON NOTICE THAT THE DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, AND OTHER DESIGNEES MAY BE, FROM TIME TO TIME, CONDUCTING EXCAVATION, CONSTRUCTION, AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE PROPERTY. BY THE ACCEPTANCE OF A DEED, TITLE, OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE, OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTY, EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE, FOR THEMSELVES AND EACH OF THEIR RESPECTIVE HEIRS, LEGAL REPRESENTATIVES, AND ASSIGNS, AUTOMATICALLY ACKNOWLEDGES, STIPULATES, AND AGREES AS FOLLOWS: (i) THAT NONE OF THE DECLARANT'S ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION, TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO THE PROPERTY WHERE THE ACTIVITIES ARE BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS); (iii) THAT THE OWNER, TENANT, RESIDENT, GUEST, AND INVITEE IS AT RISK OF SUFFERING INJURY TO BOTH THEIR PERSON AND/OR PROPERTY AS A RESULT OF ENTRY UPON ANY PROPERTY WITHIN OR IN PROXIMITY TO THE PROPERTY WHERE THE ACTIVITIES ARE BEING CONDUCTED, AND EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE EXPRESSLY ASSUMES FULL RESPONSIBILITY FOR THE RISK OF BODILY INJURY, DEATH, OR PROPERTY DAMAGE SUFFERED AS A RESULT OF THE CONSTRUCTION AND OTHER ACTIVITIES; (iv) THAT EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE HEREBY RELEASES, WAIVES, DISCHARGES, AND HOLDS HARMLESS THE DECLARANT, ITS PARTNERS AND AFFILIATES, AND EACH OF THEIR RESPECTIVE PARTNERS, AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, AND ASSIGNS, AND ANY SUBSEQUENT DECLARANT, FROM ALL LOSSES, CLAIMS, COSTS, LIABILITIES, DAMAGES, INCLUDING COMPENSATORY, CONSEQUENTIAL, PUNITIVE, OR OTHERWISE, AND INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE OR BODILY INJURY OR DEATH, WHETHER CAUSED BY NEGLIGENCE OR AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH THE CONSTRUCTION AND OTHER ACTIVITIES; (v) ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (vi) THAT THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO THE DECLARANT TO SELL, CONVEY, LEASE, AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE PROPERTY.

NO PERSON OR ENTITY SHALL INTERFERE WITH THE COMPLETION AND SALE OF LOTS. WITHOUT LIMITING THE FOREGOING, EACH OWNER, BY ACCEPTANCE OF A TITLE TO A LOT, AGREES THAT ACTIONS OF OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES MAY IMPACT THE VALUE OF LOTS. THEREFORE, EACH OWNER IS BENEFITED BY THE FOLLOWING RESTRICTIONS: PICKETING AND POSTING OF NEGATIVE SIGNS IS STRICTLY PROHIBITED IN ORDER TO PRESERVE THE VALUE OF THE LOTS IN THE COMMUNITY AND THE RESIDENTIAL ATMOSPHERE THEREOF.

15.2 Modification. The development and marketing of the Community will continue as deemed appropriate in the Declarant's sole discretion, and nothing in the Governing Documents, or otherwise, shall be construed to limit or restrict such development and marketing. It may be necessary or convenient for the development of the Property to, as an example and not a limitation, modify the boundary lines of the Common Areas; change the zoning of any portion of the Property now existing or hereafter changed to be other than single-family residential and/or to make such uses of all or any part of the Property as shall be permitted by applicable zoning regulations as they may exist from time to time; grant easements, dedications, agreements, licenses, restrictions, reservations, covenants, rights-of-way, and to take such other actions which the Declarant, or its agents, affiliates, or assignees, may deem necessary or appropriate. The Association and the Owners shall, at the request of the Declarant, execute and deliver any and all documents and instruments which Declarant deems necessary or convenient, in its sole and absolute discretion, to accomplish the same.

15.3 Community Approvals. The Declarant hereby has, shall have, and hereby reserves the right to enter upon the Property in order for the Declarant to final-out and/or close-out any and all approvals, permits, orders, conditions, and/or requirements that have been issued or imposed by any governmental entity in connection with the development and construction of the Community and all Improvements therein (collectively, the "Community Approvals"), and for the Declarant to comply and adhere to the same. Without limiting the generality of the foregoing, in exercising any such rights, the Declarant shall have the right to remove and/or relocate any and all items (including, without limitation, landscape materials, fences, and/or other Improvements) that may be required to be removed and/or relocated to final-out and/or close-out any and all Community Approvals without compensation to the Association or the Owners. The Association is and shall be responsible for complying, and causing all Common Areas to comply, with the Community Approvals including, without limitation, those Community Approvals that may be in the Declarant's name and not yet transferred to the Association. All fees, costs, and expenses of complying with the Community Approvals shall be deemed Common Expenses of the Association. In the event the Declarant is unable to: (i) final-out and/or close-out any and all such Community Approvals as a result of Association's failure to timely and/or properly perform any of its operation, maintenance, and/or repair obligations pursuant to this Declaration and/or any other applicable governmental laws, regulations, codes, approvals, and/or rules; or (ii) obtain a return of any bond or surety posted by the Declarant in connection with the development and construction of the Community, then the Declarant shall have the immediate right, but not

the obligation, in its sole discretion, to (a) commence an enforcement action against the Association, including, without limitation, monetary penalties and injunctive relief, to compel the Association to maintain such portions of the Community as required by this Declaration and/or the Community Approvals, as applicable; or (b) take any and all actions necessary, at the Association's sole cost and expense, to comply with and adhere to any such Community Approvals. The Association hereby agrees to indemnify and reimburse the Declarant (within ten (10) days of receipt of a written invoice from the Declarant) for all costs and expenses incurred by the Declarant in the event the Declarant takes actions in accordance with this Section 15.3. The rights granted to the Declarant hereunder shall survive Turnover and continue for such period of time as is necessary for the Declarant to fully comply with all Community Approvals.

15.4 Right to Approve Sales Materials. All sales, promotional, and advertising materials for any sale of property within the Community prior to the Community Completion Date by any party shall be subject to the prior written approval of the Declarant. The Declarant shall deliver notice of the Declarant's approval or disapproval of all such materials and documents within thirty (30) days of receipt of such materials and documents, and, if disapproved, set forth the specific changes requested. If the Declarant fails to do so within such thirty (30) day period, the Declarant shall be deemed to have waived any objections to such materials and documents and to have approved the foregoing. Upon disapproval, the foregoing procedure shall be repeated until approval is obtained or deemed to be obtained.

15.5 Promotional Events. Prior to the Community Completion Date, the Declarant, its agents, affiliates, or assignees, shall have the right, at any time, to hold marketing, special, and/or promotional events within the Property without any charge for use. The Declarant, its agents, affiliates, or assignees, shall have the right to market the Community in advertisements and other media by making reference to the Community, including, but not limited to, pictures or drawings of the Property and any and all Improvements within the Property.

15.6 Trademarks. All logos, trademarks, and designs used in connection with the Community are the property of the Declarant. No person or entity shall use the name of the Community, its logo, or any derivative of such name or logo in any printed or promotional material without the Declarant's prior written approval. The Association shall have no right to use the foregoing prior to the Community Completion Date, except with the express written permission of the Declarant. After the Community Completion Date, such right shall automatically pass from the Declarant to the Association. Notwithstanding the foregoing, Owners may use the name of the Community in printed or promotional materials where such term is used solely to specify that particular property is located within the Community.

15.7 Refund of Taxes and Other Charges. Unless otherwise provided herein, the Association agrees that any deposits, taxes, fees, or other charges paid by the Declarant to any governmental authority, utility company, or any other entity which at a later date are refunded in whole or in part, shall be returned to the Declarant in the event such

refund is received by the Association. In the event the Association fails or refuses to return any such deposits, taxes, fees, or other charges to the Declarant within ten (10) days of receipt, the Declarant, without limitation of other available remedy, shall be issued a credit in the same amount of any such deposits, taxes, fees, or other charges against its financial obligations in favor of the Association.

15.8 Additional Covenants. The Declarant may record additional covenants, conditions, restrictions, and easements applicable to portions of the Property, and may form condominium associations, sub-associations, or cooperatives governing such property. No person or entity shall record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without the Declarant's prior review and prior written consent. Evidence of the Declarant's prior written consent shall be obtained in the form of a joinder executed by the Declarant and recorded with such instrument. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect whatsoever unless subsequently approved by written consent signed by the Declarant and recorded in the County's Official Records.

15.9 Declarant as Attorney-In-Fact. Each Owner, by reason of having acquired ownership of a Lot, whether by purchase, gift, operation of law, or otherwise, and each tenant and resident of a Home, by reason of his or her occupancy, is hereby declared to have acknowledged and agreed: (i) to his or her automatic consent to any rezoning; replatting; creation of one (1) or more special taxing districts; amendment, modification, and/or termination of the Title Documents (if any); covenant in lieu of unity of title; change, addition, or deletion made in, on, or to the Community by the Declarant (collectively, the "Modifications"); and (ii) to have waived any right to object to or comment on any matter regarding the Modifications, including, without limitation, the form or substance of any Modification. In respect thereto, each Owner of a Lot and tenant and resident of a Home hereby designates the Declarant to act as agent and attorney-in-fact on behalf of such Owner, tenant, and resident to consent to any such Modification. If requested by the Declarant, each Owner shall evidence his or her consent to a Modification in writing (provided, however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). Further, each Owner, by reason of having acquired ownership of a Lot, hereby agrees to execute, at the request of the Declarant, any document and/or consent which may be required by any government agency to allow the Declarant and/or its affiliates to complete the plan of development of the Community, as such plan may be hereafter amended, and each such Owner hereby further appoints the Declarant as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of each such Owner, any and all of such documents and/or consents. This power of attorney is coupled with an interest and is therefore irrevocable.

15.10 Right to Contract for Telecommunications Services. The Declarant prior to Turnover, and thereafter, the Association, shall have the right, but not the obligation, to enter into one (1) or more contracts for the provision of one (1) or more Telecommunications Services for all or any part of the Property. Prior to the Community Completion Date, all contracts between a Telecommunications Provider and the

Association shall be subject to the prior written approval of the Declarant. If any such contract is established, the fees for the Telecommunications Services payable to the Telecommunications Provider shall be Common Expenses.

15.11 Affirmative Obligation of the Association. In the event the Association believes that the Declarant has failed in any respect to meet the Declarant's obligations under this Declaration or under law or the Common Areas are defective in any respect, the Association shall give written notice to the Declarant detailing the alleged failure or defect. The Association agrees that once the Association has given written notice to the Declarant pursuant to this Section 15.11, the Association shall be obligated to permit the Declarant and its agents to perform inspections of the Common Areas and to perform all tests and make all repairs/replacements deemed necessary by the Declarant to respond to such notice at all reasonable times, including, without limitation, during normal business hours. The rights reserved in this Section 15.11 include the right of the Declarant to repair or address, in the Declarant's sole option and at the Declarant's expense, any aspect of the Common Areas deemed defective by the Declarant during its inspections of the Common Areas.

15.12 Duration of Rights. The rights and privileges of the Declarant as set forth in this Article XV are in addition to, and are no way a limit on, any other rights or privileges of the Declarant. The rights of the Declarant set forth in this Declaration shall, unless specifically provided to the contrary herein, extend for a period of time ending upon the earlier of: (i) the Community Completion Date; or (ii) a relinquishment by the Declarant in an amendment to this Declaration. Neither the Association nor any Owner, nor group of Owners, may record any document that, in any way, affects, limits, or restricts the rights of the Declarant or conflict with the provisions of the Governing Documents.

15.13 Amendment and Assignment. This Article XV may not be suspended, superseded, or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by the Declarant. All or any part of the rights, exemptions, powers, and reservations of the Declarant herein contained may be conveyed or assigned, in whole or in part, to other persons or entities by an instrument in writing duly executed, acknowledged and, at Declarant's option, recorded in the County's Official Records.

## **ARTICLE XVI**

### **MASTER ASSOCIATION**

16.1 Membership. In addition to membership in the Association, the Owner of the fee simple title of record of each Lot shall be a mandatory member of the Master Association in accordance with the Master Association's Articles of Incorporation. Each Owner shall have an interest in the Master Association upon acceptance of a deed to the Lot.

16.2 Master Declaration. The Property and the use thereof shall be subject to all of the provisions of the Master Declaration and all other Master Governing Documents.

As such, the Owners, tenants, residents, guests, and invitees shall abide by all of the provisions as set out in the Master Governing Documents.

## **ARTICLE XVII**

### **GENERAL PROVISIONS**

17.1 Delegation. The Association may delegate all or a portion of its obligations hereunder to a licensed manager or professional management company selected by the Board, from time to time. The Association specifically shall have the right to pay for management services on any basis approved by the Board (including, without limitation, bonuses or special fee arrangements for meeting financial or other goals) as Common Expenses.

17.2 Binding Effect. Subject to the Declarant's right to amend this Declaration prior to Turnover and the Association's right to amend this Declaration after Turnover, the covenants, conditions, and restrictions of this Declaration shall run with and bind the land and shall be binding upon and inure to the benefit of and be enforceable by the Declarant, the Association, and the Owners, and their respective legal representatives, heirs, successors, and assigns. However, the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary.

17.3 Compliance with Provisions. All present and future Owners, tenants, residents, guests, and invitees shall be subject to and shall comply with the provisions of the Governing Documents. The acceptance of title to or interest in a Lot, the occupancy of a Home, or the leasing of a Home shall constitute an adoption, consent, and ratification by such Owner, tenant, resident, guest, and invitee of the provisions of the Governing Documents, whether or not any reference to the Governing Documents is contained in any instrument by which such person acquired title to or an interest in a Lot, in any occupancy agreement, or in any lease agreement. The Declarant shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than the Declarant.

17.4 Interpretation. The provisions of the Governing Documents shall be liberally construed to effectuate their purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Property. Article, section, and paragraph captions, headings, and titles inserted throughout the Governing Documents are intended as a matter of convenience only and in no way shall such captions, headings, or titles define, limit, or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of the Governing Documents. Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

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

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

17.7 Notices. Any notice or other communication required or permitted to be given to any person, firm, or entity under the provisions of the Governing Documents shall be deemed to have been properly sent when mailed, postage prepaid, to: (i) each Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; (ii) the Association, certified mail, return receipt requested, at the Association’s mailing address as reflected in the records of the Florida Department of State, Division of Corporations, or such other address as the Association shall hereinafter notify the Declarant and the Owners of in writing; and (iii) the Declarant, certified mail, return receipt requested, at 2300 Glades Road, Suite 202E, Boca Raton, Florida 33431, or such other address as the Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in the Declarant’s address being deemed notice to the Owners.

17.8 Florida Statutes. The Governing Documents are governed by the laws of the State of Florida. Whenever the Governing Documents refer to the Florida Statutes, it shall be deemed to refer to the Florida Statutes as they exist and are effective on the date this Declaration is recorded in the County’s Official Records, except to the extent provided otherwise in the Governing Documents as to any particular provision of the Florida Statutes.



17.9 Venue. Venue for any action, proceeding, or litigation arising out of or concerning the Governing Documents shall be brought and heard in a court located in the County to the exclusion of all other venues and the Owners, tenants, residents, guests, and invitees hereby expressly waive their rights to venue elsewhere.

17.10 Jury Waiver. EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE HEREBY KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO ENFORCE, DEFEND, OR INTERPRET ANY RIGHT OR REMEDIES UNDER, OR ARISING IN CONNECTION WITH AND/OR RELATING TO, WITHOUT LIMITATION, THE GOVERNING DOCUMENTS, USE OF THE PROPERTY, COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, OR VALIDATION, PROTECTION, OR ENFORCEMENT ACTION OR OMISSION OF ANY PARTY.

17.11 No Representations or Warranties NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY THE DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES, OR REGULATION THEREOF, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION.

17.12 Reliance. BEFORE ACCEPTING TITLE TO OR INTEREST IN A LOT, EACH OWNER HAS THE RIGHT TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THE GOVERNING DOCUMENTS. BY ACCEPTANCE OF TITLE TO OR INTEREST IN A LOT, EACH OWNER ACKNOWLEDGES HE OR SHE HAS SOUGHT AND RECEIVED SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. THE DECLARANT IS RELYING ON EACH OWNER CONFIRMING IN ADVANCE OF ACQUIRING A LOT THAT THE GOVERNING DOCUMENTS ARE VALID, FAIR, AND ENFORCEABLE. SUCH RELIANCE IS DETRIMENTAL TO THE DECLARANT. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXISTS PROHIBITING EACH OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THIS DECLARATION IS INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR THE DECLARANT TO SUBJECT THE PROPERTY TO THE GOVERNING DOCUMENTS, EACH OWNER DOES HEREBY RELEASE, WAIVE, COVENANT NOT TO SUE, ACQUIT, SATISFY, AND FOREVER DISCHARGE THE DECLARANT PARTIES FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES, AND DEMANDS WHATSOEVER, IN LAW OR IN EQUITY, WHICH AN OWNER MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR, OR ASSIGN OF THE OWNER HEREAFTER CAN, SHALL, OR MAY HAVE AGAINST ANY OF THE DECLARANT PARTIES FOR, UPON, OR BY REASON OF ANY MATTER, CAUSE, OR THING WHATSOEVER RESPECTING THE GOVERNING DOCUMENTS. THIS

RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

17.13 Official Records to Lenders. In accordance with section 720.303(5)(d), Florida Statutes, the Association shall make available for inspection upon written request, during normal business hours or under reasonable circumstances, the books, records, and financial statements of the Association to a Lender.

17.14 Notice to Lender. Upon written request by a Lender, identifying the name and address of the Lender and the name and address of the applicable Owner, the Lender shall be entitled to timely written notice of: (i) any condemnation loss or casualty loss which affects a material portion of the Lot to the extent the Association is notified of the same; (ii) any delinquency in the payment of Assessments owed by an Owner of a Home subject to a first mortgage held by the Lender which remains uncured for a period of sixty (60) days; (iii) any lapse, cancellation, or material modification of any insurance policy or fidelity coverage maintained by the Association; and (iv) any proposed action that specifically requires the consent of the Lender. In the event the Association fails to provide the Lender with written notice of any of the foregoing, the Declarant and the Association shall not be liable for such failure.

17.15 Consent and Release for Use of Likeness. Each Owner, by obtaining title to a Lot, and each resident and tenant of a Home, by occupancy of a Home, and each guest and invitee of an Owner, resident, or tenant, by use of any portion of the Property and/or participation in or attendance at any event of the Association or the Declarant, is hereby deemed to have consented and agreed to the following: (i) the taking and use, including, without limitation, in marketing materials and/or media publications, of photographs and/or videos of such persons during any use of any portion of the Property and/or during any participation in any and all activities sponsored, promoted, or arranged by or through the Declarant and/or the Association, whether or not such activities take place on the Property or elsewhere; and (ii) waiver of any and all rights to inspect, approve, or receive compensation for the taking and use of such person's photographs and/or videos and the use of such person's likeness in any marketing materials, media publications, or other advertising.

17.16 Duration. All of the covenants, conditions, restrictions, and provisions of this Declaration shall run with and bind the Property for a term of fifty (50) years from the date of recording this Declaration among the Official Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless an instrument executed by at least eighty percent (80%) of the total voting interests of the Association and by all mortgagees having a first mortgage encumbering any Lot has been recorded among the Official Records of the County agreeing to terminate this Declaration.

**[SIGNATURE PAGES FOLLOW]**

**IN WITNESS WHEREOF**, JKM Acquisitions, LLC, a Florida limited liability company, has caused this instrument to be signed on this \_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

**JKM ACQUISITIONS, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
Adam P. Freedman, its Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_  
\_\_\_\_\_

**STATE OF FLORIDA                    )**  
  **) ss:**  
**COUNTY OF PALM BEACH        )**

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2024, by Adam P. Friedman as Manager for **JKM ACQUISITIONS, LLC**, a Florida limited liability company, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

My Commission Expires:

**JOINDER TO DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR LOTIS PALM BAY 2 HOMEOWNERS ASSOCIATION**

**LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation (the "Association"), does hereby consent to and join in the **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LOTIS PALM BAY 2 HOMEOWNERS** (the "Declaration") to which this Joinder is attached. The terms, provisions, covenants, conditions, and restrictions of the Declaration are and shall be binding upon the undersigned and its successors and assigns. This Joinder shall evidence the Association's acknowledgement, understanding, and acceptance of the rights and obligations as set forth in the Declaration. Notwithstanding this Joinder, this Joinder shall not affect the validity of the Declaration as the Association has no right to approve the Declaration.

**IN WITNESS WHEREOF**, Lotis Palm Bay 2 Homeowner's Association, Inc., a Florida not for profit corporation, has caused this instrument to be signed on this \_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

**STATE OF FLORIDA                    )**  
**) ss:**  
**COUNTY OF PALM BEACH        )**

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2025, by James S. Gielda as President for **LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

**ASSOCIATION:**

**LOTIS PALM BAY 2 HOMEOWNER'S  
ASSOCIATION, INC.** a Florida not for profit  
corporation

By: \_\_\_\_\_  
James S. Gielda, its President

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LOTIS PALM BAY 2  
HOMEOWNER'S ASSOCIATION PROPERTY**

**EXHIBIT "B"**

**ARTICLES OF INCORPORATION OF LOTIS PALM BAY 2  
HOMEOWNER'S ASSOCIATION**

## **ARTICLES OF INCORPORATION OF LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.**

In order to form a not for profit corporation under and in accordance with the provisions of Chapter 617, Florida Statutes, the undersigned hereby incorporates this not for profit corporation for the purposes and with the powers hereinafter set forth, and to that end, the undersigned by these Articles of Incorporation, certifies as follows:

### **ARTICLE I DEFINITIONS**

All initially capitalized terms used herein shall have the same meaning as set out in the Declaration of Covenants, Conditions, and Restrictions for Lotis Palm Bay 2 Homeowners, as amended from time to time (the "Declaration"), unless an alternative definition is provided herein.

### **ARTICLE II NAME AND ADDRESS**

The name of the corporation is **LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.** (the "Association"). The principal address and mailing address of the Association shall be 2300 Glades Road, Suite 202E, Boca Raton, Florida 33431, or such other principal address or mailing address and may be designated, from time to time, by the Board.

### **ARTICLE III OBJECTS AND PURPOSES**

The objects and purposes for which the Association is formed are those as authorized by the Governing Documents, including, without limitation, the operation, maintenance, and control of the Common Areas and all Improvements thereon, to conduct and transact generally the business of a not for profit corporation, and to do all things and exercise all powers and perform all functions that a not for profit corporation is authorized or empowered to do, exercise, or perform under and by virtue of the Florida Not For Profit Corporation Act and the Homeowners' Association Act.

### **ARTICLE IV POWERS**

Without limitation, the powers of the Association shall include and be governed by the following provisions:

4.1 Common Law and Statutory Powers. The Association shall have all common-law and statutory powers of a not-for-profit corporation under the laws of Florida

which are not in conflict with the Declaration, these Articles, and the By-Laws, including those powers under and pursuant to the Florida Not For Profit Corporation Act and the Homeowners' Association Act. In the event of any conflict between the provisions of the Florida Not For Profit Corporation Act and the Homeowners' Association Act, the Homeowners' Association Act shall apply. In the event of any conflict between these Articles and the By-Laws, these Articles shall control; and in the event of any conflict between these Articles and the Declaration, the Declaration shall control.

4.2 Necessary Powers. The Association shall also have those powers reasonably necessary to fulfill the purposes for which the Association is formed, which powers shall include, but not be limited to, the following:

(a) To make Assessments for the operation, management, maintenance, repair, replacement, improvement, and reconstruction after casualty of the Common Areas pursuant to the Declaration; and to collect Assessments, including, without limitation, by lien filing and foreclosure procedures.

(b) To purchase equipment, supplies, material, and other personal property as may be required in the maintenance, repair, replacement, improvement, operation, and management of the Common Areas pursuant to the Declaration.

(c) To buy, accept, own, operate, lease, sell, trade, and mortgage both real and personal property as may be necessary or convenient in the administration of the Association.

(d) To acquire and pay for insurance on the Common Areas, as set forth in the Declaration, for the protection of the Association and the Common Areas and to acquire and pay for directors and officers liability insurance to protect the directors and officers of the Association.

(e) To make, amend, alter, rescind, and promulgate reasonable rules and regulations for the use and appearance of the Property for the benefit, health, safety, and welfare of the Members.

(f) To provide for management, maintenance, repair, replacement, improvement, and operation of the Common Areas pursuant to the Declaration and to delegate to a management entity or management agent those powers and duties which are not specifically required by these Articles to be retained by the Board.

(g) To employ and dismiss vendors, contractors, attorneys, accountants, engineers, architects, and other professionals and personnel to perform the services required for proper operation of the Property and the Association.

(h) To negotiate, enter into, amend, and terminate contracts and agreements, including, without limitation, with governmental authorities.



(i) To use and expend the monies collected by the Association to effectuate its purposes and powers, including, but not limited to, the payment of utilities and all taxes and assessments made by public bodies which may be levied upon the Common Areas.

(j) To select depositories for the Association funds and to determine the manner of receiving, depositing, and disbursing corporate funds.

(k) To enforce by legal means the provisions of the Governing Documents.

(l) To possess, enjoy, and exercise all powers necessary to implement, enforce, and carry into effect the powers above described, including the power to acquire, hold, convey, and deal in real and personal property.

(m) To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of the purposes and powers of the Association under the Governing Documents.

## **ARTICLE V**

### **MEMBERS**

5.1 Membership. Except as set forth herein, every person or entity who is a record owner of a fee or undivided fee interest in any Lot shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member. No Member may assign, hypothecate, or transfer in any manner membership in the Association except as an appurtenance to the Lot. Any Member of the Association who conveys or loses title to a Lot by sale, gift, bequest, judicial decree, or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of membership resulting from ownership of such Lot.

5.2 Voting Rights. The Association shall have two (2) classes of voting membership:

5.2.1 Class A. Except as set forth herein, Class A Members shall be all Members, with the exception of the Declarant while the Declarant is a Class B Member. Each Member shall be entitled to one (1) vote for each Lot owned by such Member, which vote shall not be divisible and shall be cast in the manner provided by the By-Laws.

5.2.2 Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to one thousand (1,000) votes. Class B membership shall cease and be converted to Class A membership upon Turnover.

**ARTICLE VI**  
**TERM**

The term for which the Association is to exist shall be perpetual. Except as otherwise set forth in the Declaration, in the event of dissolution of the Association, other than incident to a merger or consolidation, the Common Areas shall be conveyed to a local government body. In the event the local government body does not accept such conveyance, the Common Areas shall be conveyed to a non-profit organization with similar purposes. Any Member may petition the local Circuit Court for the appointment of a receiver to manage the affairs of the dissolved Association and to manage the Property and Improvements thereon, in the place and stead of the Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and the Property. Further, the Property shall continue to be subject to the provisions of the Declaration, including, without limitation, Assessments levied in accordance with the Declaration. Each Owner shall continue to be personally obligated to the successors or assigns of the Association for Assessments to the extent that Assessments are required to enable the successors or assigns of the Association to properly maintain, operate, and preserve the Common Areas as then-existing and as then-continues to be used for the common use and enjoyment of the Owners.

**ARTICLE VII**  
**INITIAL SUBSCRIBER**

The name and address of the initial subscriber to these Articles is as follows:

JKM Acquisitions, LLC

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

**ARTICLE VIII**  
**BOARD OF DIRECTORS**

The property, business, and affairs of the Association shall be managed by the Board, which shall consist of not less than three (3) directors, nor more than seven (7) directors, which number shall always be odd as may be determined by the Board from time to time. Except for directors appointed by the Declarant, directors shall be Members of the Association or shall be the authorized representative, officer, or employee of corporate Members of the Association. All directors shall be natural persons who are eighteen (18) years of age or older and shall comply with all additional eligibility requirements set forth in the Homeowners' Association Act. The directors shall be elected in the manner set forth in the By-Laws. The following are the names and addresses of the persons appointed to act as directors until their successors are elected and qualified:

Adam P. Freedman

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

James S. Gielda

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

Jeff Johnson

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

## **ARTICLE IX** **OFFICERS**

The affairs of the Association shall be managed by a President, a Vice President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time designate in the Board's sole discretion, the powers and duties of which shall be designated by the Board as the Board deems necessary in its sole discretion, all of whom shall serve at the pleasure of the Board. Upon Turnover, all officers must be Members of the Association. All officers shall be natural persons who are eighteen (18) years of age or older and shall comply with all additional eligibility requirements set forth in the Homeowners' Association Act. The names and addresses of the current officers of the Association, who shall hold office until their successors are duly elected in the manner set forth in the By-Laws are as follows:

PRESIDENT	James S. Gielda	2300 Glades Road, Suite 202E Boca Raton, Florida 33431
VICE PRESENT	Adam P. Freedman	2300 Glades Road, Suite 202E Boca Raton, Florida 33431
SECRETARY/ TREASURER	Jeff Johnson	2300 Glades Road, Suite 202E Boca Raton, Florida 33431

## **ARTICLE X** **INDEMNIFICATION**

Each and every director, officer, and duly appointed member of a committee ("committee member") of the Association shall be indemnified by the Association against all costs, expenses, and liabilities, including Legal Fees, reasonably incurred by or imposed upon him/her in connection with any negotiation, proceeding, arbitration, litigation, or settlement in which he/she becomes involved by reason of his/her being or having been a director, officer, or committee member of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a director, officer, or committee member at the time such fees, costs, or expenses are incurred. Notwithstanding the above, in the event of a settlement in connection with any of the foregoing, the indemnification provisions provided in this Article X shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the fees, costs, and expenses of such settlement as being in the best interest of the Association. In the event a director, officer, or committee member admits that he/she is guilty of or is adjudged guilty of willful misconduct or gross negligence in

the performance of his/her duties, the indemnification provisions of this Article X shall not apply. The foregoing right of indemnification provided in this Article X shall be in addition to and not exclusive of any and all rights of indemnification to which a director, officer, or committee member of the Association may be entitled under statute or common law.

Upon the resignation of a director who has been designated, appointed, or elected by the Declarant, or the resignation of an officer or committee member who was elected or appointed by the Declarant-controlled Board, the Association and the Members shall remise, release, acquit, and forever discharge such director, officer, and committee member of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, claims, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages (except to the extent and such damages are covered by insurance), judgments, executions, claims, and demands whatsoever, in law or in equity, which the Association or the Members, their successors, assigns, heirs, and personal representatives, had, now have, or will have against such director, officer, or committee member by reason of having been a director, officer, or committee member. Notwithstanding, the foregoing shall not apply in the event of a criminal act where such director, officer, or committee member pled guilty or nolo contendere or was adjudicated guilty.

## **ARTICLE XI**

### **BY-LAWS**

The By-Laws may be altered, amended, or rescinded in the manner set forth in the By-Laws; provided, however, that at no time shall the By-Laws conflict with these Articles or the Declaration. Any attempt to amend contrary to these prohibitions shall be of no force or effect.

## **ARTICLE XII**

### **AMENDMENTS**

12.1 Declarant Amendment. Prior to Turnover, these Articles may be amended only by an instrument in writing signed by the Declarant and joined by the Association, except as expressly set forth herein.

12.2 Membership Amendment. After Turnover, these Articles may be amended by the affirmative vote of two-thirds (2/3<sup>rd</sup>s) of all of the Members. The approval of the Members of a proposed amendment may be obtained by written consent in lieu of a membership meeting pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

12.3 Proviso. No amendment to these Articles shall conflict with the terms of the Declaration or the By-Laws. No amendment to these Articles shall be adopted which shall abridge, prejudice, amend, or alter the rights of the Declarant, as determined in the sole discretion of the Declarant, without the prior written consent of the Declarant. Any attempt to amend contrary to this prohibition shall be of no force or effect whatsoever.

12.4 Filing and Recording. Amendments to these Articles adopted pursuant to this Article XII shall be recorded among the Official Records of the County and filed in the Office of the Secretary of State of the State of Florida.

12.5 Notice of Amendment. Within thirty (30) days after recording an amendment to these Articles, the Association shall mail, deliver, or electronically transmit a copy of the amendment to the Members. However, if a copy of the proposed amendment is provided to the Members before they vote on the amendment, and the proposed amendment is not changed before the vote, the Association, in lieu of providing a copy of the amendment, may provide notice to the Members that the amendment was adopted, identifying the Official Records Book and Page number of the recorded amendment, and that a copy of the amendment is available at no charge to the Member upon written request to the Association. Notwithstanding the foregoing, the failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

### **ARTICLE XIII** **REGISTERED AGENT**

The name and address of the registered agent of the Association who shall serve until his/her successor is properly appointed by the Board shall be PG Law, PL, 5030 Champion Boulevard, Suite G11-281, Boca Raton, Florida 33496. The Association shall have the right to designate subsequent registered agents without amending these Articles.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGE FOLLOWS]**



**ACCEPTANCE BY REGISTERED AGENT**

Having been named to accept service of process for **LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, at the place designated in these Articles of Incorporation of Lotis Palm Bay 2 Homeowner's Association, Inc., the undersigned hereby agrees to act in this capacity and further agrees to comply with the provisions of all statutes relative to the proper and complete discharge of his duties.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

PG LAW, PL

By: \_\_\_\_\_  
Stephen J. Grave De Peralta,  
Manager (Registered Agent)

**EXHIBIT "C"**

**SJRWMD PERMIT**



**EXHIBIT "D"**

**BY-LAWS OF  
LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.**

**BY-LAWS OF  
LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.**

**ARTICLE I  
IDENTIFICATION**

These are the By-Laws of **LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.** (the "Association"). The Association is a not for profit corporation organized pursuant to and under Chapter 617, Florida Statutes, and a homeowners' association pursuant to and under Chapter 720, Florida Statutes, for the purpose, among other things, of administering, managing, operating, and maintaining the residential community known as "**LOTIS PALM BAY 2 HOMEOWNERS**" located in Brevard County, Florida. If utilized by the Association, the seal of the Association shall bear the name of the Association; the word "Florida;" the words "Corporation Not for Profit."

**ARTICLE II  
DEFINITIONS**

All initially capitalized terms used herein shall have the same meaning as set out in the Declaration of Covenants, Conditions, and Restrictions for Lotis Palm Bay 2 Homeowners, as may be amended from time to time (the "Declaration"), to which these By-Laws of Lotis Palm Bay 2 Homeowner's Association, Inc. are attached as Exhibit "D", as may be amended from time to time (these "By-Laws"), unless an alternative definition is provided herein.

**ARTICLE III  
MEMBERSHIP AND MEMBERSHIP MEETINGS**

3.1 Membership. The qualification for membership, the manner of admission to the membership, the voting rights of such membership, and the termination of such membership shall be as set forth in the Articles.

3.2 Annual Meeting. The annual meeting of the Members shall be held at the office of the Association, or at such other place in the County as the Board may determine, at least once each calendar year on such date and at such time as designated by the Board, for the purpose of electing directors and transacting any other business authorized to be transacted by the Members. Such annual meeting shall not take place later than thirteen (13) months from the date of the preceding annual meeting.

3.3 Special Meetings. Special meetings of the Members shall be held whenever called by the President, the Vice-President, or by a majority of the Board and must be called by such officers upon receipt of a written request from at least ten percent (10%) of the voting interests of the Members. The business conducted at a special meeting of the Members shall be limited to that stated in the notice of the meeting.

3.4 Notice. Written notice of all membership meetings shall state the date, time, and location of the meeting being called and shall provide an agenda for which the meeting is called as hereinafter set forth. The notice shall be mailed, delivered, or electronically transmitted to each Member at such mailing address, electronic mailing address, or facsimile number of the Member as appears in the official records of the Association and shall be conspicuously posted on the Common Areas at least fourteen (14) days prior to the date set for such meeting, except in the event of an emergency. Proof of mailing, delivering, or electronic transmission of notice shall be given by affidavit of the person who mailed, delivered, or electronically transmitted such notice.

3.4.1. Waiver. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the official records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The attendance of any Member (or person authorized to vote for such Member) shall constitute such Member's waiver of notice of such meeting, except when the attendance of the Member (or person authorized to vote for such Member) is for the express purpose of objecting at the time the meeting is called to order to the transaction of business because the meeting is not lawfully called.

3.4.2 Electronic Transmission. Members desiring to receive notice by electronic transmission shall provide written consent to the Association to receive notice by electronic transmission and shall provide their email address to which notice shall be sent. Once a Member provides their written consent to receive notice by electronic transmission, such authority shall apply to all other communications from the Association. The electronic mailing address provided by the Member shall be accessible to any other Member who makes a lawful request to inspect the official records of the Association.

3.5 Presiding Officer. At meetings of the membership, the President or the President's designee, including, without limitation, the Association's manager or legal counsel, shall preside, or in the President's absence, the Vice-President or the Vice-President's designee, including, without limitation, the Association's manager or legal counsel, shall preside.

3.6 Order of Business. The order of business at the annual meeting of the Members and, as far as practical, at all other meetings of the Members, shall be as follows:

- (a) Call to order.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading and disposal of any unapproved minutes.
- (d) Report of officers.
- (e) Report of committees.
- (f) Election of directors.
- (g) Unfinished business.
- (h) New business.
- (i) Adjournment.

3.7 Quorum and Decisions. A quorum at meetings of the Members shall consist of Members present, in person or by proxy, entitled to cast thirty percent (30%) of the votes of the entire membership. The acts approved by a majority of the votes of the Members present at a meeting at which a quorum is present shall constitute the acts of the Members, except when approval by a greater number of Members is required. Unless otherwise prohibited, Members may vote in person, by limited proxy, or by written consent in lieu of a meeting of the Members pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

3.8 Adjourned Meetings. If any membership meeting cannot be organized because a quorum has not been attained, either a majority of the Members who are present, whether in person or by proxy, or the presiding officer of the meeting acting alone, may adjourn the meeting, from time to time, to a date, time, and location certain until a quorum is present. Any business which might have been transacted at a meeting of the Members as originally called may be transacted at any adjourned meeting thereof. Notice of the date and time of the continued meeting and place for reconvening the meeting shall be given to the Members in the manner prescribed for meetings of the Members.

3.9 Minutes. Minutes of all meetings of the Members shall be maintained in written form or in another form that can be converted into written form within a reasonable time and shall be available for inspection by the Members, after such minutes have been approved, at all reasonable times.

3.10 Proxies. A vote cast by proxy shall only be cast by limited proxy; however, general proxies may be used in order to achieve a quorum of the Members. To be valid, a proxy must (i) be in writing; (ii) state the date on which the proxy was given; (iii) state the date, time, and location of the meeting for which it was given; (iv) be signed by the Member giving the proxy or by the person designated in a voting certificate signed by the Member as the person authorized to cast the vote attributable to such Lot; and (v) be filed with the Secretary before or at the appointed time of the meeting. Limited proxies shall additionally provide the Member's vote for such specific items as are being voted upon by the Members at the meeting for which the limited proxy is given. A proxy shall be valid only for the particular meeting designated thereon, and as the meeting may lawfully be adjourned and reconvened, from time to time, and shall automatically expire ninety (90) days after the date of the meeting for which it was originally given. If the proxy form so provides, the proxy holder may appoint, in writing, a substitute to act in the proxy holder's place. The proxy holder, or substitute proxy holder, must personally attend the meeting for which such proxy is given in order for such proxy to be valid. A proxy is revocable at any time by the Member who executed it, or any other record title owner of the Lot, unless a designated voting certificate is filed with the Association and, if so, then only by the designated voter.

3.11 Voting Member. All voting certificates issued pursuant to this Section 3.11 shall be filed with the Secretary of the Association prior to the meeting at which said vote

is to be cast. In the event any such voting certificate is not filed with the Association as required below, the vote to which such Lot is entitled shall not be considered in determining whether a quorum is present, or for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed. A voting certificate shall be valid until revoked by the Members to the voting certificate, until superseded by a subsequent voting certificate, or until a transfer of title to the Lot to which the voting certificate pertains.

3.11.1 Lot Owned by One (1) Person. A Member who is the only fee simple title holder to a Lot shall cast the vote for such Lot, and no voting certificate shall be required.

3.11.2 Lot Owned by More than One (1) Person. If a Lot is owned by more than one (1) person, a voting certificate designating either Owner as the Member entitled to cast the vote for their Lot and signed by all Owners of the Lot is not required but is permitted. If such voting certificate is not provided, then any Owner may cast the vote for their Lot; however, only one (1) vote is permitted. If more than one (1) Owner votes, then all of their votes are not counted.

3.11.3 Lot Owned by an Entity. If a Lot is owned by a corporation, partnership, limited liability company, estate, trust, or other similar entity, the person of such corporation, partnership, limited liability company, estate, trust, or other similar entity entitled to cast the vote for such Lot shall be designated in a voting certificate signed by an appropriate officer or principal of the corporation, partnership, limited liability company, estate, trust, or other entity.

3.12 Member Attendance and Participation. Subject to the relevant provisions of the Homeowners' Association Act, Members have the right to attend all meetings of the Members. No other residents, tenants, or guests are permitted to attend any meeting of the Members unless otherwise specifically approved by the Board. Members in attendance at a membership meeting shall be entitled to speak for a maximum of three (3) minutes only as to the designated agenda items prior to a vote on such designated agenda items. All Member statements must be made in a respectful and businesslike manner. In the event a Member conducts himself/herself in a manner detrimental to the carrying on of a meeting, as decided by the presiding officer of the meeting in his/her absolute discretion, the Member may be expelled from the meeting by any reasonable means which may be necessary to accomplish such an expulsion. The Board may adopt such other written reasonable rules governing the frequency, duration, and other manner of Member statements as it deems appropriate. Any Member may tape record or videotape meetings of the Members; provided, however, the equipment utilized does not produce distracting sound or light emissions and subject to any rules and regulations which may be adopted by the Board regarding placement, assemblage of audio and video equipment, prior notice to record the meeting, and distraction resulting from moving about during recording of the meeting.

3.13 Electronic Meeting. Notwithstanding anything set forth to the contrary, any meeting of the Members may, at the discretion of the Board, be held on an electronic platform, such as, and for example purposes only, Zoom. In accordance with section 617.0721(3), Florida Statutes, subject to such guidelines and procedures as the Board may adopt, Members who are not physically present at a meeting may, by means of remote communication, participate in the meeting and be deemed to be present in person and vote at the meeting if the Association implements reasonable means to (i) verify that each person deemed present and authorized to vote by means of remote communication is a Member; and (ii) provide such Members with a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Members. Votes of Members taken by means of remote communication must be recorded in the minutes of such meeting to be maintained by the Association among its official records.

## **ARTICLE IV** **DIRECTORS**

4.1 Business Affairs. The property, business, and affairs of the Association shall be managed by the Board, which shall consist of not less than three (3) directors, nor more than seven (7) directors, which number shall always be odd as may be determined by the Board from time to time. All directors shall be natural persons who are eighteen (18) years of age or older and shall comply with all additional eligibility requirements set forth in the Homeowners' Association Act and the Governing Documents. Except for directors appointed by the Declarant, directors shall be Members of the Association or shall be the authorized representative, officer, or employee of corporate Members of the Association. The Board shall exclusively exercise all of the powers of the Association, unless otherwise specifically delegated to the Members.

4.2 Term. The term of each director's service shall be one (1) year commencing with the date of election until his/her successor is duly elected and qualified or until he/she resigns or is removed in the manner provided herein.

4.3 Election. Election of Directors shall be conducted in the following manner:

4.3.1 Declarant Appointment. Notwithstanding anything to the contrary contained herein, prior to Turnover, the Declarant shall have the right to appoint directors by written notice to such effect or by an announcement reflected in the minutes of the annual meeting of the Members. Further, after Turnover, the Members other than the declarant shall be entitled to elect at least a majority of the directors; provided, however, that as so long as the Declarant owns at least one (1) Lot, the Declarant shall have the continued right to appoint at least one (1) director.

4.3.2 Initial Member-Director Election. Members other than the Declarant are entitled to elect at least one (1) director (the "Initial Member-Director") if fifty percent (50%) of the Lots in the entire Community which will ultimately be operated by the Association have been conveyed to non-Declarant Members. The Initial Member-Director, and any successor to the Initial Member-Director, shall be elected by the

Members in the manner set forth in Section 4.3.3 below. In the event Turnover does not occur prior to the annual meeting of the Members held subsequent to the Initial Member-Director's election to the Board, a successor to the Initial Member-Director shall be elected to the Board at each annual meeting of the Members held after the election of the Initial Member-Director. Notwithstanding the foregoing, in the event the annual meeting of the Members held subsequent to the Initial Member-Director's election to the Board is less than six (6) months from the date of the Initial Member-Director's election to the Board, the term of the Initial Member-Director shall extend to the earlier of the next annual meeting of the Members or Turnover. In no event shall the term of the Initial Member-Director, or any successor to the Initial Member-Director, extend beyond Turnover.

4.3.3 Member Election of Directors. The director(s) elected by the Members shall be elected at the annual meeting of the Members.

4.3.3.1 First Notice of Election. At least sixty (60) days before a scheduled election, the Association shall mail, deliver, or electronically transmit to each Member a first notice of the date of the election.

4.3.3.2 Candidacy of Members. Any Member desiring to be a candidate for the Board shall provide written notice of his/her intent to be a candidate to the Association at least forty (40) days prior to the scheduled election. Such notice shall be effective upon receipt of same by the Association. No nominations shall be permitted past such date, and no nominations shall be permitted from the floor of the meeting at which the election is being conducted. Pursuant to the relevant provisions of the Homeowners' Association Act, a Member who is delinquent in the payment of any monetary obligation to the Association on the day that he/she could last nominate himself/herself or be nominated for the Board may not seek election to the Board, and his/her name shall not be listed on the "Ballot" (as such term is hereinafter defined). Additionally, a Member who has been convicted of any felony in the State of Florida or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in the State of Florida, is not eligible for candidacy unless such felon's civil rights have been restored for at least five (5) years as of the date on which such Member seeks election to the Board. The validity of any action by the Board is not affected if it is later determined that a director was ineligible for candidacy or Board membership at the time of such director's election to the Board.

4.3.3.3 Second Notice of Election. In accordance with Section 3.4 of these By-Laws, not less than fourteen (14) days prior to the scheduled election, the Association shall mail, deliver, or electronically transmit a second notice of the election to all Members, together with any candidate's information sheet(s), if any, subject to the provisions of Section 4.3.3.4 below.

4.3.3.4 Candidate Information Sheet. Upon the timely written request of a candidate, the Association shall include the information sheet of the requesting candidate along with the second notice of election. Such information sheet

shall be no larger than a single side of an eight and one half inches by eleven inches (8½" by 11") sheet of paper and shall be provided to the Association by the candidate at least thirty-five (35) days prior to the election. The information sheet may describe the candidate's educational background, employment experience, and/or any other qualifications the candidate deems relevant to his/her service on the Board. The Association shall not be liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of a sheet of paper and may do so in black and white.

4.3.3.5 Ballots. The Board shall be elected by written ballot and limited proxy only. Elections shall be decided by a plurality of votes cast. The ballot, as set forth in the written ballot and limited proxy (the "Ballot"), shall indicate in alphabetical order by surname, each and every Member who desires to be a candidate for the Board and who gave written notice to the Association not less than forty (40) days before a scheduled election, unless such Member has, prior to the mailing of the second notice of election, withdrawn his/her candidacy in writing. No Ballot shall indicate which candidates are incumbents on the Board. No write-in candidates shall be permitted. A Ballot shall not be deemed cast until delivered to the office of the Association or to the presiding officer at an annual meeting of the Members. Upon closing of balloting at an annual meeting of the Members, no Ballot may be rescinded or changed.

4.3.3.6 Conduct of the Election. At the annual meeting of the Members at which the election is held, the Association shall have available blank written ballots for distribution at the annual meeting of the Members. There shall be no quorum requirement; however, at least twenty percent (20%) of the eligible voters must cast a Ballot in order to have a valid election. At the annual meeting, ballots shall be deposited into a ballot box and collected by an "Election Committee." Upon closing of balloting, no further Ballots shall be cast. The Election Committee shall be appointed by the presiding officer during the annual meeting of the Members immediately prior to the collection of Ballots, and the members of the Election Committee shall not be the candidates, directors, officers, or the spouses of the candidates, directors, or officers. The Ballots shall be tallied in the presence of the Members in attendance at the annual meeting of the Members. All Ballots, whether disregarded or not, shall be retained with the official records of the Association. Once the Ballots have been tallied, those candidates who have been elected to the Board shall be immediately announced.

4.3.3.7 Election by Acclimation. Unless more candidates are nominated for an election than there are available positions on the Board, an election is not required. In such event, the candidates will be seated on the day of the annual meeting of the Members.

4.4 Compensation. Subject to the relevant provisions of the Homeowners' Association Act, directors shall not receive or be entitled to any compensation for services as a director, unless approved by a majority of all of the Members. Notwithstanding the foregoing, nothing herein contained shall be construed to preclude a director from serving the Association in any other capacity and receiving compensation therefor, subject to the



disclosure and approval requirements of the Florida Not For Profit Corporation Act regarding conflicts of interest. Further, directors appointed by the Declarant may be compensated by the Declarant as part of their regular employee pay. Directors shall not solicit or accept, directly or indirectly, any gifts, gratuity, favor, loan, or any other thing of monetary value from any company or individual seeking to obtain contractual or other business or financial relations with the Association, or from anyone whose intent is to influence any decision or action on any official matter, except a director may accept food and beverage to be consumed at a business meeting with a value of less than Twenty Five Dollars (\$25.00) per individual, as set forth in section 720.3033, Florida Statutes.

4.5 Organizational Meeting. The organizational meeting of the newly-elected Board shall be held immediately after the annual meeting of the Members. If the majority of the directors elected shall not be present at that time, or if the directors shall fail to elect officers, the organizational meeting shall then be held within ten (10) days after the annual meeting of the Members at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice to or by the Board of the organizational meeting shall be necessary. The singular instance in which the Board may vote by secret ballot shall be for the election of officers, but such vote shall take place in front of the Members.

4.6 Certification of Directors. All directors shall be certified pursuant to the relevant provisions of the Homeowners' Association Act. The written certification or educational certificate is valid for the uninterrupted tenure of the director and shall be kept among the Association's official records for five (5) years after such director's election or appointment. Any director who does not timely file the written certification or educational certificate shall be suspended from the Board until he/she complies with the requirement. The Board may temporarily fill the vacancy during the period of suspension.

4.7 Recall of Directors. Any Director may be removed from office at any time, as authorized by the Homeowners' Association Act, with or without cause, by the affirmative vote of a majority of the entire membership at a special meeting of the Members called for that purpose or as otherwise provided by the Homeowners' Association Act. Notice for such special meeting of the Members shall not be electronically transmitted. If less than a majority of the Board is removed, the vacancy shall be filled by the affirmative vote of a majority of the remaining directors. If a majority or more of the Board is removed, the vacancies shall be filled by the Members voting in favor of the recall. If removal is at a meeting, any vacancies shall be filled by the Members at the meeting. If the recall occurred by agreement in writing or by written ballot, Members may vote for replacement directors in the same instrument in accordance with the relevant provisions of the Homeowners' Association Act, together with procedural rules adopted by the Division of Florida Condominiums, Timeshares, and Mobile Homes. This Section 4.7 shall not apply to any director appointed by the Declarant.

4.8 Resignation and Disqualification of Directors. Directors shall have the absolute right to resign at any time by providing written notice of such resignation to the Board, delivered to the President or the Secretary. Such written notice of resignation shall

be effective upon receipt, unless a later date is provided in the written notice of resignation, then upon such later date the resignation shall become effective. Any director shall be disqualified for any manner as provided by the relevant provisions of the Homeowners' Association Act creating a vacancy in the office to be filled in the manner provided herein.

4.9 Vacancies. Except as to vacancies created by recall, vacancies on the Board occurring between annual meetings of the Members shall be filled by the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. A director elected or appointed pursuant to this Section 4.9 shall have all of the rights, privileges, duties, and obligations as a director elected at an annual meeting of the Members and shall serve for the unexpired term of the vacancy being filled. A vacancy occurring on the Board due to the resignation or disqualification of a Declarant-appointed director shall be filled by the Declarant for so long as the Declarant may have a director on the Board.

4.10 Board Meetings. Meetings of the Board may be held at such date, time, and location within the County as the Board may designate. Meetings of the Board may be called by the President and must be called by the Secretary at the written request of a majority of the directors.

4.11 Notice. Notice of Board meetings shall be conspicuously posted within the Common Areas at least forty-eight (48) hours before such meeting, except in the event of an emergency. All notices shall provide the date, time, and location of the Board meeting being called. A notice for a Board meeting at which an Assessment may be levied shall include a statement that Assessments will be considered and the nature of the Assessments. Notice of any meeting at which Special Assessments will be considered or at which amendments to rules regarding Lot use will be considered must be mailed, delivered, or electronically transmitted to the Members and conspicuously posted within the Common Areas at least fourteen (14) days prior to the Board meeting. Proof of mailing, delivering, or electronic transmission of such fourteen (14) day notice shall be given by affidavit of the person who mailed, delivered, or electronically transmitted such notice. The provisions set forth in Section 3.4.1 above, regarding waiver, and Section 3.4.2 above, regarding electronic transmission, shall apply hereto.

4.12 Order of Business. The order of business at Board meetings, as far as practical, shall be as follows:

- (a) Proof of due notice of meeting.
- (b) Reading and disposal of unapproved minutes.
- (c) Report of officers.
- (d) Report of committees.
- (e) Election of officers.
- (f) Unfinished business.
- (g) New business.
- (h) Adjournment.

4.13 Presiding Officer. At meetings of the Board, the President shall preside, or in the President's absence, the Vice-President shall preside, or in the absence of both, the directors present shall designate one of their number to preside at such meeting.

4.14 Quorum and Decisions. A quorum of the Board shall consist of a majority of the entire Board. All actions or resolutions approved by a majority of those directors present at a meeting at which a quorum is present shall constitute the acts of the Board, except when approval by a greater number of directors is required. Directors may not vote by proxy or secret ballot; provided, however, that secret ballots may be used for the election of officers. Prior to Turnover, and unless otherwise prohibited, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting by unanimous written consent in lieu of a meeting of the Board pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

4.15 Adjourned Meetings. If at any meeting of the Board there is less than a quorum present, the majority of those directors present may adjourn the meeting, from time to time, until a quorum is present. At any adjourned meeting, any business which might have been transacted at the meeting of the Board as originally called may be transacted without further notice. If for any reason a new date must be fixed for reconvening the meeting after adjournment, notice of the meeting and place for reconvening the meeting shall be given in the manner prescribed for meetings of the Board.

4.16 Member Attendance and Participation. Subject to the relevant provisions of the Homeowners' Association Act, Members have the right to attend all meetings of the Board. No other residents, tenants, or guests are permitted to attend any meeting of the Board unless otherwise specifically approved in writing by the Board. Members in attendance at a Board meeting shall be entitled to speak for a maximum of three (3) minutes only as to the designated agenda items prior to the Board's vote on such designated agenda items and in such manner as determined by the Board. All Member statements must be made in a respectful and businesslike manner and must be directed to the Board. In the event a Member conducts himself/herself in a manner detrimental to the carrying on of a meeting, the Board may, at the sole and unfettered discretion of the meeting chairperson, expel such Member from the meeting by any reasonable means which may be necessary to accomplish such an expulsion. The Board may adopt such other written reasonable rules governing the frequency, duration, and other manner of Member statements as it deems appropriate. Any Member may tape record or videotape meetings of the Board; provided, however, the equipment utilized does not produce distracting sound or light emissions and subject to any rules and regulations which may be adopted by the Board regarding placement, assemblage of audio and video equipment, prior notice to record the meeting, and distraction resulting from moving about during recording of the meeting.

4.17 Minutes. Minutes of all Board meetings shall be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote

or abstention from voting on each matter voted upon for each director present at a Board meeting shall be recorded in the minutes. Minutes shall be available for inspection by the Members, after such minutes have been approved, at all reasonable times.

4.18 Committees. The Board may, by resolution duly adopted, create one (1) or more committees and appoint persons to such committees and delegate to such committees such powers and responsibilities as the Board may deem advisable, subject to any limitations on the Board's right to delegate authority as may exist under general corporate law. Such committees shall consist of at least three (3) Members. The committee(s) shall have such name(s) as may be determined from time to time by the Board, and said committee(s) shall keep regular minutes of their proceedings and report the same to the Board as required. The provisions applicable to Board meetings, including, without limitation, notice provisions and Member attendance and participation provisions, shall be applicable to the meetings of any committee only when a final decision regarding the expenditure of Association funds will be made and for meetings of the ACC.

4.19 Electronic Meeting. Notwithstanding anything set forth to the contrary, any meeting of the Board may, at the discretion of the Board, be held on an electronic platform, such as, and for example purposes only, Zoom. Subject to such guidelines and procedures as the Board may adopt, Members may remotely attend and participate in Board meetings held on an electronic platform. The Association must implement reasonable means to provide Members who are not physically present with a reasonable opportunity to participate in the Board meeting by means of remote communication.

4.20 Master Association Director Appointment. Prior to Turnover, the Declarant shall have the right to appoint two (2) directors to serve on the Master Association's Board of Directors (the "Master Board") as the representative of the Association by written notice to the Master Association. After Turnover, upon receipt of notice from the Master Association requesting the appointment of two (2) directors to the Master Board to represent the Association, the Board shall, by majority vote, appoint two (2) of their number to serve on the Master Board. Eligibility to serve on the Master Board, the term of service on the Master Board, and other provisions governing service on the Master Board are set forth in the Master Governing Documents.

## **ARTICLE V** **OFFICERS**

5.1 The Officers. The officers of the Association shall be a President, a Vice President, a Treasurer, a Secretary, and such other officers as may be designated by the Board from time to time in the Board's sole discretion, the powers and duties of which shall be designated by the Board as the Board deems necessary, in its sole discretion, to manage the affairs of the Association. All officers shall serve at the pleasure of the Board. Except for officers appointed by the Declarant, officers shall be Members or shall be the authorized representative, officer, or employee of corporate Members. An individual officer may hold more than one (1) office; however, however, the individual serving as the President shall not also fill any other office.

5.2 Election of Officers. Officers shall be elected from time to time by the affirmative vote of a majority of the directors present at any Board meeting at which a quorum is present.

5.3 Removal, Resignation, and Disqualification of Officers. Any officer may be removed at any time by the affirmative vote of a majority of the Board present at any Board meeting at which a quorum is present. Without limitation of other lawful remedy, Section 4.8 of these By-Laws regarding the resignation and disqualification of directors shall also apply to officers.

5.4 Compensation. Subject to the relevant provisions of the Homeowners' Association Act, officers shall not directly receive any compensation from the Association for the performance of his/her duties as an officer. Notwithstanding the foregoing, nothing herein contained shall be construed to preclude an officer from serving the Association in any other capacity and receiving compensation therefor, subject to the disclosure and approval requirements of the Florida Not For Profit Corporation Act regarding conflicts of interest. Further, officers appointed by the Declarant-controlled Board may be compensated by the Declarant as part of their regular employee pay. Officers shall not solicit or accept, directly or indirectly, any gifts, gratuity, favor, loan, or any other thing of monetary value from any company or individual seeking to obtain contractual or other business or financial relations with the Association, or from anyone whose intent is to influence any decision or action on any official matter, except an officer may accept food and beverage to be consumed at a business meeting with a value of less than Twenty Five Dollars (\$25.00) per individual, as set forth in section 720.3033, Florida Statutes.

5.5 Duties of Officers. The officers shall perform the duties of such offices customarily performed by officers of like corporations, including, but not limited, to the following:

5.5.1 President. The President shall be a member of the Board and the chief executive officer of the Association. The President shall have all of the powers and duties which are usually vested in the office of a president, including, but not limited to, the responsibility to serve as presiding officer of all meetings. The President shall ensure that all orders and resolutions of the Board are carried out and shall sign all notes, checks, leases, and all other written instruments upon approval of the Board. The President shall set the agenda for all meetings of the Board and all meetings of the Members in consultation with the officers and directors.

5.5.2 Vice President. The Vice President shall be a member of the Board and shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board.

5.5.3 Secretary. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and directors at all reasonable times. The Secretary shall have custody of the seal of the Association and shall affix the same to instruments requiring a seal, when duly approved and signed by the Board. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of secretary and as may be required by the Board or the President.

5.5.4 Treasurer. The Treasurer shall have custody of all of the property of the Association, including funds, securities, and evidences of indebtedness. The Treasurer shall keep the Assessment rolls and accounts of the Members, keep the books of the Association in accordance with good accounting practices, make provision for collection of Assessments, and all other duties incident to the office of treasurer and as may be required by the Board or the President.

## **ARTICLE VI**

### **FISCAL MANAGEMENT**

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year, beginning January 1<sup>st</sup> and ending December 31<sup>st</sup> of each year; provided, however, the Board is expressly authorized to adopt a different fiscal year at such time as the Board deems advisable.

6.2 Accounting Records. The Association shall maintain accounting records in accordance with good accounting practices which shall be open to inspection by Members at reasonable times in accordance with the Homeowners' Association Act.

6.3 Budget. The initial budget prepared by the Declarant is adopted as the budget for the period of operation until adoption of the first annual budget by the Board. THE INITIAL BUDGET OF THE ASSOCIATION IS PROJECTED (NOT BASED ON HISTORICAL OPERATING FIGURES). THEREFORE, IT IS POSSIBLE THAT ACTUAL ASSESSMENTS MAY BE LESS OR GREATER THAN PROJECTED. Thereafter, all annual budgets shall be prepared and adopted by the Board. The Board shall prepare and adopt an annual budget reflecting, among other things, the estimated revenues and expenses for the forthcoming fiscal year and the estimated surplus or deficit for the end of the current fiscal year. After the budget has been adopted by the Board, a copy of the adopted budget shall be mailed, delivered, or electronically transmitted to each Member at the Member's last known address, electronic mailing address, or facsimile number as shown on the books and records of the Association. In lieu of mailing, delivering, or electronically transmitting a copy of the adopted budget, the Association shall mail, deliver, or electronically transmit to each Member at the Member's last known address, electronic mailing address, or facsimile number as shown on the books and records of the Association written notice that a copy of the adopted budget is available upon request at no charge to the Member.

6.4 Budget Deficiency. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Common Expenses not included in the budget or which exceed budgeted amounts, and no Board shall be required to engage in deficit spending. Recognizing that it is extremely difficult to adopt a budget for each fiscal year that exactly coincides with the actual expenses during the year, should there exist any deficiency which results from there being greater Common Expenses than income from Assessments, then such deficits shall be carried into the next year's budget as a deficiency or shall be the subject of a Special Assessment to be levied by the Board in accordance with the Declaration.

6.5 Financial Report. Within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year in accordance with the Homeowners' Association Act. Within twenty-one (21) days after the final financial report is completed by the Association, or received from the third party, but not later than one hundred twenty (120) days after the end of the fiscal year, the Association shall provide each Member with a copy of the annual financial report or a written notice advising that a copy of the report is available upon request at no charge to the Member.

6.6 Depositories. The depository of the Association shall be such bank(s) or other financial institution(s) as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Board. In the absence of such determination by the Board, such checks shall be signed by the Treasurer, and countersigned by the President or the Vice-President.

6.7 Fidelity Coverage. The Association shall maintain insurance or a fidelity bond for all "persons who control or disburse funds of the Association." The fidelity coverage must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this Section 6.7, the term "persons who control or disburse funds of the Association" includes, but is not limited to, persons authorized to sign checks on behalf of the Association, and the President, the Vice-President, the Secretary, and the Treasurer. The Association shall bear the cost of any such fidelity coverage. If annually approved by a majority of the voting interests present at a properly called meeting of the Association, the Association may waive the requirement of obtaining fidelity coverage for all persons who control or disburse funds of the Association.

## **ARTICLE VII**

### **RULES AND REGULATIONS**

The Board may, at a properly noticed meeting of the Board, adopt reasonable rules and regulations for the operation and use of the Community, or amend or rescind any such existing rules and regulations; provided, however, that such rules and regulations shall not be inconsistent with any of the terms or provisions of any of the Declaration, the Articles, or these By-Laws. Copies of any rules and regulations as promulgated,

amended, or rescinded by the Board shall be mailed, delivered, or electronically transmitted to all Members at the last known address, electronic mailing address, or facsimile number of the Members as shown on the books and records of the Association and shall become effective upon such mailing, delivery, or electronic transmission.

## **ARTICLE VIII**

### **PARLIAMENTARY RULES**

Robert's Rules of Order (latest edition) shall govern the conduct of meetings of the Board and meetings of the Members when not in conflict with the Governing Documents, the Homeowners' Association Act, or the Florida Not For Profit Corporation Act.

## **ARTICLE IX**

### **AMENDMENTS**

9.1 Declarant Amendment. Prior to Turnover, these By-Laws may be amended only by an instrument in writing signed by the Declarant and joined by the Association.

9.2 Membership Amendment. After Turnover, these By-Laws may be amended by the affirmative vote of two-thirds (2/3<sup>rd</sup>s) of all Members. The approval of the Members of a proposed amendment may be obtained by written consent in lieu of a membership meeting pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

9.3 Proviso. No amendment to these By-Laws shall conflict with the terms of the Declaration or the Articles. No amendment to these By-Laws shall be adopted which shall abridge, prejudice, amend, or alter the rights of the Declarant, as determined in the sole discretion of the Declarant, without the prior written consent of the Declarant. Any attempt to amend contrary to this prohibition shall be of no force or effect whatsoever.

9.4 Recording. Amendments to these By-Laws adopted pursuant to this Article IX shall be recorded among the Official Records of the County.

9.5 Notice of Amendment. Within thirty (30) days after recording an amendment to these By-Laws, the Association shall mail, deliver, or electronically transmit a copy of the amendment to the Members. However, if a copy of the proposed amendment is provided to the Members before they vote on the amendment, and the proposed amendment is not changed before the vote, the Association, in lieu of providing a copy of the amendment, may provide notice to the Members that the amendment was adopted, identifying the Official Records Book and Page number of the recorded amendment, and that a copy of the amendment is available at no charge to the Member upon written request to the Association. Notwithstanding the foregoing, the failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.



**IN WITNESS WHEREOF**, these By-Laws of Lotis Palm Bay 2 Homeowner's Association, Inc. were executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

**STATE OF FLORIDA                    )**  
  **) ss:**  
**COUNTY OF PALM BEACH        )**

The foregoing By-Laws of Lotis Wellington 2 Homeowner's Association, Inc. were acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by James S. Gielda as President for **LOTIS PALM BAY 2 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

**ASSOCIATION**

**LOTIS PALM BAY 2 HOMEOWNER'S  
ASSOCIATION, INC.**  
a Florida not for profit corporation

By: \_\_\_\_\_  
James S. Gielda, its President

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

My Commission Expires:

**JOINDER TO BY-LAWS OF  
LOTIS PALM BAY 2 HOMEOWNER’S ASSOCIATION, INC.**

**JKM ACQUISITIONS, LLC**, a Florida limited liability company (the “Declarant”), does hereby join in the **BY-LAWS OF LOTIS PALM BAY 2 HOMEOWNER’S ASSOCIATION, INC.** to which this Joinder is attached on the date set forth below.

**Signed, sealed, and delivered  
in the presence of:**

**JKM ACQUISITIONS, LLC**,  
a Florida limited liability company  
its Member

By: \_\_\_\_\_  
Adam P. Freedman, its Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

STATE OF FLORIDA                    )  
  ) ss:  
COUNTY OF PALM BEACH        )

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2025, by Adam P. Freedman as Manager for **JKM ACQUISITIONS, LLC**, a Florida limited liability company, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

My Commission Expires:



Prepared by and return to:

Stephen Grace de Peralta, Esq.  
PG Law  
5030 Champion Blvd.  
Suite G11-281  
Boca Raton, FL 33496

SPACE ABOVE THIS LINE FOR PROCESSING DATA

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
LOTIS PALM BAY 3 HOMEOWNERS ASSOCIATION**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LOTIS PALM BAY 3 HOMEOWNERS ASSOCIATION** (this “Declaration”, as such term is hereinafter further defined) is made this \_\_\_\_ day of \_\_\_\_\_, 2025 by **JKM ACQUISITIONS, LLC**, a Florida limited liability company (the “Declarant”, as such term is hereinafter further defined), and is joined by **LOTIS PALM BAY 3 HOMEOWNER’S ASSOCIATION, INC.**, a Florida not for profit corporation (the “Association”), in acknowledgement of its duties, responsibilities, and obligations hereunder.

**WHEREAS**, the Declarant is the record title owner of the real property located in Palm Beach County, Florida, more particularly described on Exhibit “A” attached hereto and incorporated as if fully set forth herein, as may be supplemented from time to time (the “Property”, as such term is hereinafter further defined), and desires to develop a planned community to be known as “**LOTIS PALM BAY 3 HOMEOWNERS**” (the “Community”) on the Property; and

**WHEREAS**, in order to preserve and enhance the values and amenities of the Community, the Declarant declares, commits, and subjects the Property and the “Improvements” (as such term is hereinafter defined) now or hereafter constructed thereon to certain land use covenants, restrictions, reservations, regulations, burdens, liens, and easements, and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance, and enforcement; and

**WHEREAS**, this Declaration is a covenant running with all of the land comprising the Property, and each present and future owner of interests therein and their heirs, successors, and assigns are hereby subject to this Declaration.

**NOW THEREFORE**, in consideration of the promises and covenants contained in this Declaration, the Declarant hereby declares that every portion of the Property is to be owned, held, transferred, sold, conveyed, leased, mortgaged, improved, used, and occupied subject to the covenants, conditions, restrictions, easements, reservations, rules, regulations, charges, and liens hereinafter set forth.

## **ARTICLE I**

### **DEFINITIONS**

In addition to the terms defined elsewhere in this Declaration, all initially capitalized terms herein shall have the following meanings:

1.1 "ACC" shall mean the Association's Architectural Control Committee established pursuant to Article XII hereof.

1.2 "Architectural Guidelines" shall mean such standards of maintenance, repair, replacement, reconstruction, refurbishment, addition, alteration, improvement, or other activity, if any, established pursuant to Section 12.4 hereof.

1.3 "Articles" shall mean the Articles of Incorporation of Lotis Palm Bay 3 Homeowner's Association, Inc., attached hereto and incorporated as if fully set forth herein as Exhibit "B", as may be amended from time to time.

1.4 "Assessments" shall mean any assessments made in accordance with this Declaration and as further set forth in Article XI hereof, whether "General Assessment(s)", "Individual Assessment(s)", "Special Assessment(s)" (as such terms are hereinafter defined), or any combination thereof, and any and all other assessments and monetary fines and charges which are or may be levied by the Association in accordance with the "Governing Documents" (as such term is hereinafter defined).

1.5 "Board" shall mean the Board of Directors of the Association.

1.6 "By-Laws" shall mean the By-Laws of Lotis Palm Bay 3 Homeowner's Association, Inc., attached hereto and incorporated as if fully set forth herein as Exhibit "D", as amended from time to time.

1.7 "Common Areas" shall mean all real property interests and Improvements within the Property designated as Common Areas from time to time by the Declarant, by the "Plat" (as such term is hereinafter defined), or by recorded amendment to this Declaration and which is not included in any "Lot" (as such term is hereinafter defined) and is provided for, owned, leased by, or dedicated to, the common use and enjoyment of the "Owners" (as such term is hereinafter defined) within the Community. The Common Areas may include, without limitation, the Access Control System, the "Recreational Facilities" (as such term is hereinafter defined), the "Stormwater Management System" (as such term is hereinafter defined), private roadways, entrance features, buffer or landscaped areas, open space areas, internal buffers, perimeter buffers, perimeter walls and fences, easement areas owned by others, private rights-of-way, irrigation facilities, sidewalks, street lights, and commonly used utility facilities. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DEFINITION OF "COMMON AREAS" AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND, OBLIGATE, OR LIMIT THE DECLARANT TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET

FORTH IN SUCH DESCRIPTION, THE CONSTRUCTION OR SUPPLYING OF ANY SUCH ITEM BEING IN THE DECLARANT'S SOLE DISCRETION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY, IF ANY, AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED BY THE ASSOCIATION, EXCEPT AFTER CONSTRUCTION OF SUCH ITEM AND CONVEYANCE OF ANY SUCH ITEM TO THE ASSOCIATION.

1.8 "Common Expenses" shall mean all actual and estimated costs and expenses of the Association, including without limitation, the following: (i) all costs and expenses of ownership, maintenance, repair, replacement, reconstruction, operation, and administration of the Common Areas, any portion thereof and Improvements thereon, and all other property owned by the Association; (ii) all amounts payable by the Association under the terms of this Declaration; (iii) all costs and expenses of Community lighting, including, without limitation, up-lighting and entrance lighting; (iv) all amounts payable in connection with any private street lighting agreement between the Association and a utility provider; (v) all costs and expenses of utilities providing services for the Common Areas or to the Lots on a bulk basis (if any), such as water, gas, electricity, telephone, cable television, internet, sanitation, sewer, and any type of utility or any other type of service charge which is not separately billed to an Owner; (vi) all amounts payable to a "Telecommunications Provider" for "Telecommunications Services" (as such terms are hereinafter defined) furnished to all Owners; (vii) all taxes, assessments, and tax liens which may be assessed or levied at any and all times against the Common Areas or against any and all personal property or Improvements thereon; (viii) all costs and expenses for the maintenance, operation, management, repair, and replacement of the irrigation system throughout the Property; (ix) the premiums on policies of insurance including, but not limited to, liability and casualty insurance for the Common Areas, fidelity bonding, and liability insurance for the directors and officers of the Association; (x) salaries, management fees, professional fees, and associated costs for all employees, management firms and agents, and professionals hired or retained by the Association; (xi) all amounts payable in connection with Association sponsored social events; (xii) all costs and expenses relating to the discharge of the Association's powers and duties; (xiii) all costs and expenses as determined to be part of the Common Expenses by the Board; and (xiv) all other costs and expenses incurred and lawfully imposed by the Association.

1.8.1 Any expenses which are required by this Declaration to be the matter of Individual Assessment or Special Assessment (unless levied against all Owners) shall not be deemed to be Common Expenses. The Common Expenses with respect to the Common Areas are payable by each Owner to the Association notwithstanding the fact that the Declarant may not have as yet conveyed title to the Common Areas to the Association.

1.8.2 Notwithstanding anything to the contrary herein, Common Expenses shall not include "Reserves" (as such term is hereinafter defined). Prior to "Turnover" (as such term is hereinafter defined), use of the term "reserves" or "Reserves" in any budget shall not be construed to mean the Declarant created "Statutory Reserves" (as such term is hereinafter defined) in accordance with the requirements of the "Homeowners'

Association Act” (as such term is hereinafter defined). Pursuant to the requirements of the Homeowners’ Association Act, the Association may, if it so determines by a vote of the Owners, include Statutory Reserves in the Association’s annual budget, and the Board may establish “Non-Statutory Reserves” (as such term is hereinafter defined). However, through the “Community Completion Date” (as such term is hereinafter defined), no such vote to establish Statutory Reserves nor Board establishment of Non-Statutory Reserves shall be effective against the Declarant.

1.9 “Community Completion Date” shall mean the date upon which each and every “Home” (as such term is hereinafter defined) within the Community, as ultimately planned and as fully developed, have been conveyed by the Declarant to Owners.

1.10 “County” shall mean Brevard County, Florida.

1.11 “Declarant” shall mean LOTIS ACQUISITIONS, LLC, a Florida limited liability company, and any successor or assignee who has or takes title to any portion of the Property for development and/or sale and who is designated as Declarant in a written instrument which is signed by the Declarant and recorded among the Official Records of the County or which succeeds to such rights by merger or consolidation. The Declarant shall have the right to assign all or a portion of any rights granted to the Declarant in this Declaration. The Declarant shall also have the right to assign all or a portion of any obligations of the Declarant in this Declaration. In the event of a partial assignment of some, but not all, Declarant rights and/or obligations, the assignee shall not be deemed the Declarant, but may exercise only those rights, or shall be responsible for only those obligations, of the Declarant assigned to such assignee. Additionally, any partial assignee that does not assume all of the obligations of Declarant shall not be deemed the Declarant.

1.12 “Declaration” shall mean this Declaration, together with all amendments, supplements, and modifications hereto.

1.13 “Florida Not For Profit Corporation Act” shall mean Chapter 617 of the Florida Statutes as it exists through the date of recording this Declaration.

1.14 “General Assessment(s)” shall mean and refer to Assessments levied to fund the Common Expenses of the Association as further set forth in Section 11.4 hereof.

1.15 “Governing Documents” shall mean this Declaration, the Articles, the By-Laws, the Architectural Guidelines, the “Rules and Regulations” (as such term is hereinafter defined), and any applicable “Supplemental Declaration” (as such term is hereinafter defined), all as amended from time to time.

1.16 “Home” shall mean a residential dwelling and appurtenances thereto constructed on a Lot within the Community designed and intended for use and occupancy as a single-family residence. A Home shall be deemed created and have perpetual existence upon the issuance of a final or temporary Certificate of Occupancy for such



residence; provided, however, the subsequent loss of such Certificate of Occupancy (e.g., by casualty or remodeling) shall not affect the status of a Home, or the obligation of an Owner to pay Assessments with respect to such Home. Upon completion of construction of a Home on a Lot as evidenced by issuance of a Certificate of Occupancy, the Lot and Improvements thereon, or other property appurtenant to the Home may collectively be referred to as a Home.

1.17 "Homeowners' Association Act" shall mean Chapter 720 of the Florida Statutes as it exists through the date of recording this Declaration.

1.18 "Improvement" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within the Property, including, but not limited to, buildings, walkways, recreation areas and facilities, parking areas, berms, fountains, sprinkler systems, gatehouse, streets, drives, roads, driveways, fences, underground footers and other foundation supports, stairs, roofs, landscaping, trees, hedges, plantings, flower pots, poles, swings, gym sets and play structures, swimming pools, spas, covered patios, screen enclosures, jogging, bicycling and walking paths, basketball backboards and hoops, signs, site and perimeter walls, gazebos, benches, mailboxes, street lights, and signs. The foregoing list of Improvements is for example purposes only and shall not create any obligation of the Declarant to construct or fund construction of same.

1.19 "Individual Assessment(s)" shall mean Assessments levied against one (1) or more Lots and/or one (1) or more Owners for such matters as set forth in this Declaration and/or as related to a specific level of service provided by the Association to a Lot and/or Owner in accordance with section 720.308, Florida Statutes, and as further set forth in Section 11.6 hereof.

1.20 "Legal Fees" shall mean all fees for attorney and paralegal services and all costs and expenses and court costs through and including all trial and appellate levels and post judgment proceedings incurred in connection with: (i) enforcement of the Governing Documents, whether or not mediation, arbitration and/or litigation is actually begun; (ii) negotiation and preparation for mediation, arbitration, and/or litigation, whether or not an action is actually begun; (iii) collection of past due Assessments including, but not limited to, preparation of notices and liens; and (iv) litigation regarding the entitlement to Legal Fees, including, without limitation, determining or quantifying the amount of Legal Fees due. Additionally, and without limitation of the foregoing, Legal Fees shall include any and all costs that are taxable pursuant to any applicable statute, rule, or guideline (including, but not limited to, the Statewide Uniform Guidelines for Taxation of Costs), as well as costs not taxable thereunder, including, without limitation, the following: (i) costs of investigation; (ii) costs of copying documents and other materials, whether for discovery, filing with the court, internal review, or any other purpose; (iii) costs for electronic discovery; (iv) Westlaw, Lexis Nexis, or other electronic research service charges; (v) telephone charges; (vi) mailing, commercial delivery service, and courier charges; (vii) travel expenses, whether for investigation, depositions, hearings, trial, or any other purpose; (viii) information technology support charges; (ix) any and all

consultant or expert witness fees, whether or not such fees are incurred in connection with a court-ordered report or testimony at a deposition, hearing, or trial; (x) court reported and transcript fees, whether for deposition, trial, or an evidentiary or non-evidentiary hearing; (xi) mediator fees; and (xii) any other reasonable cost incurred in connection with the dispute.

1.21 "Lender" shall mean (i) the institutional and licensed holder of a first mortgage encumbering a Home or (ii) the Declarant and its affiliates, to the extent the Declarant or its affiliates finances the purchase of a Home initially or by assignment of an existing mortgage.

1.22 "Lot" shall mean any platted parcel of land shown on the Plat upon which a Home is permitted to be constructed, together with the Improvements thereon or other property appurtenant to the Lot. Upon completion of construction of a Home on a Lot as evidenced by issuance of a Certificate of Occupancy, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot.

1.23 "Master Association" shall mean Lotis Palm Bay Master Association, Inc., a Florida not for profit corporation.

1.24 "Master Declaration" shall mean the Declaration of Covenants, Conditions, and Restrictions for Lotis Palm Bay, recorded in the Official Records of Brevard County in Official Records Book \_\_\_\_\_, Page \_\_\_, together with all exhibits thereto, all as amended and supplemented from time to time.

1.25 "Master Governing Documents" shall mean the Master Declaration, the Articles of Incorporation and By-Laws of the Master Association, and the Master Association's Architectural Guidelines and Rules and Regulations, all as amended and supplemented from time to time.

1.26 "Member(s)" shall mean any person(s) or entity(ies) that is an Owner as evidenced by a deed or other title instrument in the name of such person(s) or entity(ies) recorded in the Official Records of the County.

1.27 "Non-Residential Property" shall mean that portion of the property subject to the Master Declaration, less and except the Property, which is intended for commercial, medial, rental apartments, and institutional development and use.

1.28 "Owner(s)" shall mean the record title owner(s) (whether one (1) or more persons or entities) of fee simple interest to any Lot but excluding those having such interest merely as security for the performance of an obligation and excluding purchasers under executory contracts of sale. The term "Owner" shall not include the Declarant, even

after Turnover, unless the Declarant, in a writing addressed to the Association, elects otherwise.

1.29 "Plat" shall mean the plat of Lotis Palm Bay, recorded in the Official Records of the County in Plat Book \_\_\_\_, Page \_\_\_\_, and any replat of any portion thereof and any amendment thereto as may be recorded in the Official Records of the County from time to time, unless such replatted property is not intended to remain subjected to this Declaration. This definition shall be automatically amended to include the plat of any additional property added or removed to this Declaration and any replat of any portion thereof as may be recorded in the Official Records of the County from time to time.

1.30 "Property" shall mean the property described in Exhibit "A" hereto (including all Improvements thereon), and as may be applicable, such additions thereto as may hereafter be brought within the jurisdiction of this Declaration and such withdrawals therefrom as may be removed from the jurisdiction of this Declaration by Supplemental Declaration.

1.31 "Reserves" shall mean any reserve accounts for capital expenditures and/or deferred maintenance created in accordance with section 720.303(6)(d), Florida Statutes, and subject to the provisions of section 720.303(6), Florida Statutes ("Statutory Reserves"), and reserve accounts for capital expenditures and/or deferred maintenance established at the discretion of the Board which are not subject to the provisions of section 720.303(6) ("Non-Statutory Reserves"), or any combination thereof.

1.32 "Rules and Regulations" shall mean the rules and regulations governing the Community as adopted by the Board from time to time. The Rules and Regulations may be incorporated in the Architectural Guidelines or may be adopted separately by the Board.

1.33 "Special Assessment(s)" shall mean Assessments levied against one (1) or more Lots or one (1) or more Owners for such matters as set forth in this Declaration as further set forth in Section 11.5 hereof.

1.34 "Single-Family Lot" means any Lot upon which a detached, single-family Home is constructed.

1.35 "SJRWMD" shall mean the St. Johns River Water Management District.

1.36 "SJRWMD Permit" shall mean the Individual Environmental Resource Permit No. \_\_\_\_\_ issued by SJRWMD to the Master Association regarding the Property and the Non-Residential Property, a copy of which is attached hereto and incorporated as if fully set forth herein as Exhibit "C". Copies of the SJRWMD Permit and any future permit actions of SJRWMD shall be maintained by the Secretary of the Association for the benefit of the Association.

1.37 “Stormwater Management System” means a system that is designed and constructed or implemented to control discharges that are necessary by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, over-drainage, environmental degradation, and water pollution otherwise affecting the quantity and quality of discharges from the system, as applicable.

1.38 “Supplemental Declaration” shall mean and refer to an instrument filed in the Official Records of the County pursuant to Article VI hereof which subjects additional property to this Declaration, withdraws property from this Declaration, designates neighborhoods, creates additional classes of members, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The Declarant may, by Supplemental Declaration, create additional classes of membership, with such rights, privileges, and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

1.39 “Telecommunications Provider” shall mean any party contracting with the Association to provide Owners with one (1) or more Telecommunications Services. With respect to any particular Telecommunications Services, there may be one (1) or more Telecommunications Providers.

1.40 “Telecommunications Services” shall mean delivered entertainment services, if provided, or none at all; all services that are typically, and in the future, identified as telecommunication services; cable television services; and data transmission services. Without limiting the foregoing, such Telecommunications Services may include the development, promotion, marketing, advertisement, provision, distribution, maintenance, transmission, and servicing of any of the foregoing services. The term Telecommunications Services is to be construed as broadly as possible.

1.41 “Title Documents” shall mean, if any, certain land use and title documents recorded in the County’s Official Records to which all or a part of the Property may be subject, and upon the Community Completion Date, the Association shall assume all of the obligations of the Declarant under the Title Documents, unless otherwise provided by the Declarant by amendment to this Declaration and in the sole and absolute discretion of Declarant.

1.42 “Townhome Lot” means any Lot upon which an attached, single-family Home is constructed.

1.43 “Turnover” shall mean the transfer of operation of the Association by the Declarant to the Owners, such that the Owners are entitled to elect a majority of the Board, which occurs upon the earliest of the following events in accordance with section 720.307, Florida Statutes: (i) three (3) months after the conveyance of ninety percent (90%) of all of the Lots to Owners; (ii) the Declarant voluntarily relinquishes control of the Association in a writing delivered to the Association; (iii) upon the Declarant abandoning

or deserting its responsibility to maintain and complete the amenities or infrastructure as set forth in this Declaration as evidenced by a court order; (iv) upon the Declarant filing a petition seeking protection under Chapter 7 of the Federal Bankruptcy Code; (v) upon the Declarant losing title to the Property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of Declarant rights and responsibilities first arising after the date of such assignment; or (vi) upon a receiver for the Declarant being appointed by a circuit court and not being discharged within thirty (30) days after such appointment, unless the court determines within thirty (30) days after such appointment that transfer of control would be detrimental to the Association or its Members.

## **ARTICLE II**

### **DESCRIPTION OF THE COMMUNITY**

2.1 General Plan of Development. The Property is part of the mixed-use development, containing residential, commercial, rental apartments, and institutional uses, known as "LOTIS PALM BAY". The Property, constituting the single-family residential use of the mixed-use development, comprises the Community to encompass approximately three hundred and ten (310) Single-Family Lots and Common Areas, and, in addition, lands which the Declarant may add or remove, but shall in no way be obligated to add or remove, by one (1) or more Supplemental Declarations. The Declarant makes no representations concerning development both within and outside the boundaries of the Community, including, but not limited to, the number, design, boundaries, configuration, and arrangements, prices of Lots and Homes and buildings in all other proposed forms of ownership and/or other Improvements on the Property or adjacent to or near the Property, including, but not limited to, the size, location, configuration, elevations, design, building materials, height, view, airspace, number of Lots or Homes, number of buildings, location of easements, parking and landscaped areas, and services and amenities offered. The Declarant hereby reserves the right to modify its general plan of development of the Community (including, without limitation, the right to modify the site plan of the Community and the right to supplement, change, or reduce the number of Homes, Lots, and/or Recreational Facilities (if any) to be constructed within the Community) and/or the right to add land to the Property or to withdraw land from the Property, all in the Declarant's sole and absolute discretion. Therefore, in the event the Declarant modifies its general plan of development of the Community, adds land to the Property and/or withdraws land from the Property, the number of Lots, the layout of Lots and/or the size of Lots within the Community may change and the Assessments required to be paid pursuant to this Declaration may increase or decrease, as applicable. Further, the Declarant hereby reserves the right to modify, amend, or revise the Plat or any replat thereof, from time to time, and the right to record, modify, amend, or revise, from time to time, one (1) or more additional plats or replats thereof, setting forth such information as the Declarant may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of Lots, Homes, Common Areas, additional property, roads, sidewalks, utility systems, drainage

systems, and easements. The Declarant's general plan of development further contemplates that such Homes shall be whatever types of structures the Declarant may choose which are in conformance with this Declaration. THE DECLARANT MAY PRESENT TO THE PUBLIC OR TO OWNERS RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER DOCUMENTS RESPECTING THE COMMUNITY. SUCH RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER DOCUMENTS ARE NOT A GUARANTEE OF HOW THE COMMUNITY WILL APPEAR UPON COMPLETION, AND THE DECLARANT RESERVES THE RIGHT TO CHANGE ANY AND ALL OF THE FOREGOING AT ANY TIME AS THE DECLARANT DEEMS NECESSARY IN ITS SOLE AND ABSOLUTE DISCRETION.

2.2 Absence of Obligation. The planning process for the Community is an ever-evolving one and must remain flexible in order to be responsible to and accommodate the needs of the Community. Subject to the Title Documents (if any), the Declarant may and has the right to develop the Community and adjacent property owned by the Declarant into residences, comprised of homes, villas, coach homes, townhomes, patio homes, single-family homes, estate homes, multi-family homes, condominiums, rental apartments, and other forms of residential dwellings, and/or Improvements for any form of commercial, institutional, or other non-residential uses. The existence at any point in time of walls, landscape screens, or berms is not a guaranty or promise that such items will remain or form part of the Community as finally developed. Additionally, the Declarant expressly reserves the right as to the Property to (i) commence construction and development of the Property if and when the Declarant desires; (ii) develop the Property, and each portion thereof, upon such timetable as the Declarant, without obligation and in its sole discretion, chooses; and (iii) modify the general plan of development of the Property (including, without limitation, the right to modify the site plan of the Community and the right to change the Recreational Facilities (if any) and the number of Homes to be constructed within the Community) in such manner as the Declarant, in its sole and absolute discretion, chooses. Nothing contained herein shall be construed as obligating the Declarant to construct the Community according to the present general plan of development or as obligating the Declarant to declare any additional property to be Property hereunder.

2.3 Model Homes. The Declarant hereby reserves the right to construct and operate model homes within the Community. The model homes may contain models for the Community or other communities being developed by the Declarant or affiliate(s) of the Declarant, as the Declarant and/or any of the Declarant's affiliates may so determine, in their sole discretion. The model homes may also contain parking, landscaping, and fencing, including, without limitation, across roadways and sidewalks, as the Declarant may determine in its sole discretion. In the event the Declarant and/or any of the Declarant's affiliates constructs model homes in the Community, such model homes may be used for such period of time that the Declarant and/or any of the Declarant's affiliates determine to be necessary in its or their sole discretion including, without limitation, after Turnover. Each Owner, by acceptance of a deed or title to a Lot, acknowledges and agrees that: (i) the Declarant and/or any of the Declarant's affiliates have a right to

construct and/or operate model homes even after Turnover; (ii) the Declarant, its affiliates, guests, invitees, and prospective purchasers, have an easement over the Community for ingress and egress to and from each and every model home and to use and show the model homes to prospective purchasers in the Community or other communities being developed by the Declarant and/or any of the Declarant's affiliates, for so long as such model homes exist; and (iii) the Owners, tenants, residents, guests, and invitees shall not interfere in any manner whatsoever in the sales process by the Declarant and/or any of the Declarant's affiliates, including, without limitation, the carrying of signs, the posting of signs on Lots or Homes (which the Declarant has the right to do in its unfettered discretion), or other types of demonstrations in or around the Community or any public right-of-way adjacent to the Property. Each Owner acknowledges and agrees that any sales interference by an Owner, tenant, resident, guest, or invitee shall be deemed a nuisance and therefore detrimental to: (i) the quiet enjoyment of the Community by other residents, (ii) the value of the Homes within the Community, and (iii) the Declarant's and/or any of the Declarant's affiliates' ability to conduct their business.

### **ARTICLE III** **COMMON AREAS**

3.1 Common Areas. The Declarant anticipates it will construct certain facilities and Improvements as part of the Common Areas to include whatever facilities and Improvements the Declarant considers in its sole judgment to be appropriate to the Community, as well as any changes thereto. By way of example, and not limitation, the facilities and Improvements may include, without creating any obligation to provide same: private streets, roads, rights-of-way, and sidewalks; streets, roads, and rights-of-way dedicated to the public; the Stormwater Management System; water collection, treatment, and distribution facilities; sewage collection facilities and related wastewater treatment and disposal facilities (including, but not limited to, an irrigation system utilizing treated effluent from the Stormwater Management System); mailbox facilities; and utility and maintenance buildings. The description of the Common Areas on the Plat is subject to change and the notes on a Plat are not a guarantee of what Improvements and facilities will be constructed as Common Areas. Site plans, the Plat, and renderings used by the Declarant in its marketing efforts may illustrate the types of Improvements and facilities that may be constructed as Common Areas but such site plans, the Plat, and renderings are not a guarantee of what Improvements will actually be constructed. Each Owner should not rely on the Plat or any site plans or renderings used for illustration purposes as this Declaration governs the rights and obligations of the Declarant and Owners with respect to the Common Areas. The Owners shall have no right in or to any Common Areas referred to in this Declaration unless and until same are actually constructed, completed, and conveyed to the Association. Prior to the Community Completion Date, the Declarant reserves the absolute right to add to, delete from, or modify any of the Common Areas at its discretion without notice and to dedicate and/or transfer any portion of the Common Areas for various public purposes, or to make any portions of the Property part of the Common Areas. SALES BROCHURES, SITE PLANS, AND MARKETING MATERIALS ARE CURRENT CONCEPTUAL REPRESENTATIONS AS TO WHAT IMPROVEMENTS, IF ANY, WILL BE INCLUDED WITHIN THE COMMON AREAS. THE

DECLARANT SPECIFICALLY RESERVES THE RIGHT TO CHANGE THE LAYOUT, COMPOSITION, AND DESIGN OF ANY AND ALL COMMON AREAS, AT ANY TIME, WITHOUT NOTICE AND AT ITS SOLE AND UNFETTERED DISCRETION.

3.2 Recreational Facilities. Certain of the Common Areas may be intended for recreational activities (collectively, the "Recreational Facilities"). The Declarant shall be the sole judge of the composition of any Common Area Improvements constructed by the Declarant, including, without limitation, the Recreational Facilities. Prior to the Community Completion Date, the Declarant reserves the absolute right to construct additional Improvements on the Common Areas within the Community, from time to time, in its sole discretion, and to remove, add to, modify, and change the boundaries, facilities, and Improvements now or then part of the Common Areas. The Declarant is not obligated to, nor has it represented that it will, construct any Common Area Improvements, including, without limitation, the Recreational Facilities. The Declarant is the sole judge of the Common Area Improvements constructed by the Declarant, including, without limitation, the plans, specifications, design, location, completion schedule, materials, size, and contents of the facilities, Improvements, appurtenances, personal property, color, textures, finishes, or changes or modifications to any of them. Notwithstanding anything contained herein, neither the Declarant nor the Association makes any representations whatsoever to commence, complete, or construct any of the Recreational Facilities within any specific time period.

3.3 Public Facilities. The Community may include one (1) or more public facilities, including, without limitation, a lift station dedicated to the County and/or the City as part of the wastewater treatment system.

3.4 Mailboxes. Owners hereby acknowledge that the United States Postal Service has sole discretion to determine the form of mail delivery for the Community and may require cluster boxes to be installed and utilized at one (1) or more delivery points within the Property. Curbside delivery may not be available within the Property. Mailbox sites, equipment type, and method of delivery may change from time to time in the sole discretion of the United States Postal Service.

3.5 Retention/Detention Areas. Any retention/detention areas may be a part of the Common Areas, and if a part of the Common Areas, shall be maintained, administered, and operated by the Master Association in accordance with the Master Declaration as part of the Stormwater Management System. In furtherance of the foregoing, the Declarant hereby reserves and grants an easement in favor of the Master Association throughout all portions of the Property as may be necessary for the purpose of constructing, accessing, maintaining, and administering the retention/detention areas, and no Owner, tenant, resident, guest, or invitee, nor the Association, shall do any act which may interfere with the performance by the Declarant or the Master Association of its obligations hereunder.

THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION  
MAKE NO REPRESENTATIONS CONCERNING THE CURRENT OR FUTURE WATER



LEVELS IN ANY OF THE RETENTION/DETENTION AREAS IN THE COMMUNITY; PROVIDED, FURTHER, THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION BEAR NO RESPONSIBILITY TO ATTEMPT TO ADJUST OR MODIFY THE WATER LEVELS SINCE SUCH LEVELS ARE SUBJECT TO SEASONAL GROUNDWATER, SUN EXPOSURE, AND RAINFALL FLUCTUATIONS THAT ARE BEYOND THE CONTROL OF THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION. THERE IS NO GUARANTEE BY THE DECLARANT, THE MASTER ASSOCIATION, OR THE ASSOCIATION THAT WATER LEVELS OR RETENTION/DETENTION AREAS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME; AT TIMES, WATER LEVELS MAY BE NONEXISTENT. EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO SUCH OWNER'S LOT, HEREBY ACKNOWLEDGES THE WATER LEVELS OF ALL RETENTION/DETENTION AREAS MAY VARY AND HEREBY RELEASES THE DECLARANT, THE MASTER ASSOCIATION, THE ASSOCIATION, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, COMMITTEE MEMBERS, EMPLOYEES, MANAGERS, MANAGEMENT AGENTS, CONTRACTORS, AND SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, LIABILITIES, DAMAGES, COSTS, AND EXPENSES OF WHATEVER NATURE OR KIND (INCLUDING, WITHOUT LIMITATION, LEGAL FEES, RELATED TO, ARISING OUT OF AND/OR RESULTING FROM WATER LEVELS IN THE RETENTION/DETENTION AREAS REGARDLESS OF THE CAUSE THEREOF.

EACH OWNER, BY THE ACCEPTANCE OF A DEED OR TITLE TO A LOT, AGREES THAT NONE OF THE LISTED PARTIES SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY OR WATER QUALITY OF ANY RETENTION/DETENTION AREAS WITHIN OR AROUND THE COMMUNITY. THE DECLARANT, THE MASTER ASSOCIATION, AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO ERECT FENCES, GATES, OR WALLS AROUND OR ADJACENT TO ANY RETENTION/DETENTION AREAS WITHIN OR AROUND THE COMMUNITY. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE OR RESPONSIBLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY RETENTION/DETENTION AREAS. ALL PERSONS USING RETENTION/DETENTION AREAS DO SO AT THEIR OWN RISK. ALL OWNERS AND USERS OF ANY RETENTION/DETENTION AREAS SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF A DEED OR TITLE TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO RELEASE AND HOLD HARMLESS THE LISTED PARTIES FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, LIABILITIES, DAMAGES, COSTS, AND EXPENSES OF WHATEVER NATURE OR KIND (INCLUDING, WITHOUT LIMITATION, LEGAL FEES, RELATED TO, ARISING OUT OF AND/OR RESULTING FROM ANY AND ALL OF THE FOREGOING IN THIS PARAGRAPH INCLUDING, WITHOUT LIMITATION, CHANGES IN THE SAFETY OR QUALITY OF WATER IN RETENTION/DETENTION AREAS. ALL PERSONS ARE HEREBY NOTIFIED THAT, FROM TIME TO TIME, WILDLIFE MAY INHABIT OR ENTER INTO RETENTION/DETENTION AREAS WITHIN OR NEARBY THE COMMUNITY AND MAY

POSE A THREAT TO PERSONS, PETS, AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY, OR DAMAGE CAUSED BY SUCH WILDLIFE.

3.6 Special Taxing Districts. Prior to Turnover, the Declarant shall have the right, but not the obligation, to dedicate or transfer or cause the dedication or transfer of all or portions of the Common Areas to a special taxing district, or a public agency or authority under such terms as the Declarant deems appropriate in order to create or contract with special taxing districts and community development districts (or others) for lighting, perimeter walls, entrance features, roads, landscaping, irrigation areas, ponds, surface water management systems, wetlands mitigation areas, parks, recreational or other services, security or communications, or other similar purposes deemed appropriate by the Declarant, including, without limitation, the maintenance and/or operation of any of the foregoing. As hereinafter provided, the Declarant may sign any taxing district petition as attorney-in-fact for each Owner. Each Owner's obligation to pay taxes associated with such district shall be in addition to such Owner's obligation to pay Assessments. Any special taxing district shall be created pursuant to all applicable ordinances of the County and all other applicable governing entities having jurisdiction with respect to the same.

3.7 Access Control Systems and Services. The Declarant may provide and/or install access control systems, monitoring systems, or other security/safety system, including, without limitation, a gatehouse, entry and exit gates, camera monitoring systems, and perimeter walls/fences, within the Property, including within any Tract and/or within the Common Areas, and contract for the service for same (collectively, "Access Control Systems and Services"). Additionally, the Association shall have the right, but not the obligation, to contract for the installation of additional Access Control Systems and Services for the Community. If provided, all costs associated with any Access Control Systems and Services shall be part of the Common Expenses. The Declarant hereby reserves for itself and the Master Association, and their respective contractors, suppliers, agents, and employees, and any prospective purchasers of Homes or Lots from the Declarant, an easement for free and unimpeded access through any such Access Control Systems and Services, subject only to such controls and restrictions as are agreed to in writing by the Declarant and/or the Master Association, as applicable. If the Association attempts to restrict or control access into the Community through means not approved by the Declarant and/or the Master Association, as applicable, the Declarant and the Master Association may take any and all measures necessary to eliminate same, including, without limitation, disabling any entry system during any hours desired by the Declarant or the Master Association, and the Declarant and the Master Association shall have no liability in this regard.

Additionally, the Declarant may install a fire protection system, burglar alarm system, or other security/safety system within the Common Areas and/or within Homes and contract for service for same. Thereafter, the Association shall have the right, but not the obligation, to contract for the service of any fire protection system, burglar alarm

system, or other security/safety system to the Homes on a bulk basis and to the Common Areas as Common Expenses.

THE OWNERS ACKNOWLEDGE THAT THE ACCESS CONTROL SYSTEMS AND SERVICES WILL NOT BE ABLE TO PREVENT CRIME. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER THE DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER TO COMMENCE, COMPLETE, CONSTRUCT, OR STAFF ANY ACCESS CONTROL SYSTEMS AND SERVICES WITHIN ANY SPECIFIC TIME PERIOD, IF AT ALL.

ALL OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES ACKNOWLEDGE THAT THE DECLARANT AND THE ASSOCIATION DO NOT REPRESENT OR WARRANT THAT: (i) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OTHER SECURITY/SAFETY SYSTEM, OR ANY ACCESS CONTROL SYSTEMS AND SERVICES RECOMMENDED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ASSOCIATION MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR (ii) THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OTHER SECURITY/SAFETY SYSTEM, OR ANY ACCESS CONTROL SYSTEMS AND SERVICES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEMS OR SERVICES ARE DESIGNED OR INTENDED.

NEITHER THE DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATION WHATSOEVER AS TO THE SECURITY OF THE PROPERTY OR THE ADEQUACY OR EFFECTIVENESS OF ANY ACCESS CONTROL SYSTEMS AND SERVICES. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY, EVEN IF CAUSED BY THE NEGLIGENCE OF THE DECLARANT AND/OR THE ASSOCIATION.

NEITHER THE DECLARANT NOR THE ASSOCIATION GUARANTEES OR WARRANTS, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH ACCESS CONTROL SYSTEMS AND SERVICES OR THAT ANY SUCH ACCESS CONTROL SYSTEMS AND SERVICES WILL PREVENT INTRUSION, THEFT, FIRE, DAMAGE, INJURY, DEATH, OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT SUCH ACCESS CONTROL SYSTEMS AND SERVICES ARE DESIGNED TO MONITOR SAME. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY OR OF THE HEALTH, SAFETY, OR WELFARE OF ANY OWNER, TENANT, RESIDENT, GUEST, OR INVITEE, OF THE LOT OR THE HOME, OR OF ANY PROPERTY, REAL OR PERSONAL, LOCATED WITHIN THE LOT OR HOME. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY CASUALTY OR INTRUSION INTO A LOT OR HOME.

EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO A LOT, AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING A USE OF, ANY PORTION OF THE PROPERTY, BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE, SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS, DAMAGES, LOSSES, AND CAUSES OF ACTION AGAINST THE DECLARANT AND THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE DECLARANT AND THE ASSOCIATION HAS BEEN DISCLAIMED. ALL OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES AGREE TO HOLD THE DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM (INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY AND/OR DEATH) ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT.

AS USED IN THIS SECTION 3.7, "DECLARANT" AND "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE DECLARANT'S AND THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, AND ASSIGNS.

3.8 Road Drainage. EACH OWNER, BY ACCEPTANCE OF A DEED OR TITLE TO A LOT, HEREBY ACKNOWLEDGES THAT THE ROAD(S) WITHIN THE COMMUNITY ARE DESIGNED AS A SECONDARY RESERVOIR FOR STORMWATER AND SURFACE WATER. THEREFORE, THE ROAD(S) ARE DESIGNED TO FLOOD IN THE EVENT THE PRIMARY RESERVOIR SYSTEM FAILS OR EXCEEDS CAPACITY. THE DECLARANT, NOR THE ASSOCIATION, SHALL BE RESPONSIBLE FOR ANY DAMAGE TO OR LOSS OF ANY LOT, HOME, IMPROVEMENT, OR PERSONAL PROPERTY OF ANY OWNER, TENANT, RESIDENT, GUEST, OR INVITEE IN THE EVENT THE ROAD(S) BECOME FLOODED.

3.9 Conveyance. Upon Turnover, all Common Areas shall be owned by the Association as if specifically deeded to the Association as follows: the Declarant shall convey to the Association the fee simple title to the Common Areas, and the Association shall be obligated to accept such conveyance, including responsibility for (i) all real estate taxes and assessments due with respect to the Common Areas from and after the date of recording of this Declaration; (ii) subject to all laws, ordinances, regulations, restrictions, prohibitions, and other requirements imposed by governmental authorities, including, without limitation, all building, zoning, land use and environmental laws, ordinances, codes, and regulations; (iii) matters which would be disclosed by an accurate survey of the Common Areas; (iv) easements, covenants, conditions, restrictions, reservations, limitations, and other matters of record; and (v) the terms and provisions of this Declaration.

The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance, and administration of the Common Areas. The Association shall, and does hereby, indemnify and hold the Declarant, its directors, officers, members,

managers, shareholders, agents, employees, affiliates, successors, and assigns (collectively, the "Declarant Parties") harmless on account thereof. The Association, by its joinder to this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. The Association shall accept any and all transfer of permits from the Declarant, or any other permittee, of any permit required by a governmental agency in connection with the development of the Community, as modified and/or amended. The Association shall cooperate with the Declarant, or any other permittee of such permits, as modified and/or amended, with any applications, certifications, documents, or consents required to effectuate any such transfer of permits to the Association.

The Association shall also accept the Common Areas and the personal property and Improvements appurtenant thereto in "AS IS" "WHERE IS" condition, with all faults, and without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Common Areas or any portion thereof, and the personal property and Improvements appurtenant thereto being conveyed. TO THE FULL EXTENT PERMITTED BY LAW (INCLUDING, WITHOUT LIMITATION SECTION 553.835, FLORIDA STATUTES), THE ASSOCIATION AND EACH OWNER KNOWINGLY AND VOLUNTARILY RELINQUISHES AND WAIVES, AND THE DECLARANT EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED) AS TO THE LOTS, THE HOMES, THE COMMON AREAS, PERSONAL PROPERTY, AND OTHER IMPROVEMENTS ON OR UNDER THE PROPERTY WHETHER ARISING FROM CUSTOM, USAGE, OR TRADE, COURSE OF CONDUCT, COURSE OF DEALING, CASE LAW, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR ANY IMPLIED WARRANTY OF FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. TO THE EXTENT THAT BY LAW OR OTHERWISE ANY OF THE WARRANTIES RELINQUISHED, WAIVED, OR DISCLAIMED CANNOT BE RELINQUISHED, WAIVED, OR DISCLAIMED, IN WHOLE OR IN PART, ALL SECONDARY, INCIDENTAL, AND CONSEQUENTIAL DAMAGES ARE SPECIFICALLY EXCLUDED AND DISCLAIMED (INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM CLAIMS OF PROPERTY DAMAGE, LOSS OF USE, PERSONAL INJURY, OR EMOTIONAL DISTRESS).

The Declarant hereby reserves the right, until the Community Completion Date, to require the Association to reconvey all or a portion of the Common Areas by quitclaim deed in favor of the Declarant in the event that such property is required to be owned by the Declarant for any purpose, including, without limitation, the reconfiguration of any adjacent property by replatting or otherwise. To the extent legally required, each Owner shall be deemed to have granted to the Declarant, and thereafter the Association, an irrevocable power of attorney, coupled with an interest, for the purposes herein expressed.

3.10 Mortgaging the Common Areas by the Declarant. Subject to Section 3.9, the Declarant may mortgage any part or all of the Common Areas to finance construction and development provided the mortgagee recognizes the rights of Owners under this

Declaration and neither the Association nor the Owners shall be personally liable for paying the mortgage. Neither the Association nor the Owners shall be required to join in or be entitled to consent to such mortgage.

3.11 Operation after Conveyance. Except as to the Association's right to grant easements and other interests as provided in this Declaration and except as to the taking of any Common Areas or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas to a third party without (i) if prior to Turnover, the approval of (a) a majority of the Board and (b) the written consent of the Declarant, or (ii) after Turnover, approval of (a) a majority of the Board and (b) sixty percent (60%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained.

3.12 Assumption of Risk. All persons using the Common Areas do so at their own risk. Without limiting any other provision herein, each Owner, tenant, resident, guest, and invitee accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupancy of any portion of the Common Areas, including, without limitation: (i) noise from maintenance equipment; (ii) use of pesticides, herbicides, and fertilizers; (iii) view restrictions and impairment caused by the construction of any structures and/or the maturation of trees and shrubbery; (iv) reduction in privacy caused by the removal or pruning of shrubbery or trees within the Property; and (v) design of any portion of the Property. Each Owner expressly indemnifies and agrees to hold harmless the Declarant Parties and the Association and its directors, officers, committee members, managers, agents, and employees (collectively, the "Association Parties"), from any and all actions, injuries, deaths, claims, losses, liabilities, damages (whether actual, consequential, incidental, or otherwise), judgments, orders, fines, liens, encumbrances, penalties, costs, and expenses of any kind or nature whatsoever, including, without limitation, Legal Fees (collectively, "Losses"), arising from or related to the person's use of the Common Areas, including, without limitation, the Recreational Facilities. BY THE ACCEPTANCE OF A DEED OR TITLE TO A LOT, EACH OWNER ACKNOWLEDGES THE COMMON AREAS AND AREAS IN THE VICINITY OF THE COMMON AREAS MAY CONTAIN WILDLIFE, SUCH AS, BUT NOT LIMITED TO, INSECTS, ALLIGATORS, COYOTES, RACCOONS, SNAKES, DUCKS, DEER, SWINE, TURKEYS, AND FOXES. THE DECLARANT AND THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE IS RESPONSIBLE FOR THEIR OWN SAFETY.

3.13 Obligation to Indemnify. Each Owner agrees to indemnify and hold harmless the Association Parties against any and all Losses incurred by or asserted against any of the Association Parties, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of the Common Areas by Owners, tenants, residents, guests, or invitees. Should any Owner bring suit against any of the Association Parties for any claim or matter and fail to obtain judgment therein against such Association Parties, such Owner shall be liable to such

parties for all Losses incurred by the Association Parties in the defense of such suit. Additionally, the Association and each Owner covenant and agree, jointly and severally, to indemnify, defend, and hold harmless the Declarant Parties from and against any and all Losses incurred by or asserted against any of the Declarant Parties, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of the Common Areas by the Association, the Owners, tenants, residents, guests, or invitees, or to other property serving the Association and the Owners, and Improvements thereon, or resulting from or arising out of activities or operations of the Association or the Owners within the Property. The costs of fulfilling the Association's indemnification, defense, and hold harmless obligations in this Section 3.13 shall be Common Expenses to the extent such matters are not covered by insurance maintained by the Association. Notwithstanding the foregoing, the indemnification and defense obligations in this Section 3.13 shall not apply to: (i) any damage claim directly asserted by the Association against the Declarant for defects in construction of Improvements constructed by the Declarant on the Common Areas provided such claim does not arise out of or result from any third-party claim, and/or (ii) any gross negligence or willful misconduct by the indemnified parties.

#### **ARTICLE IV**

#### **OPERATION OF COMMUNITY PRIOR TO CONVEYANCE**

After development of the Property, the Declarant may own all Lots within the Community until such time as the Declarant determines to sell and convey Lots to Owners. As such, the Declarant shall be the sole owner of all Lots and the sole member of the Association as set forth in the Articles. During such time, in addition to the rights and privileges granted to and reserved for the Declarant, the Declarant shall enjoy all the rights and privileges of an Owner under this Declaration as if the Declarant were deemed an Owner, including, without limitation, the easement rights set forth in Article V of this Declaration; provided, however, the Declarant shall not be subject to any duties or obligations of an Owner under this Declaration, including, without limitation, the restrictions set forth in Article VIII and Article XII of this Declaration. Notwithstanding the foregoing, the Declarant shall be responsible to maintain, repair, and replace all Lots and the Improvements thereon in the manner set forth in Section 7.4 and Section 7.5 of this Declaration for so long as the Declarant owns such Lots at the Declarant's expense.

#### **ARTICLE V**

#### **PROPERTY RIGHTS AND EASEMENTS**

5.1 Owners' Easement of Enjoyment. As long as this Declaration is in effect, each Owner, tenant, resident, guest, and invitee shall have, except as otherwise may be provided in this Declaration, a permanent and perpetual, non-exclusive easement for ingress and egress over, enjoyment in, and use of the Common Areas in common with all other Owners, tenants, residents, guests, and invitees. This easement shall be appurtenant to, shall pass with title to that Owner's Lot, and shall be subject to the following:

(i) The right of the Declarant, prior to the Community Completion Date, and thereafter, of the Association, at any and all times, and from time to time, to further additionally provide and make the Common Areas available to other individuals, persons, firms, or corporations, as it deems appropriate. The granting of such rights shall not invalidate this Declaration, reduce or abate any Owner's obligations pursuant to this Declaration, or give any Owner the right to avoid any of the covenants, agreements, or obligations to be performed hereunder.

(ii) The right of the Declarant and/or the Association to enter into easement agreements or other use or possession agreements whereby the Owners, Telecommunications Providers, the Association, and/or others may obtain the use, possession of, or other rights regarding certain property, on an exclusive or non-exclusive basis, for certain specified purposes. The Association may agree to maintain and pay the taxes, insurance, administration, upkeep, repair, and replacement of such property, the expenses of which shall be a part of the Common Expenses. Any such agreement by the Association prior to the Community Completion Date shall require the prior written consent of the Declarant. Thereafter, any such agreement shall require the approval of the majority of the Board, which consent shall not be unreasonably withheld or delayed.

(iii) The right of the Association to reasonably limit the number of guests or invitees of an Owner, resident, or tenant who may use the Common Areas and to prohibit such use of the Common Areas upon failure to abide by the provisions of the Governing Documents.

(iv) The right and duty of the Association to levy Assessments against each Lot for the purpose of operating, maintaining, repairing, and replacing the Common Areas in compliance with the provisions of this Declaration and the restrictions on portions of the Property from time to time recorded by the Declarant.

(v) The right of the Association in accordance with the Governing Documents to borrow money for the purpose of maintaining, repairing, replacing, and improving the Common Areas and, in aid thereof, to mortgage, pledge, or hypothecate the right of assessment and/or any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners in the Common Areas.

(vi) The right of the Association to dedicate, release, alienate, or transfer all or any part of the Common Areas owned by the Association to any public agency, authority, or utility; and to grant any covenant, restriction, or reservation against the Common Areas in favor of any such public agency, authority, or utility subject to the approval required in accordance with Section 3.11 hereof, except for such circumstances where the government is condemning the property through eminent domain.

(vii) The right of the Association, without any vote of the Owners, to grant easements and rights-of-way where necessary or desirable, for utilities, water, and sewer



facilities, cable television, and other services over the Common Areas to serve the Common Areas and any other portions of the Property.

(viii) The right of the Declarant and its officers, directors, managers, partners, employees, agents, licensees, and invitees to the non-exclusive access and use of the Common Areas, and any portion thereof, without charge and without notice, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes or for any other purpose deemed appropriate by the Declarant without interference from any Owner or any other person or entity whatsoever, and to grant (without consent of the Association and/or vote of the Owners) easements and rights-of-way as provided in this Declaration until the Community Completion Date.

(ix) The easements, restrictions, reservations, conditions, limitations, and rights provided elsewhere in this Declaration and as designated on the Plat.

(x) The right of the Association, the Declarant, and their respective officers, directors, managers, employees, agents, licensees, and invitees to come upon the Property (including, without limitation, a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient for the Association and/or the Declarant to carry on their respective duties, obligations, and responsibilities hereunder, and all other work reasonably inferred therefrom (including, without limitation, the Declarant's development and construction of the Community and Homes therein).

(xi) The right of the Declarant to access and enter the Common Areas at any time, even after the Community Completion Date, for the purposes of inspection and testing of the Common Areas. The Association and each Owner shall give the Declarant unfettered access, ingress, and egress to the Common Areas so the Declarant and/or its agents can perform all tests and inspections deemed necessary by the Declarant. In the event the Declarant exercises the rights in this Paragraph (xi), it is acknowledged by the Association and all Owners that the Declarant is performing any such rights for its own benefit and not for the benefit of the Association or the Owners and further, the Declarant shall have no obligation to inform the Association and/or the Owners of the result of any such inspection or testing. The Declarant shall have the right to make all repairs and replacements deemed necessary by the Declarant. At no time shall the Association or any Owner prevent, prohibit, or interfere with any testing, repair, or replacement deemed necessary by the Declarant relative to any portion of the Common Areas.

(xii) The right of the Association to promulgate, amend, and abolish Rules and Regulations governing the use of the Property, including, without limitation, the Common Areas and the Lots.

(xiii) The right of the Association, in addition to all other remedies available to the Association, to suspend the rights of Owners, tenants, residents, guests, and invitees to use the Common Areas and Recreational Facilities in accordance with Article XIV of this Declaration.

(xiv) The rights and duties of the Master Association under and in accordance with the SJRWMD Permit for the purposes of operating, maintaining, repairing, replacing, and improving the Stormwater Management System in accordance with the SJRWMD Permit and the rights and duties of the Master Association under and in accordance with the Master Declaration.

(xv) All of the provisions of the Master Governing Documents.

5.2 Ingress and Egress Easement. A perpetual and non-exclusive ingress and egress easement is hereby created and reserved by the Declarant for itself, the Master Association, the Association, and the Owners, tenants, residents, guests, and invitees, for pedestrian and vehicular traffic over, through, and across all sidewalks, paths, walkways, driveways, passageways, roadways, streets, and lanes as the same may exist upon, or be designed as part of, the Common Areas.

5.3 Public Easements. All of the Property shall be subject to a permanent and perpetual easement to provide for governmental services, including, without limitation, fire, police, school sponsored transportation, mail, health, sanitation, emergency services, and other public service personnel for the purpose of performing their appropriate functions, including, without limitation, ingress and egress over, through, and upon the Property and reasonable rights of access for persons and equipment necessary for such purposes.

5.4 Utilities Easement. A blanket easement upon, across, through, and under the Property is hereby created and reserved by the Declarant for the ingress, egress, installation, service, maintenance, repair, replacement, relocation, expansion, and operation of any and all utilities and other service lines, facilities, and systems (including, without limitation, those for supplying electricity, gas, cable television, internet, wireless nodes, and telephone service, for collecting, treating, and distributing water and for collecting, treating, and disposing of sewage and wastewater) servicing or intended to service any one (1) or more Improvements on the Property. A blanket easement upon, across, through, and under the Common Areas is hereby created for the disposal, through an irrigation system or otherwise, of treated effluent from any sewage and wastewater collection and disposal system servicing or intended to service one (1) or more Improvements. Without limiting the generality of the foregoing, the Declarant or any party providing any such utilities or other service may, by virtue of the easements created by this Section 5.4, install, maintain, repair, and replace on the Property any and all facilities that are necessary or useful for providing the utilities or service, may perform whatever excavations it considers necessary or helpful in doing so, and may perform whatever meter installations and meter reading it considers necessary or helpful in operating the utilities or service. The Declarant is hereby authorized to execute and record whatever instruments it deems necessary or desirable to effect or evidence the easements created by this Section 5.4, and shall be considered and deemed an agent of each Owner for purposes of executing and recording any such instrument with respect to the Lots owned by the Owner.

5.5 Development Easement. In addition to the rights reserved elsewhere herein, the Declarant reserves an easement for itself and the Declarant's affiliates over, upon, across, through, and under the Property as may be required or convenient in connection with the development of the Property, the development of the Non-Residential Property, and/or other lands designated by the Declarant, and to promote or otherwise facilitate the development, construction, and sale and/or leasing of Lots and Homes, any portion of the Property, any portion of the Non-Residential Property, and/or any other lands designated by the Declarant. Without limiting the generality of the foregoing, the Declarant specifically reserves the right to use all streets, roads, and rights of way within the Property for vehicular and pedestrian ingress and egress to and from construction sites. Each Owner acknowledges construction vehicles and trucks may use portions of the Common Areas. The Declarant shall have no liability or obligation to repave, restore, or repair any portion of the Common Areas as a result of the use of the same by construction traffic, and all maintenance and repair of such Common Areas shall be deemed ordinary maintenance of the Association payable by all Owners as part of the Common Expenses. Without limiting the foregoing, at no time shall the Declarant be obligated to pay any amount to the Association on account of the Declarant's use of the Common Areas. The Declarant has the right to use all portions of the Common Areas in connection with its marketing activities, including, without limitation, allowing members of the general public to inspect model homes, installing signs and displays, holding promotional parties and outings, and using the Common Areas for every other type of promotional or sales activity that may be employed in the marketing of residential homes. The easements created by this Section 5.5, and the rights reserved herein in favor of the Declarant, shall be construed as broadly as possible and supplement the rights of the Declarant set forth in this Declaration. At no time shall the Declarant incur any expense whatsoever in connection with its use and enjoyment of such rights and easements.

5.6 Easement for Encroachments. In the event that any Improvement upon the Common Areas as originally constructed, shall encroach upon any other property or Improvements thereon, or for any reason, then an easement appurtenant to the encroachment shall exist for so long as the encroachment shall naturally exist. If any building or Improvement upon a Lot shall encroach upon another Lot or upon the Common Areas by reason of original construction by the Declarant, then an easement for such encroachment shall exist so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvement and for any natural water runoff from roof overhangs, eaves, and other protrusions onto an adjacent Lot.

5.7 Support Easement. An easement is hereby created for the existence and maintenance, repair, and replacement of supporting structures in favor of the person or entity required to maintain same.

5.8 Drainage Easement. A non-exclusive easement shall exist in favor of the Declarant, the Master Association, the Association, SJRWMD, the County, the Village, and/or any governmental agency having jurisdiction over, across, through, under, and upon the Property for drainage, irrigation, and water management purposes and in order

to construct, maintain, inspect, record data on, monitor, test, or repair, as necessary, any water management areas, conservation areas, mitigation areas, irrigation systems and facilities thereon and appurtenances thereto. Such drainage easement shall not be removed from its intended use by any Owners or others. No structure, landscaping, or other material or Improvement shall be placed or be permitted to remain which may damage or interfere with the drainage or irrigation of the Property and/or installation or maintenance of utilities or which may obstruct or retard the flow of water through the Property and/or water management areas and facilities or otherwise interfere with any drainage, irrigation, and/or easement provided for in this Section 5.8 or the use rights set forth elsewhere in this Declaration. Any such drainage easement shall not contain permanent Improvements, including, but not limited to, sidewalks, driveways, impervious surfaces, patios, decks, pools, air conditioners, structures, utility sheds, poles, fences, irrigation systems, trees, shrubs, hedges, or landscaping other than grass, except for (i) Improvements installed by the Declarant, (ii) initial landscaping of the Stormwater Management System, (iii) as required by the County, the Village, or the SFWMD Permit, and/or (iv) Improvements approved by the Association and the Master Association. Additionally, a non-exclusive easement is hereby granted to all Owners, the Association, the Master Association, and all owners of the Non-Residential Property over, across, through, under, and upon the Property, including, without limitation, the Lots, for surface water drainage purposes.

5.9 Association Easement. The Association is hereby granted an easement over, across, through, under, and upon all of the Property for the purposes of: (i) inspecting, constructing, maintaining, repairing, replacing, improving, and operating all Common Areas; (ii) performing any obligation the Association is obligated to perform under this Declaration; and (iii) performing any obligation of an Owner for which the Association intends to impose an Individual Assessment, including, without limitation, entering a Lot for the purpose of inspecting, maintaining, repairing, and replacing the Lot and Improvements thereon in the event the Owner thereof fails to do so. Any entry into a Lot by the Association, its directors, officers, committee members, managers, agents, and employees, in accordance with the Association's rights set forth in this Declaration shall not be deemed a trespass.

5.10 Emergency Access Easement. The Association shall have the right, without obligation, to enter upon any Lot for emergency, security, and safety reasons, as determined in the discretion of the Board, and to perform any act deemed necessary by the Board, including, without limitation, shutting off water or electricity and conducting any necessary maintenance, repairs, and replacements. The fees, costs, and expenses incurred by the Association in accordance with the foregoing shall be assessable against the Owner and the Lot as an Individual Assessment. Any entry into a Lot by the Association, its directors, officers, committee members, managers, agents, and employees, in accordance with the Association's rights set forth in this Declaration shall not be deemed a trespass.

5.11 Master Association Easement. The Master Association is hereby granted an easement over, across, through, under, and upon all of the Property for the purposes

of performing any obligation or exercising any right the Master Association is obligated or entitled to perform under this Declaration and/or under the Master Declaration. Any entry into a Lot by the Master Association, its directors, officers, committee members, managers, agents, and employees, in accordance with the Master Association's rights set forth in this Declaration and/or the Master Declaration shall not be deemed a trespass.

5.12 Assignments and Additional Easements. Until the Community Completion Date, the Declarant reserves the exclusive right to grant, modify, amend, relocate, and terminate, in its sole discretion, easements, permits, and/or licenses for ingress and egress, drainage, utilities, maintenance, Telecommunications Services, and other purposes over, under, through, upon and across the Property so long as any said easements do not materially and adversely interfere with the intended use of Homes previously conveyed to the Owners. All easements necessary for such purposes are reserved in favor of the Declarant, in perpetuity, for such purposes. The Declarant shall have the sole right to any fees of any nature associated therewith, including, without limitation, license or similar fees on account thereof. The Association and the Owners shall, without charge, collect and remit fees associated with any easement, license, or permit, received, if any, to the Declarant. The Association will not grant any easements or licenses to any other entity providing the same services as those granted by the Declarant, nor will it grant any such easement or license prior to the Community Completion Date without the prior written consent of the Declarant, which may be granted or denied in the Declarant's sole discretion. After the Community Completion Date, the Association shall have the rights of the Declarant only as set forth in this Section 5.12. The Owners hereby authorize the Declarant and the Association to execute, on their behalf and without any further authorization, such grants of easement or other instruments as may from time to time be necessary in accordance with the provisions of this Declaration and/or requirements of prevailing law.

5.13 Duration. All easements created herein or pursuant to the provisions hereof shall be perpetual unless stated to the contrary. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

5.14 Non-Interference with Easement Rights. No portion of the Common Areas may be obstructed, encumbered, or used by any Owner, tenant, resident, guest, or invitee for any purpose other than as permitted by the Declarant or the Association. No Owner, tenant, resident, guest, or invitee shall place any Improvements, material, or obstacle in, under, or over any easement area which would unreasonably interfere with the rights of the owner of the easement. Any such Improvement, material, or obstacle shall be promptly removed by the Owner at the Owner's sole cost and expense when requested by the owner of the easement, the Declarant, the Master Association, or the Association notwithstanding any lapse of time since such Improvement, material, or other obstacle was placed in or over the easement area. In the event an Owner fails to remove such Improvement, material, or obstacle, then the Declarant, the Master Association, or the Association may remove same and the expense of such removal shall be charged to the Lot and collected as an Individual Assessment levied by the Association under this

Declaration or as an individual assessment levied by the Master Association under the Master Declaration. The Declarant's or the Association's installation of any traffic calming devices shall not be considered an obstruction or unreasonable impediment to any use of the Common Areas, easements, or rights-of-way.

## **ARTICLE VI**

### **ANNEXATION TO AND WITHDRAWALS FROM THE PROPERTY**

6.1 Annexation by the Declarant. Prior to the Community Completion Date, the Declarant may, from time to time, without obligation and in its sole discretion, add any real property, including any Improvements thereon, to the Property by recording a Supplemental Declaration to this Declaration in the Official Records of the County. Except for applicable governmental approvals (if any), no consent to such annexation shall be required from any other party, including, without limitation, the Association, the Owners, or any Lenders; provided, however, the Association shall join in the execution of any such Supplemental Declaration at the request of the Declarant, but the absence of such joinder shall not affect the validity of the Supplemental Declaration. The Supplemental Declaration shall subject the annexed property to the covenants, conditions, and restrictions contained in this Declaration as though the annexed property were described herein as a portion of the Property. Such Supplemental Declaration may contain additions to, modifications of, or omissions from the covenants, conditions, and restrictions contained in this Declaration as deemed appropriate by the Declarant and as may be necessary to reflect the different character, if any, of the annexed property. The Declarant may designate any annexed property as Common Areas or Lots as set forth in the Supplemental Declaration annexing such property. Except as otherwise provided herein, prior to the Community Completion Date, only the Declarant may add additional lands to the Property. Nothing in this Declaration shall be construed to require the Declarant to add any real property to the Property or to require the Declarant to declare any portion of any properties added to the Property to be Common Areas or Lots.

6.2 Annexation by the Association. After the Community Completion Date, and subject to applicable governmental approvals (if any), additional property may be annexed with the approval of (i) a majority of the Board; and (ii) fifty-one percent (51%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained.

6.3 Withdrawal. Prior to the Community Completion Date, any portions of the Property, or any additions thereto, may be withdrawn by the Declarant from the provisions and applicability of this Declaration by recording a Supplemental Declaration to this Declaration in the Official Records of the County. The right of the Declarant to withdraw portions of the Property, or any additions thereto, shall not apply to any Lot that has been conveyed to an Owner unless that right is specifically reserved in the instrument of conveyance or the prior written consent of the Owner is obtained. The withdrawal of any portion of the Property, or any additions thereto, shall not require the consent or joinder of any other party, including, without limitation, the Association, the Owners (except as set forth above), or any Lenders; provided, however, the Association shall join in the

execution of any such Supplemental Declaration at the request of the Declarant, but the absence of such joinder shall not affect the validity of the Supplemental Declaration. If the Declarant withdraws portions of the Property, or any additions thereto, from the operation of this Declaration, the Declarant may, but is not required to, subject to governmental approvals (if any), create other forms of residential property ownership or other Improvements of any nature on the property not subjected to or withdrawn from the operation of this Declaration. The Declarant shall not be liable or responsible to any person or entity on account of its decision to do so or to provide, or fail to provide, the amenities and/or facilities which were originally planned to be included in such areas. If so designated by the Declarant, owners or tenants of such other forms of housing or improvements upon their creation may share in the use of all or some of the Common Areas and other facilities and/or roadways that remain subject to this Declaration. The expense of the operation of such facilities shall be allocated to the various users thereof, if at all, as determined by Declarant. The Association shall have no right to withdraw land from the Property.

6.4 Effect of Filing Supplemental Declaration. Any Supplemental Declaration filed pursuant to this Article VI shall be effective upon recording in the Official Records of the County, unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and Assessment liability in accordance with the provisions of the Supplemental Declaration and this Declaration.

## **ARTICLE VII**

### **MAINTENANCE AND IMPROVEMENT OF THE PROPERTY**

7.1 Common Areas. Except as otherwise specifically provided in this Declaration to the contrary, the Association shall at all times maintain, repair, replace, and operate the Common Areas in a continuous and satisfactory manner. The Association shall also be responsible for the payment of property taxes and governmental assessments levied against the Common Areas. The Association shall have the right, but not the obligation, to arrange for periodic inspections of the Common Areas by a licensed contractor and/or engineer and to determine the parameters of such inspection from time to time, if any. The fees, costs, and expenses incurred by the Association to inspect, maintain, repair, replace, and operate the Common Areas shall be Common Expenses. Notwithstanding the foregoing, the fees, costs, and expenses incurred by the Association for any maintenance, repair, or replacement of any portion of the Common Areas occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents shall be borne solely by such Owner and the Lot owned by such Owner shall be subject to an Individual Assessment for all such fees, costs, and expenses.

7.2 Irrigation System. The Association shall also maintain, repair, and replace the irrigation system throughout the Property as part of the Common Expenses. Notwithstanding the foregoing, the Association shall not be responsible for the

replacement of any landscaping upon any Lot occasioned by insufficient watering or poor water quality. Due to water quality, the irrigation system may cause staining on Homes, fences, or other Improvements or paved areas upon the Property. The cleaning and removal of any such staining within an Owner's Lot shall be performed in accordance with the exterior maintenance responsibilities as to Townhome Lots and Single-Family Lots as further set forth herein. In the event any portion of the irrigation system is adversely affected by an Owner's Improvements to a Lot (including, without limitation, landscaping, fences, or concrete or brick pavers), the cost to correct, repair, and replace such portion of the irrigation system shall be the responsibility of the Owner and shall be assessable against the Owner and the Lot as an Individual Assessment. Further, the Owner shall be responsible for all fees, costs, and expenses of maintenance, repair, or replacement of any portion of the irrigation system located on such Owner's Lot if such maintenance, repair, or replacement is occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents.

7.3 Lot Landscaping. The Association shall maintain landscaping within the Lots as initially installed by the Declarant, including the following: (i) trimming trees and shrubs; (ii) mowing, trimming, edging, and fertilizing lawns; (iii) weeding, by chemical treatment or otherwise, in curb joints, expansion joints, and driveways; and (iv) weeding and mulching of flower beds. The Board shall determine the need for such landscaping maintenance from time to time and at its sole discretion. Notwithstanding the Association's responsibility to maintain landscaping in accordance with this Section 7.3, neither the Declarant, nor the Association shall be responsible to maintain, prevent, or redirect natural root growth or be liable for any damage, or repair thereof, to any property cause by any tree, or the root system thereof, planted within a Lot or the Common Areas. All fees, costs, and expenses incurred by the Association in carrying out its landscaping maintenance shall be Common Expenses; provided, however, due to the specific level of landscaping maintenance services provided to Single-Family Lots and Townhome Lots, these Common Expenses shall be allocated among the Single-Family Lots and the Townhome Lots based upon the specific level of landscaping maintenance services received by each respective Lot type as reasonably determined by the Board. Each Lot within each respective Lot type shall share equally the landscaping maintenance costs allocated to such respective Lot type. Notwithstanding the foregoing, the fees, costs, and expenses incurred by the Association for any landscaping maintenance occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents shall be borne solely by such Owner and the Lot owned by such Owner shall be subject to an Individual Assessment for all such fees, costs, and expenses.

7.3.1 Replacements. Notwithstanding the Association's responsibility to maintain landscaping in accordance with this Section 7.3, each Owner shall be responsible to replace landscaping within the Lots in the event any such landscaping becomes diseased, is dead or dying, or is destroyed by natural occurrences. In such event, such landscaping shall be replaced by the Owner of the Lot at the Owner's sole expense with landscaping of the same or substantially similar type and size, unless



otherwise approved by the ACC. No other objects or landscaping may be installed in place of any such landscaping, unless otherwise approved by the ACC.

7.3.2 Alterations. In the event an Owner alters, improves, or otherwise changes any landscaping upon the Owner's Lot (subject to approval obtained in accordance with this Declaration) which increases the landscaping maintenance, and cost therefor, to be performed by the Association, the increase in landscaping maintenance costs incurred, or to be incurred, by the Association shall be assessable against the Owner and the Lot as an Individual Assessment.

7.3.3 Association Access. Under no circumstances shall the Association be responsible for maintaining any inaccessible areas within fences or walls that form a part of a Lot. In the event any landscaped areas to be maintained by the Association are not readily accessible, including, without limitation, due to the failure to include a gate of adequate size within a fence or wall enclosing any portion of a Lot, the Owner shall be deemed to have voluntarily and knowingly assumed the responsibility to perform, at the Owner's sole cost and expense, all landscaping maintenance as to the landscaped areas for which access is denied or not readily available to the same standards as performed by the Association. No Owner shall be exempt from such Owner's share of Common Expenses attributable to landscape maintenance by refusal or inability to provide the Association with access to the Owner's Lot for the purpose of performing maintenance upon such Lot in accordance with this Declaration or by voluntarily undertaking any maintenance upon such Lot which is otherwise the responsibility of the Association in accordance with this Declaration.

7.4 Townhome Lots. Except as otherwise set forth in this Declaration, each Owner of a Townhome Lot shall maintain, repair, and replace all portions of the Townhome Lot, including, without limitation, the Home and the contents therein, in a first class, safe, clean, neat, and attractive condition at such Owner's sole cost and expense.

7.4.1 Party Walls. The Homes constructed upon Townhome Lots are attached by a common wall, known as a "Party Wall," between each Home that adjoins another Home upon the neighboring Townhome Lot. The center line of a Party Wall is the common boundary of the adjoining Home. The cost of maintaining each side of a Party Wall shall be borne by the Owner using said side, except as otherwise provided herein. Each adjoining Owner of a Party Wall, and such Owner's heirs, successors, and assigns, shall have the right to use same jointly with the other Owner to said Party Wall as herein set forth. The term "use" shall and does include normal interior usage such as paneling, plastering, decoration, erection of tangent walls, and shelving but prohibits any form of alteration which would cause an aperture, hole, conduit, break, or other displacement of the original concrete forming said Party Wall. Repairs or replacement of any Party Wall shall be to its original construction. Structural changes to Party Walls are prohibited. Each Owner shall have right to file a lien against the adjoining Townhome Lot(s) and the Owner(s) thereof for repair costs.

7.4.2 Shared Roofing. The entire roof of each building containing Homes constructed on Townhome Lots, any and all roof structure support, and any and all appurtenances to such structures, including, without limitation, the roof covering, fascia, soffit, and roof drainage fixtures, shall be collectively referred to as "Shared Roofing." The Association shall maintain, repair, and replace the Shared Roofing. Alteration and improvement of the Shared Roofing by anyone other than the Declarant or the Association are prohibited.

7.4.3 Exterior Maintenance. The Association shall be responsible for normal and routine pressure cleaning and painting of the exterior of the Homes constructed on Townhome Lots and shall maintain, repair, and replace the driveways serving the Homes constructed on Townhome Lots. The Board shall determine the need for such maintenance, repair, or replacement from time to time and at its sole discretion. The Board shall determine, from time to time and at its sole discretion, the paint color scheme of the buildings containing Homes constructed on Townhome Lots. Alteration and improvement of any driveway serving any Home constructed on a Townhome Lot by anyone other than the Declarant or the Association are prohibited.

7.4.4 Association Expenses. All fees, costs, and expenses incurred by the Association in carrying out its obligations related to the Townhome Lots in this Section 7.4 shall be Common Expenses of the Association allocated among the Townhome Lots only, and all Owners of Townhome Lots within each building containing Homes constructed on Townhome Lots shall share the cost of such maintenance, repair, or replacement equally as reasonably determined by the Board. Notwithstanding the foregoing, the fees, costs, and expenses incurred by the Association for any such maintenance, repair, or replacement occasioned by the negligent or willful acts of an Owner, tenant, resident, guest, or invitee or caused by the failure of an Owner, tenant, resident, guest, or invitee to comply with the Governing Documents shall be borne solely by such Owner and the Townhome Lot owned by such Owner shall be subject to an Individual Assessment for all such fees, costs, and expenses.

7.5 Single-Family Lots. Except as otherwise set forth in this Declaration, each Owner of a Single-Family Lot shall maintain, repair, and replace all portions of the Single-Family Lot, including, without limitation, the Home and the contents therein, in a first class, safe, clean, neat, and attractive condition at such Owner's sole cost and expense.

7.5.1 Exterior Maintenance. Without limitation, each Owner is solely responsible for the proper cleaning, maintenance, repair, and replacement of the exterior of the Owner's Home, including, without limitation, the roof and the exterior walls of the Home.

7.5.2 Paved and Concrete Surfaces. Each Owner shall be responsible to maintain, repair, and replace the driveways and walkways, including, without limitation, concrete or brick pavers, and other paved and concrete surfaces comprising part of the Owner's Lot and that portion of the driveway serving the Owner's Single-Family Lot located within the right-of-way immediately adjacent to such Owner's Single-Family Lot

between such Owner's Single-Family Lot and the private Common Area roadway. If the Village, the County, or any of their respective subdivisions, agencies, and/or divisions must remove any portion of the paved or concrete surfaces located for which the Owner of the Single-Family Lot is responsible for the installation, repair, replacement, or maintenance of utilities, then the Owner of the applicable Single-Family Lot shall be responsible to replace or repair the paved or concrete surfaces at such Owner's expense, if such expenses are not paid for by the Village or the County, as applicable.

7.6 Maintenance of Property Owned by Others. The Association shall, if designated by the Declarant (or by the Board after Turnover), maintain vegetation, landscaping, irrigation systems, community identification/features, infrastructure, and/or other areas or elements designated by the Declarant (or by the Board after Turnover) upon areas that are within or outside of the Property. Such areas may abut, or be proximate to, the Property, and may be owned by, or be dedicated to, others including, but not limited to, a utility, governmental or quasi-governmental entity, or a property owners' association. These areas may include, for example purposes only and not limited to, parks, swale areas, landscape buffer areas, berm areas or median areas within the right-of-way of public streets, roads, drainage areas, community identification or entrance features, and/or community signage or other identification. The Association shall have the right to enter into new agreements or arrangements from time to time for improvements and facilities serving the Members or to amend such agreements or arrangements if the Board deems the same reasonable and appropriate for the continued use and benefit of any part of the Common Areas.

7.7 Alterations and Improvements. The Association, by and through the Board, may make alterations and Improvements to the Common Areas, any portion thereof and any Improvements thereon, costing, in the aggregate, equal to or less than of Twenty Thousand Dollars (\$20,000.00) without the approval of the Owners. Alterations and Improvements costing, in the aggregate, in excess of Twenty Thousand Dollars (\$20,000.00) must first be approved by a majority of the Owners present, in person or by proxy, at a meeting of the Members at which a quorum is attained.

7.8 Stormwater Management System. The Stormwater Management System, including, without limitation, swales, pipes, pumps, and/or retention/detention areas, as may be part of the Common Areas and/or Lots, shall be maintained, repaired, replaced, and operated by the Master Association in accordance with the Master Declaration. The Association has the right to utilize the Stormwater Management System. All fees, costs, and expenses regarding the Stormwater Management System shall be assessed and collected through the Master Association assessments. Notwithstanding the foregoing, in the event the Stormwater Management System is adversely affected by Owner's Improvements to the Lot (including, without limitation, landscaping, fences, or concrete or brick pavers), the cost to correct, repair, or replace the Stormwater Management System shall be the responsibility of the Owner and such costs shall be assessable against the Owner and the Lot as an individual assessment levied by the Master Association in accordance with the Master Declaration. No Improvement shall be constructed, installed, placed, or maintained in any manner that would obstruct, interfere with, or adversely affect

the Stormwater Management System. NOTWITHSTANDING THE FOREGOING, THE MASTER ASSOCIATION, THE ASSOCIATION, AND THE DECLARANT SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DRAINAGE ISSUES OF ANY TYPE WHATSOEVER RESULTING FROM AN OWNER'S IMPROVEMENT TO OR ALTERATION OF THE LOT.

7.9 Exterior Finish and Water Intrusion. Exterior walls may be improved with a finish material composed of stucco or cementitious coating (collectively, the "Exterior Finish"). If so, then while the Exterior Finish is high in compressive or impact strength, it is not of sufficient tensile strength to resist building movement. It is the nature of the Exterior Finish to experience some cracking and it will expand and contract in response to temperature, sometimes creating minor hairline cracks in the outer layer of the Exterior Finish application. This is normal behavior and considered a routine maintenance item for the Owner. Each Owner is responsible to inspect the Exterior Finish to the exterior walls for cracking and engage a qualified professional to seal those cracks and repair the affected area. In addition, each Owner is responsible for inspecting the caulk material in the exterior wall system openings (i.e., windows, doors, hose bibs, etc.) for peeling, cracking, or separating. If the inspection reveals any such items, the Owner is responsible for engaging a qualified professional to clean, repair, re-caulk, and repaint those areas of the Home to ensure the Owner's Home remains watertight. All of the foregoing shall be completed by the Owner in a timely fashion to prevent any damage to the Home, particularly given that Florida experiences heavy rainfall and humidity on a regular basis. Each Owner acknowledges that running air conditioning machinery with windows and/or doors open in humid conditions can result in condensation, mold, and/or water intrusion. The Declarant and the Association shall not have liability under such circumstances for any damage or loss that may occur in the event an Owner fails to maintain their Home in accordance with this provision. FURTHER, GIVEN THE CLIMATE AND HUMID CONDITIONS IN FLORIDA, MOLDS, MILDEW, TOXINS, AND FUNGI MAY EXIST AND/OR DEVELOP WITHIN HOMES. EACH OWNER IS HEREBY ADVISED THAT CERTAIN MOLDS, MILDEW, TOXINS, AND/OR FUNGI MAY BE, OR IF ALLOWED TO REMAIN FOR A SUFFICIENT PERIOD MAY BECOME, TOXIC AND POTENTIALLY POSE A HEALTH RISK. BY ACQUIRING TITLE TO A LOT, EACH OWNER SHALL BE DEEMED TO HAVE ASSUMED THE RISKS ASSOCIATED WITH MOLDS, MILDEW, TOXINS, AND/OR FUNGI AND TO HAVE RELEASED THE DECLARANT PARTIES AND THE ASSOCIATION PARTIES FROM ANY AND ALL LIABILITY RESULTING FROM SAME.

7.10 Declarant Indemnification. The Association, being the entity responsible for the ownership, operation, maintenance, repair, and replacement of the Common Areas and other portions of the Property as set forth in this Article VII, hereby agrees to indemnify, defend, and hold the Declarant Parties harmless from and against any and all Losses arising out of or in any way resulting from or in any way connected with: (i) any acts or omissions of the Association Parties and their respective heirs, successors, and assigns; (ii) personal injury, loss of life, or damage to property sustained on or about the Common Areas, or other property serving the Association, and Improvements thereon; and/or (iii) activities or operations of the Association or the Owners. The Association's

obligation to defend the Declarant Parties shall be triggered upon any allegation or claim being asserted that, in whole or in part, is to be indemnified or defended pursuant to this Section 7.10. If any indemnified party is compelled to enforce the Association's obligations in this Section 7.10, such indemnified party shall recover any and all Legal Fees incurred in prosecuting such enforcement action in addition to Legal Fees incurred in defending the underlying allegations or claims. The costs of fulfilling the Association's indemnification, defense, and hold harmless obligations in this Section 7.10 shall be Common Expenses to the extent such matters are not covered by insurance maintained by the Association. Notwithstanding the foregoing, the indemnification and defense obligations in this Section 7.10 shall not apply to: (i) any damage claim directly asserted by the Association against the Declarant for defects in construction of Improvements constructed by the Declarant on the Common Areas provided such claim does not arise out of or result from any third-party claim, and/or (ii) any gross negligence or willful misconduct by the indemnified parties.

7.11 Right of the Association to Enforce. In addition to all other remedies available to the Association, in the event the Owner fails to comply with any of its obligations as set forth in this Article VII, including, without limitation, failing to properly maintain, repair, and replace the Owner's Lot, or any Improvements thereon, the Association shall have the right, without obligation, to enter the Lot, as applicable, for the purpose of performing the maintenance, repair, and replacement obligations on behalf of the Owner. The costs and expenses incurred by the Association in performance thereof shall be assessable against the Lot and the Owner as an Individual Assessment. The determination of whether an Owner is failing to properly maintain, repair, and replace the Lot, or any Improvements thereon, shall be determined in the sole discretion of the Board. Without limitation, the Declarant hereby grants the Association an easement over all portions of the Property for the purpose of ensuring compliance with the requirements of this Article VII.

## **ARTICLE VIII**

### **USE RESTRICTIONS**

Except as to the Declarant and any portion of the Property owned by the Declarant, all of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions, the Architectural Guidelines, the Rules and Regulations, and any and all additional rules and regulations which may, from time to time, be adopted by the Declarant, prior to Turnover, and thereafter, by the Board:

8.1 Use of Lots. Each Lot is restricted to residential use as a residence by the Owner, tenants, residents, guests, and invitees thereof. Except as to the Declarant, no trade, business, profession, or commercial activity, or any other nonresidential use, shall be conducted upon any portion of the Property or within any Lot or Home by any Owner, tenant, resident, or guest, except that a home office is permitted so long as no customers or excessive deliveries are caused thereby, as determined in the sole discretion of the Board, and subject to applicable statutes and ordinances. No Owner, tenant, resident, guest, or invitee may actively engage in any solicitations for commercial purposes within

the Property. No garage sales are permitted, except as approved by the Board in writing. Prior to the Community Completion Date, the Association shall not permit any garage sales without the prior written consent of the Declarant.

8.2 Subdivision and Regulation of Land. No portion of any Lot shall be divided or subdivided or its boundaries changed without the prior written approval of the Declarant, prior to the Community Completion Date, and thereafter, the prior written approval of the Board, which may be granted or denied in the Declarant's or the Board's sole discretion. No Owner shall inaugurate or implement any variation from, modification to, or amendment of governmental regulations, land use plans, land development regulations, zoning, or any other development orders or development permits applicable to the Property, without the prior written approval of Declarant, prior to the Community Completion Date, and thereafter, the prior written approval of the Board, which may be granted or denied in the Declarant's or the Board's sole discretion.

8.3 Nuisances. No nuisance, as determined by the Board, nor any use or practice that is the source of unreasonable annoyance to others within the Property or which interferes with the peaceful possession and proper use of the Property, as determined by the Board, is permitted. Nothing shall be done or kept within the Property which may reasonably be expected to increase the rate of insurance maintained by the Association. No loud noises or noxious odors, as determined by the Board, shall be permitted within the Property.

8.4 Lawful Use. No immoral, improper, offensive, unlawful, or obnoxious use shall be made of any portion of the Property, as determined by the Board. All laws, zoning ordinances, and regulations of all governmental entities having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental entities for maintenance, modification, or repair of a portion of the Property shall be the same as the responsibility for maintenance and repair of the property concerned.

8.5 Animals. No animals of any kind shall be raised, bred, or kept within the Property for commercial or breeding purposes. Only common domesticated household pets, including dogs or cats, may reside within a Home. No other animals, livestock, horses, swine (but specifically excluding miniature domesticated pigs), or poultry of any kind shall be kept, raised, bred, or maintained on any portion of the Property. No more than three (3) animals are permitted to be kept on any Lot. All animals shall be maintained and kept in accordance with all applicable County ordinances and the Rules and Regulations. No animal shall be permitted outside a Home unless such animal is kept on a leash, carried by hand, or within an enclosed portion of the Lot. No animal may be left unattended outside a Home. No dog runs or enclosures shall be permitted on any Lot. All solid animal waste deposited by an animal on the Property shall be immediately picked up and properly disposed of in a sanitary manner. Owners are responsible for the cost of repair or replacement of any Common Areas or property of the Association or for which the Association is responsible damaged by their animal. No animal shall become a nuisance, as determined by the Board, which nuisance activities include, without limitation, barking, growling, biting, jumping on others, lunging at others, or other

obnoxious or aggressive behaviors. A determination by the Board that an animal kept or harbored in a Home is a nuisance shall be conclusive and binding on all parties. The Board shall have the right, without obligation, to demand permanent removal of any animal deemed to be a nuisance by the Board. When notice of permanent removal of any animal is given by the Board, the animal shall be removed within forty-eight (48) hours of the receipt of such notice. Each Owner shall be responsible for all the activities of the animal. Each Owner who determines to keep an animal or permits an animal to be kept within the Owner's Home hereby agrees to indemnify and hold harmless the Association Parties and the Declarant Parties against any Losses arising from or related to such Owner having any animal or permitting any animal on and within the Property.

**8.6 Vehicle Restrictions and Parking.** No commercial vehicle, limousine, dually truck, monster truck, recreational vehicle, golf cart, scooter, mini motorcycle, all-terrain vehicle (ATV), boat (or other watercraft), trailer (including, without limitation, boat trailers, house trailers, mobile homes, and trailers of every other type, kind, or description), or camper, may be kept within the Property except within the enclosed garage of a Home. The term "commercial vehicle" shall not be deemed to include law enforcement vehicles, sport utility vehicles (SUVs), or clean personal use vehicles, such as, and for example purposes only, pick-up trucks, vans, or cars if they are used on a daily basis for normal personal transportation; provided, however, vehicles with commercial lettering and/or images and/or ladders, racks, and hooks or such other equipment attached to such vehicles shall be "commercial vehicles" prohibited by this Section 8.6. The term "monster truck" shall be deemed to include pickup trucks modified with large suspension and large tires resulting in a lifted truck body. No vehicles bearing a "for sale" sign or with tarpaulin covers shall be parked anywhere within the Property within the view of others. Vehicles without a valid license plate and current registration are not permitted within the Property. No vehicle shall be used as a domicile or residence, either temporarily or permanently. No Owner, tenant, resident, or guest shall keep any vehicle on any Lot which is deemed to be a nuisance by the Board. No vehicle which cannot operate on its own power shall remain within the Property for more than twelve (12) hours, except within the enclosed garage of a Home. No repair or maintenance of vehicles, except emergency repair, shall be made within the Property, except in the garage of a Home. No vehicles shall be stored on blocks. No ATVs, scooters, or mini motorcycles are permitted to be used at any time on the Common Areas. Vehicles shall be parked in the garage or driveway of the respective Lot and shall not block the sidewalk. No vehicles of any nature shall be parked on any portion of the Property except on the paved or concrete surfaced parking area thereof. Vehicles shall not park on the paved or concrete surfaces comprising the Common Areas, including, without limitation, the private roadways, except in designated parking areas, if any. To the extent the Property has any guest parking, Owners, residents, and tenants are prohibited from parking in such guest parking spaces. No vehicles used in business for the purpose of transporting goods, equipment, and the like, shall be parked in the Property except during the delivery of goods or during the provision of services. Subject to applicable laws and ordinances, any vehicle parked in violation of this Section 8.6 and/or the Rules and Regulations may be towed by the Association at the sole expense of the owner of such vehicle. Each Owner, by acceptance of title to a Lot, irrevocably grants to the Association and its designated towing service the right to

enter a Lot and tow vehicles in violation of this Section 8.6 and/or the Rules and Regulations. Neither the Association nor the towing company shall be liable to the Owner or the owner of such vehicle for trespass, conversion, or otherwise, nor guilty of any criminal act, by reason of such towing or removal, and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind.

8.7 Oil and Mining Operations No oil, drilling development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or on any Lot, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon or on any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Lot.

8.8 Hazardous Substances. No flammable, combustible, or explosive fuel, fluid, chemical, hazardous waste, or substance shall be kept on any portion of the Property, except those which are required for normal household use. No fuel storage shall be permitted within the Property, except as may be necessary or reasonably used for swimming pools, spas, barbecues, fireplaces, or similar household devices. Any such permitted fuel storage must be installed underground or in a manner to be screened from view by landscaping or other materials approved by the ACC.

8.9 Ownership by Entity. In the event that an Owner is other than a natural person, that Owner shall, prior to any occupancy of the Home, designate, in writing signed by an officer, director, or managing member of the entity, one (1) or more persons who are to be the occupants of the Home and register such persons with the Association. All provisions of the Governing Documents shall apply to both such Owner and the designated occupants.

8.10 Leases. Homes may be leased only in their entirety, and no room or portion of a Home may be leased. No Home or portion thereof shall be leased to transient tenants or for hotel-like rental. No Owner may list the Owner's Home on any website (e.g., AirBnB, VRBO, or HomeAway), print, or online publication advertising the Home for short term, "hotel-like" rental. No Home shall be subleased or subject to an assignment of lease. Occupancy within a leased Home shall only be by the tenant(s) and those individuals listed as occupants in the lease agreement. No lease shall be for a term of less than three (3) months nor more than one (1) year, and no Home may be leased more than two (2) times in any calendar year. All lease agreements shall be in writing. Within five (5) days following execution of a lease agreement, but in no event later than occupancy of the Home by the tenant(s), the Owner shall: (i) notify the Association in writing with the name of the tenant(s) and all others that will be occupying the Home; and (ii) provide the Association with a true, correct, and complete copy of the executed lease agreement. In the event Owner fails to timely comply with the foregoing, such lease shall be null and void and of no further force or effect. The provisions of this Section 8.10 shall also apply to renewals and extensions of lease agreements.



No Owner may lease a Home if such Owner is delinquent in the payment of any monetary obligation to the Association. In the event an Owner whose Home is leased is delinquent in the payment of any monetary obligation to the Association, the Association may, without limitation of other lawful remedies, make written demand to such Owner and such Owner's tenant(s) for payment of rent to be remitted to the Association in accordance with the relevant provisions of the Homeowners' Association Act. All leases are hereby made subordinate to any lien filed by the Association, whether prior or subsequent to such lease.

No Owner may lease a Home where such Owner is, at the time the Owner desires to lease a Home, in violation of any of the covenants, terms, conditions, and restrictions of the Governing Documents. Every lease shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the full compliance by the tenant(s) and the occupant(s) with the covenants, terms, conditions, and restrictions of the Governing Documents.

By acceptance of title to a Home, the Owner hereby agrees, at the Owner's sole expense, to remove by legal means, including, without limitation, eviction, the tenant(s) and occupant(s) in the event of any violation of any provision of the Governing Documents by the tenant(s) or occupant(s). Notwithstanding the foregoing, should the Owner fail to remove the tenant(s) and occupant(s) from the Home, the Association shall have the right, but not the obligation, to terminate the lease agreement and to evict/eject such tenant(s) and occupant(s) and exercise all such other legal remedies as may be available to the Association on behalf of the Owner. All Legal Fees associated with such eviction/ejectment and/or action for other legal remedies as may be available to the Association shall be assessable against the Owner and the Lot as an Individual Assessment.

Every Owner shall be deemed to have delegated its right of enjoyment to the Common Areas to the Owner's tenant(s) and occupant(s) of the leased Home, subject to the provisions of the Governing Documents. Any such delegation shall not relieve any Owner from its responsibilities and obligations provided herein.

The Owner shall be jointly and severally liable with the tenant(s) to the Association for any amount which is required by the Association to repair any damage to the Common Areas or any other property for which the Association is responsible resulting from acts or omissions of tenant(s) and/or occupant(s) of the leased Home (as determined in the sole discretion of the Board) and to pay any claim for injury or damage to property caused by the negligence of the tenant(s) and/or occupant(s) of the leased Home, the costs and expenses of which shall be assessable against the Owner and the Lot as an Individual Assessment.

Each Owner shall collect from the tenant(s) and remit to the Association, no later than the date of occupancy of the Home by the tenant(s), a security deposit in the amount one (1) month's rental which may be used by the Association to cover expenses related to the maintenance and repairs of the Common Areas or any other property for which the

Association is responsible resulting from acts or omissions of tenant(s) or occupant(s) (as determined in the sole discretion of the Board). Payment of interest, claims against the security deposit, refunds, and disputes regarding the disposition of the security deposit shall be handled in the same fashion as provided in Part II of Chapter 83, Florida Statutes. In the event that the Owner does not properly remit the security deposit to the Association, the Association may charge the security deposit to the Owner as an Individual Assessment. Notwithstanding anything to the contrary herein, the leasing of a Home and the collection of the deposit referred to herein from an Owner shall not reduce or abate any Owner's obligations pursuant to the Governing Documents or give any Owner the right to avoid any of the covenants, agreements, or obligations to be performed pursuant to the Governing Documents.

8.11 Personal Property Storage and Storage Structures. All personal property of Owners, tenants, residents, and guests shall be stored within the Homes, except for tasteful and typical patio furniture (as determined by the Board). No temporary or permanent utility or storage shed, storage building, tent, shack, or other structure or building shall be permitted within the Property. Water softeners, trash containers, propane tanks, and other similar devices shall be properly screened from view in a manner approved by the ACC.

8.12 Decorations. No decorative items, including, without limitation, birdbaths, light fixtures, sculptures, statues, or weather vanes, shall be installed or placed within or upon any portion of a Lot without the prior written approval of the ACC. Notwithstanding the foregoing, holiday lighting and decorations shall be permitted to be placed upon the Lot commencing the month in which the holiday is celebrated and removed not later than two (2) weeks after the passing of the holiday (e.g., Halloween decorations and lighting may be displayed commencing October 1<sup>st</sup> and must be removed by November 14<sup>th</sup>, and Christmas decorations and lighting may be displayed commencing December 1<sup>st</sup> and must be removed by January 8<sup>th</sup>). The Association may require the removal of any holiday lighting that creates a nuisance, as determined by the Board (e.g., unacceptable spillover to an adjacent Home or excessive travel through the Property).

8.13 Extended Vacation and Absences. In the event a Home will be unoccupied for an extended period, the Home must be prepared prior to departure by: (i) removing all movable furniture, plants, and other objects from outside the Home; and (ii) designating a responsible firm or individual to care for the Home, should the Home suffer damage or require attention, and providing a key to that firm or individual. Neither the Association nor the Declarant shall have any responsibility of any nature relating to any unoccupied Home.

8.14 Fences and Walls. No walls or fences shall be erected, constructed, or installed without the prior written consent of the ACC. In the event that any planned wall or fence is to be erected, constructed, or installed within an easement area or to cross any easement area, such ACC approval shall be subject to the Owner first receiving written approval from the easement holder(s) and all other applicable governmental authorities. In the event any wall or fence is installed within any easement area or blocks

access to any easement area, the Owner shall be solely responsible for the prompt removal of the wall or fence and shall repair or replace the wall or fence once the easement holder completes work within the easement area and/or if the need for access to the easement area is no longer required at such time. No chain link or wood fencing of any kind is permitted. All walls and fences must be in compliance with the Architectural Guidelines. Fences shall not be installed flush to the ground so that drainage will be blocked in any way. Walls shall be constructed in such a manner as to permit proper drainage. Notwithstanding that an Owner has obtained the approval of the ACC to erect, construct, or install a wall or fence, doing so shall be at the Owner's sole risk so long as the Declarant has not yet begun or is engaged in development of on an adjacent Lot. The Declarant shall have the right, without obligation and in its sole discretion, to temporarily remove the wall or fence if deemed necessary by the Declarant in order to complete development on the adjacent Lot. In the event such development activity on an adjacent Lot or the Declarant's temporary removal of the wall or fence causes damage to or destruction of such Owner's wall or fence or any part thereof, the Owner on whose Lot the wall or fence has been damaged shall be required, at the Owner's expense, to repair or replace such wall or fence in conformance with the requirements of the ACC's initial approval of wall or fence, and the Declarant shall have no liability for any such damage or destruction. Such repair or replacement shall commence as soon as development of the adjacent Lot has been completed and shall be pursued to completion with due diligence.

8.15 Screened Enclosures. All screening, screened enclosures, and enclosure of balconies or patios, including, without limitation, with vinyl windows, shall have the prior written approval of the ACC and shall be in compliance with the Architectural Guidelines. No rear yard screen enclosure shall extend beyond the boundary created by the side walls of the Home and cannot be higher than the roofline of the Home. No screen enclosure shall be constructed, installed, or maintained in the front portion of any Home, including, without limitation, any front porch or covered entryway.

8.16 Garages. No garage shall be converted into a living area unless approved the Board and the ACC, as applicable. Garage doors shall remain closed at all times except when vehicular or pedestrian access is required. No Owner shall store any items, materials, or other personal property in the garage of such Owner's Home to the extent such storage would limit or prohibit the use of the garage for the parking of vehicles.

8.17 Garbage Containers. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on any portion of the Lot, except in clean and sanitary garbage containers. Each Owner shall be responsible for properly depositing garbage and trash in garbage containers sufficient for pick-up by the appropriate collection agencies in accordance with the requirements of any such agency. No garbage containers, supplies, or other similar articles shall be maintained on any Lot so as to be visible from another Lot or the Common Areas, except for proper garbage removal. Garbage containers shall not be placed outside the Home for removal earlier than 7:00 p.m. on the day preceding scheduled removal and shall be removed the day of scheduled removal. No outside burning of trash or garbage is permitted. No odor shall be permitted

to arise from a garbage container so as to render the Property or any portion thereof unsanitary, offensive, detrimental, or a nuisance to Owners, tenants, residents, or guests or to any other property in the vicinity thereof or to its occupants.

8.18 Hurricane Shutters. Any hurricane shutters or other protective devices visible from outside a Home shall be of a type as approved in writing by the ACC, shall match the color or trim of a Home and be of a neutral color. Any approval by the ACC shall not be deemed an endorsement of the effectiveness of hurricane shutters or other protective devices. Panel, accordion, and roll-up style hurricane shutters may not be installed or closed except forty-eight (48) hours prior to the expected arrival of a hurricane and must be removed or opened within seventy-two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise.

8.19 Artificial Vegetation. Except as otherwise permitted by Florida law, no artificial grass, plants, or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Lot, unless approved by the ACC.

8.20 Laundry. Subject to the provisions of section 163.04, Florida Statutes, to the extent applicable, no rugs, mops, or laundry of any kind, or any other similar type article, shall be shaken, hung, or exposed so as to be visible outside the Home or Lot. Clotheslines or clothes poles may be installed in the rear of a Lot so long as it is not visible from the Common Areas or an adjoining Lot; provided, that, any such clothesline or clothes pole shall be removed when it is not in use as a clothesline or clothes pole.

8.21 Satellite Dishes and Antennae. Except as may be installed by the Declarant or the Association, no antennas, satellite dishes, aerials, or other devices for communication or transmission of current shall be placed on any portion of the Common Areas or any property owned by the Association. Subject to the Federal Telecommunications Act of 1996, as amended from time to time, satellite dishes approved by the ACC to be installed on a Lot or other area in the exclusive control of the Owner shall be no greater than one (1) meter in diameter. In no event, however, shall lines or wires for communication or the transmission of current be constructed, placed, or permitted to be placed within the Common Areas unless the same shall be installed by the Declarant or the Association for the common use of all Owners. Any installation of communication equipment by an Owner shall not relieve such Owner from payment of any portion of Assessments. The ACC may, from time to time, adopt reasonable standards regarding the visibility and location of permissible antennas, satellite dishes, or any other communication equipment to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation.

8.22 Signs and Flags. Except as otherwise provided in section 720.304(2), Florida Statutes, no flags or flag poles are permitted without the prior written approval of the ACC. No sign, display, poster, banner, advertisement, notice, or other lettering shall

be exhibited, displayed, inscribed, painted, hung, or affixed in or upon any Home, Lot, or vehicle, that is visible from the Common Areas or another Lot.

8.23 Sports Equipment. No recreational, playground, or sports equipment, either permanent or temporary, including, without limitation, basketball backboards and hoops, skateboard ramps, or play structures, shall be installed, constructed, or placed within or about any portion of a Lot without the prior written consent of the ACC. Such approved equipment shall be located at the rear of the Lots or on the inside portion of corner Lots within the setback lines. Tree houses or platforms of a similar nature shall not be constructed on any part of a Lot. The Board may adopt, amend, or rescind reasonable rules and regulations regarding the use of any recreational, playground, or sports equipment, including, without limitation, times during which basketball hoops and/or play structures may be used.

8.24 Swimming Pools. No above-ground pools shall be permitted on any Lot. All in-ground pools, hot tubs, spas, and appurtenances installed shall require the prior written approval of the ACC. The design must incorporate, at a minimum, the following: (i) the composition of the material must be thoroughly tested and accepted by the industry for such construction; (ii) any swimming pool constructed on any Lot shall have an elevation at the top of the pool of not over two feet (2') above the natural grade unless otherwise approved by the ACC; (iii) any swimming pool constructed on any Lot must be constructed with the necessary safety barriers and barrier gates as required by Florida law. Unless installed by the Declarant, no diving boards, slides, or platforms shall be permitted without ACC approval. All pools shall be adequately maintained and chlorinated (or cleaned with similar treatment). Under no circumstances may chlorinated water be discharged onto adjacent Lots, streets, roadways, or into any retention/detention areas within the Property or adjoining properties.

8.25 Visibility on Corners. Notwithstanding anything to the contrary, no obstruction to visibility at street intersections shall be permitted and such visibility clearances shall be maintained as required by the Board and governmental agencies. No vehicles, objects, fences, walls, hedges, shrubs, plantings, or other Improvements shall be placed or permitted on a corner Lot where such obstruction would create a traffic problem.

8.26 Wells and Septic Tanks. No individual wells or septic tanks are permitted on any Lot.

8.27 Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window coverings, as determined by the Board, and no newspaper, aluminum foil, sheets, cardboard, towels, or other temporary window treatments are permitted. No security bars shall be placed on the windows of any Home without prior written approval of the ACC. No awnings, canopies, or shutters shall be affixed to the exterior of a Home without the prior written approval of the ACC. No reflective tinting or mirror finishes on windows shall be permitted without the prior written approval of the ACC.

8.28 Solar Panels. To the extent not prohibited by law, solar collectors shall not be visible from the road on which the Home is situated. The ACC may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within forty-five degrees (45°) east or west of due south if such determination does not impair the effective operation of the solar collectors.

8.29 Air Conditioning Units. Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are permitted. All exterior air conditioning units, pumps, electric, mechanical, and all other equipment must be screened from view by landscaping or other materials as approved in writing by the ACC, and in any event, no exterior air conditioning units or other equipment shall be placed in the front of a Home.

8.30 Control of Contractors. Except for direct services which may be offered to the Owners (and then only according to the Rules and Regulations relating thereto as adopted from time to time), no person other than an Association director or officer or the Association's manager shall direct, supervise, or in any manner attempt to assert any control over any contractor of the Association.

8.31 Cooking. No cooking shall be permitted, nor shall any goods or beverages be consumed, on the Common Areas, except in areas designated for those purposes by the Association. The Board shall have the right to prohibit or restrict the use of grills or barbecue facilities throughout the Property.

8.32 Responsibility for Personal Property and Persons. Each Owner assumes sole responsibility for the health, safety, and welfare of such Owner and the residents, tenants, guests, and invitees of the Owner's Lot, including, without limitation, minors, and the personal property of all of the foregoing. No person shall cause or permit any damage to the Common Areas or any other property for which the Association is responsible or interfere with the rights of other Owners hereunder. Neither the Declarant nor the Association shall be responsible for any loss or damage to any personal property brought into, used, placed, or left within or upon the Common Areas, including, without limitation, the Recreational Facilities (if any). Any person using the Common Areas, including, without limitation, engaging in any contest, game, function, exercise, competition, or other activity, shall do so at their own risk. By the use of the Common Areas, each Owner, tenant, resident, guest, and invitee agrees to indemnify and hold harmless the Association Parties and the Declarant Parties from and against all Losses incurred by or asserted against any of the Association Parties or the Declarant Parties as a result of or in any way related to use of the Common Areas by such persons. Should any Owner, tenant, resident, guest, or invitee bring suit against any of the Association Parties or the Declarant Parties for any Losses and fail to obtain judgment therein against the Association Parties or the Declarant Parties, the Owner, tenant, resident, guest, or invitee, as applicable, shall be liable to the Association Parties or the Declarant Parties, as applicable, for all Legal Fees incurred by the Association Parties or the Declarant Parties, as applicable, in the defense of such suit.

8.33 Activities. The Common Areas shall not be used by Owners, tenants, residents, guests, or invitees for any society, party, religious, political, charitable, fraternal, civil, fund-raising, or other purposes without the prior written consent of the Board, which consent may be withheld for any reason.

8.34 Association Personal Property. Personal property of the Association used in connection with the Community and/or the Common Areas shall not be removed from the location in which it is placed or from the Common Areas without the prior written consent of the Board.

8.35 Master Association Rules and Regulations. The Owners, tenants, residents, guests, and invitees shall additionally abide by the use restrictions, rules, and regulations as set out in the Master Governing Documents.

8.36 Declarant Exemption. The use restrictions and limitations set forth in this Article VIII, the Architectural Guidelines, and the Rules and Regulations shall not apply to the Declarant or to any property owned by the Declarant and shall not be applied in a manner that would prohibit or restrict the development or operation of the Property by the Declaration or adversely affect the interests of the Declarant. The Declarant shall specifically be exempt from any rules, restrictions, resolutions, or other actions of the Board or of the Members which interfere in any manner whatsoever with the Declarant's plans for development, construction, sale, lease, or use of the Property and to the Improvements thereon. The Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Article VIII in addition to whatever remedies at law to which it might be entitled. Without limiting the foregoing, the Declarant shall have the right to: (i) develop and construct Lots, Homes, Common Areas, and Improvements thereon within the Property, and make any additions, alterations, or changes thereto; (ii) maintain sales offices for the sale, re-sale, and/or lease of Lots and of properties located outside of the Property, general offices, and construction operations within the Property; (iii) place, erect, or construct portable, temporary, or accessory buildings or structures within the Property for sales, construction storage, or other purposes deemed suitable by the Declarant; (iv) temporarily deposit, dump, or accumulate materials, trash, refuse, debris, and rubbish in connection with the development or construction of any portion of the Property; (v) post, display, inscribe, or affix to any portion of the Property, signs and other materials used in developing, constructing, selling, or promoting the sale of any portion of the Property; (vi) excavate fill from any retention/detention areas or water bodies within and/or contiguous to the Property by dredge or dragline, store fill within the Property, and remove and/or sell excess fill; (vii) grow or store plants and trees within, or contiguous to, the Property and use and/or sell excess plants and trees; (viii) use construction vehicles in connection with construction, improvement, installation, or repair by the Declarant, or its agents, within the Property; and (ix) undertake all activities which, in the sole opinion of the Declarant, are necessary or convenient for the development and sale of any portion of the Property.

## **ARTICLE IX** **INSURANCE**

### **9.1    Common Areas.**

9.3.1 Coverages. The Association shall purchase and maintain the following insurance coverages subject to the following provisions:

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

(ii)   Liability Insurance. General liability insurance coverage insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance, repair, replacement, and use of the Common Areas and any Improvements thereon, and for any other risks insured against by such policies with such limits deemed appropriate by the Board. Such policies must provide that they may not be cancelled or substantially modified by any party, without at least thirty (30) days' prior written notice to the Declarant (until the Community Completion Date) and the Association.

(iii)   Flood Insurance. If the Common Areas are located within an area which has special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Association may maintain insurance coverage in appropriate amounts, available under NFIP, for all buildings and other insurable property within any portion of the Common Areas located within a designated flood hazard area.

(iv)   Fidelity Coverage. Adequate fidelity coverage shall be maintained in accordance with the By-Laws.

(v)    Directors and Officers Liability Insurance. Adequate directors' and officers' liability insurance in such amounts and with such provisions as approved by the Board.

(vi)   Additional Insurance. Such other insurance coverage as deemed appropriate by the Board, from time to time, including, without limitation, worker's compensation insurance and insurance for lawsuits related to employment contracts in which the Association is a party, in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Common Areas and any Improvements now or hereafter located thereon or in the best interests of the



Association and/or its officers and directors. All coverage obtained by the Association shall cover all activities of the Association and all properties maintained by the Association, whether or not the Association owns title thereto.

9.3.2 Cost of Payment of Premiums and Deductibles. Except as otherwise provided herein, the costs of all insurance maintained by the Association, and any other fees or expenses incurred that may be necessary or incidental to carry out the provisions hereof, are Common Expenses.

9.3.3 Condemnation. In the event the Association receives any award or payment arising from the taking of any Common Areas or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and Improvements thereon to the extent deemed advisable by the Board, and the remaining balance thereof, if any, shall then be distributed pro rata to the Owners and Lenders as their respective interests may appear.

9.2 Single-Family Lot Insurance. Each Owner of a Single-Family Lot shall be required to obtain and maintain insurance in an amount equal to the then full replacement cost of all insurable Improvements on such Owner's Single-Family Lot, less a reasonable deductible. Such insurance shall be sufficient for necessary repair or reconstruction work and shall cover the costs to demolish a damaged Home, as applicable, remove the debris, and to re-sod and landscape land comprising the Single-Family Lot. Upon the request of the Association, each Owner of a Single-Family Lot shall be required to supply the Board with evidence of insurance coverage on such Owner's Single-Family Lot and Home which complies with the provisions of this Section 9.2. Without limiting any other provision of this Declaration or the powers of the Association, the Association shall specifically have the right, without obligation, to bring an action to require an Owner to comply with the Owner's obligations hereunder. The Association, its directors, officers, committee members, agents, and employees, shall not be liable to any Owner should an Owner fail for any reason whatsoever to obtain insurance coverage on the Owner's Single-Family Lot and Home.

9.3 Townhome Lot Insurance. As may be reasonably determined by the Board, from time to time not less than one hundred twenty (120) days prior to the expiration of then-existing coverage, due to coverage availability, market conditions, and other relevant factors, insurance upon Townhome Lots shall be obtained in either manner set forth below. Any change in the manner of obtaining insurance coverage for Townhome Lots shall become effective sixty (60) days after the recording of a certificate in the Official Records of the County providing notice of such change under this Section. Within thirty (30) days after recording said certificate, the Association shall provide each Owner with written notice of such change to provide a reasonable amount of time for the Owners to comply with such change. Upon the request of the Association, each Owner of a Townhome Lot shall be required to supply the Board with evidence of insurance coverage on such Owner's Townhome Lot and Home which complies with the provisions of this Section 9.3. Without limiting any other provision of this Declaration or the powers of the

Association, the Association shall specifically have the right, without obligation, to bring an action to require an Owner to comply with the Owner's obligations hereunder. The Association, its directors, officers, committee members, agents, and employees, shall not be liable to any Owner should an Owner fail for any reason whatsoever to obtain insurance coverage on the Owner's Townhome Lot and Home. The costs of all insurance maintained by the Association in accordance with this Section 9.3, and any other fees or expenses incurred that may be necessary or incidental to carry out the provisions hereof, are Common Expenses of the Association allocated among the Townhome Lots only, and all Owners of Townhome Lots within each building containing Homes constructed on Townhome Lots shall share said fees, costs, and expenses equally as reasonably determined by the Board.

9.3.1 Coverage Option One. The Association shall purchase and maintain property and casualty insurance in an amount equal to the then full replacement cost, exclusive of items normally excluded from such coverage, of all Shared Roofing now or hereafter located upon the Townhome Lots, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Shared Roofing in developments similar to the Community in construction, location, and use. Each Owner of a Townhome Lot shall be required to obtain and maintain insurance in an amount equal to the then full replacement cost of all other insurable Improvements on such Owner's Townhome Lot, less a reasonable deductible. Such insurance shall be sufficient for necessary repair or reconstruction work and shall cover the costs to demolish a damaged Home, as applicable, remove the debris, and to re-sod and landscape land comprising the Townhome Lot.

9.3.2 Coverage Option Two. The Association shall purchase and maintain property and casualty insurance in an amount equal to the then full replacement cost, exclusive of items normally excluded from such coverage, of all Improvements located upon the Townhome Lots, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to said Improvements in developments similar to the Community in construction, location, and use. Such insurance shall be sufficient for necessary repair or reconstruction work and shall cover the costs to demolish a damaged Home, as applicable, remove the debris, and to re-sod and landscape land comprising the Townhome Lot. Notwithstanding the foregoing, the coverage purchased and maintained by the Association shall exclude all personal property within the Townhouse Lot, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the Townhouse Lot. Each Owner of a Townhome Lot shall be required to obtain and maintain insurance in an amount equal to the then full replacement cost of all the foregoing items, less a reasonable deductible.

9.4 Declarant. Prior to Turnover, the Declarant shall have the right, at the Association's expense, to provide insurance coverage under its master insurance policy in lieu of any of the foregoing. Until the Community Completion Date, the Declarant shall

be named as “additional insured” by endorsement on all policies obtained by the Association. Notwithstanding anything to the contrary, the Declarant Parties shall not be liable to any Owner or any other person should the Association fail for any reason whatsoever to obtain insurance coverage for the Common Areas or should the Owner fail for any reason whatsoever to obtain insurance coverage for their Lot.

9.5 Insurance Trustee. The Board may, in its sole discretion, appoint itself, a Florida or national bank with trust powers, or such other person or entity, in the Board’s sole discretion, as insurance trustee hereunder. If the Board fails or elects not to appoint an insurance trustee, the Association will perform directly all obligations imposed upon the insurance trustee by this Declaration. Fees and expenses of any insurance trustee shall be Common Expenses.

9.6 Association as Agent. The Association is irrevocably appointed agent for each Owner of any interest relating to the Common Areas to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

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

## **ARTICLE X**

### **DAMAGE TO OR DESTRUCTION OF THE PROPERTY**

10.1 Damage to or Destruction of a Lot. In the event a Lot, or any portion thereof, is damaged or destroyed by fire, flood, or other casualty, the Owner of such Lot shall do one (1) of the following: (i) the Owner shall commence reconstruction and/or repair of the Lot (“Required Repair”), or (ii) the Owner shall, to the extent permitted by law, tear the Home on the Lot down, remove all the debris, and re-sod and landscape the Lot as required by the ACC (“Required Demolition”). The Required Repair or the Required Demolition must be: (i) approved by the ACC; (ii) commenced within ninety (90) days after damage or destruction of the Improvements on the Single-Family Lot; and (iii) conducted in a continuous, diligent, and timely manner.

10.1.1 Each Owner acknowledges that the issuance of a building permit or a demolition permit in no way shall be deemed to satisfy the requirements set forth herein, which are independent of, and in addition to, any requirements for completion of work or progress requirements set forth in applicable statutes, zoning codes, and/or building codes.

10.1.2 Notwithstanding anything to the contrary herein, to the extent that insurance coverage obtained and maintained by the Association covers casualty damage to or destruction of a Lot or any Improvement thereon, the Owner of such damaged or destroyed Lot shall not perform any activities that would negate such coverage or impair the availability of such coverage. Any insurance proceeds received by the Association for such casualty damage to or destruction of a Lot or any Improvement thereon shall be applied to the repair or replacement of the property so covered if the Required Repair is undertaken by the Owner of the Lot or shall be applied to the tear down and removal of the property so covered if the Required Demolition is undertaken by the Owner of the Lot.

10.1.3 The Association shall have the right to inspect the progress of the Required Repair or the Required Demolition, as applicable. In addition to all other remedies available to the Association, the Association shall have the right, without obligation, to bring an action against an Owner who fails to comply with the requirements of this Section 10.1. Without limitation, if an Owner refuses or fails, for any reason, to perform the Required Repair or the Required Demolition, then the Association, in the Board's sole and absolute discretion, is hereby irrevocably authorized by such Owner to perform the Required Repair or the Required Demolition on such Owner's behalf. The Association shall have the absolute right to perform the Required Demolition to a Home pursuant to this Section 10.1.3 if any contractor certifies in writing to the Association that such Home cannot be rebuilt or repaired without demolition. The costs and expenses of any Required Repair or the Required Demolition, as applicable, conducted by the Association in accordance with this Section 10.1.3, including, without limitation, any costs and expenses incurred with the management and oversight of any such Required Repair or Required Demolition performed by the Association, shall be levied against the Lot and the Owner thereof as an Individual Assessment. The Association Parties shall not be liable to any person if the Association does not enforce the rights given to the Association in this Section 10.1.

10.2 Damage to or Destruction of the Common Areas. In the event of damage to or destruction of the Common Areas, or any portion thereof, the Association shall be responsible for repair and reconstruction after casualty and shall be commenced within ninety (90) days after damage or destruction of the Improvements on the Common Areas. Any repair or reconstruction of improvements hereunder shall be substantially in accordance with the plans and specifications of the original Improvement, or as the Improvement was last constructed, subject to modification to conform to the then current governmental regulation(s). In the event insurance proceeds are insufficient to effect total repair or reconstruction of the Common Areas, or any portion thereof, damaged or destroyed by casualty, the Association may raise the necessary funds in excess of insurance proceeds by levying Special Assessments against all Owners.

10.3 Standard of Work. The standard for all demolition, reconstruction, and other work performed as required by this Article X shall be in accordance with the Architectural Guidelines and any other standards established by the Board with respect to any casualty that affects all or a portion of the Property.

## **ARTICLE XI**

### **ASSESSMENTS AND COLLECTION**

11.1 Covenant to Pay Assessments. In order to fulfill the terms, provisions, covenants, conditions, restrictions, reservations, regulations, burdens, liens, and easements herein contained and to maintain, operate, and preserve the Common Areas for the use and benefit of the Owners, tenants, residents, guests, and invitees, there is hereby imposed upon each Lot and each Owner, the affirmative covenant and obligation to pay to the Association, commencing from and after the first conveyance of a Lot from the Declarant as evidenced by the recordation of a deed in the County's Official Records, all Assessments as set forth herein, which Assessments include, without limitation, General Assessments, Special Assessments, and Individual Assessments. Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title in any manner (whether or not so expressed in the deed), including, without limitation, any purchaser at a judicial sale, shall be deemed to have covenanted and agreed to pay to the Association all Assessments or charges as are fixed, established, and collected from time to time by the Association and that each Lot and the Owners thereof are jointly and severally liable for their portion of Assessments. Any individual or entity, unless otherwise set out herein, acquiring title to a Lot shall be personally liable, jointly and severally, for any unpaid sums due and payable to the Association that are attributed to the Lot, including, without limitation, any unpaid Assessments, late fees, interest, and any Legal Fees with respect to such Lot. Each Owner is jointly and severally liable with the previous owner of the Lot for all unpaid Assessments that came due up to the time of transfer of title.

11.2 Establishment of Lien. Each Assessment, and other charges and fees set forth herein, together with interest thereon, administrative late fees, and costs of collection, including, without limitation, all Legal Fees, shall be a charge and continuing lien in favor of the Association encumbering the Lot and all personal property located thereon owned by the Owner against whom each such Assessment is made. The lien established by this Section 11.2 shall relate back to the date of recording this Declaration among the County's Official Records.

11.3 Master Association Assessments. Assessments levied and imposed upon the Owners and the Lots by the Master Association in accordance with the Master Declaration shall be collected by the Association, on behalf of all Owners and all Lots. The Association shall thereafter remit such Master Association assessments to the Master Association. The duty of the Association to pay the Master Association assessments on behalf of all Owners and all Lots shall not be deferred or relieved by any non-payment of Master Association assessments by any Owner. Any Master Association assessment for which the Association is required to pay in the event of Owner non-payment shall be assessable against such non-paying Owner and such Owner's Lot as an Individual Assessment.

11.4 General Assessments. General Assessments levied by the Association shall be used for, among other things, the purpose of operating and maintaining the

Association and the Property, including, without limitation, the Common Expenses. General Assessments shall be established by the adoption of the annual budget as further set forth in the By-Laws and subject to this Section 11.4. The Board may, from time to time, determine when General Assessments will be collected by the Association (i.e., monthly, quarterly, or annually). Unless otherwise established by the Board, General Assessments shall be collected in advance on a monthly basis. The Board shall fix the date of commencement and the amount of General Assessments for each fiscal year of the Association at least thirty (30) days in advance of the commencement of the fiscal year for which the annual budget is adopted. Written notice of General Assessments shall thereupon be sent to every Owner subject thereto at least fifteen (15) days prior to payment of the first installment thereof. In the event no such notice of a change in General Assessments for the upcoming fiscal year is given, the amount payable shall continue to be the same as the amount payable for the previous fiscal year, until changed in the manner provided for herein. The amount of General Assessments (and applicable installments) may be changed at any time by the Board from that originally stipulated or from any other General Assessments that are in the future adopted. The General Assessments for any year shall be levied for the fiscal year (to be reconsidered and amended, as necessary), but the amount of any revised General Assessment to be levied during any period shorter than a full fiscal year shall be in proportion to the number of months (or other appropriate installments) remaining in such fiscal year.

11.4.1 Reserves. The Declarant does not and will not create Statutory Reserves. The Board may, but shall have no obligation to, include in the annual budget Non-Statutory Reserves, including, without limitation, reserves for maintenance, repair, and replacement of the Recreational Facilities. Reserves shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Reserves are established. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Reserves or any portion thereof through the Community Completion Date. Therefore, in the event Statutory Reserves are later created by the Owners in accordance with section 720.303(6)(d), Florida Statutes, or in the event the Board creates Non-Statutory Reserves, the Declarant shall not be responsible for the payment of any such Reserves through the Community Completion Date or to such other date provided by law, whichever is longer.

11.4.2 Allocation. Except as provided herein with respect to "Vacant Lots" and "Spec Lots" (as such terms are hereinafter defined) and with respect to the costs to be incurred by the Association to maintain certain Improvements on the Lots, as further set forth below, General Assessments imposed by the Association shall be imposed against all Lots equally.

11.4.2.1 Vacant Lots and Spec Lots. Subject to the rights of the Declarant pursuant to Section 11.11 below, any Lot that does not have a Home constructed thereon as evidenced by a Certificate of Occupancy (a "Vacant Lot") and any Lot that has a Home constructed thereon but is owned by the Declarant (a "Spec Lot") shall be assessed at ten percent (10%) of the General Assessment, less Reserves (if

any), assessed to Lots with Homes constructed thereon and owned by Owners. In accordance with section 720.308(1)(a), Florida Statutes, this lesser General Assessment amount reflects that Vacant Lots and Spec Lots will not benefit from maintenance and other services provided by the Association. At such time as a Home is conveyed by the Declarant to an Owner, then the Spec Lot shall be deemed a fully assessed Lot and shall be responsible for one hundred percent (100%) of General Assessments, except as otherwise provided herein. Notwithstanding any other provision to the contrary, Vacant Lots and Spec Lots shall not be responsible for Reserves or Individual Assessments and to the extent permitted by law, Special Assessments, as further set forth below. Assessments shall commence as to each Owner on the day of the conveyance of title of a Home to such Owner. Each Owner agrees that so long as it does not pay more than the required amount, they shall have no grounds upon which to object to either the method of payment or nonpayment by other Owners or the Declarant of any sums due.

11.4.2.2 Lot Maintenance. Due to the specific level of maintenance and other services provided by the Association to Single-Family Lots and to Townhome Lots in accordance with Article VII of this Declaration, the costs to be incurred by the Association to maintain the Single-Family Lots and Townhome Lots will differ. Therefore, in accordance with section 720.308, Florida Statutes, the costs to be incurred by the Association for maintenance upon the Lots shall be allocated among the Single-Family Lots and Townhome Lots based upon the specific level of maintenance services received by each respective Lot type. Each Lot within each respective Lot type shall share equally the landscaping maintenance costs allocated to such respective Lot type.

11.5 Special Assessments. The Association, by and through the Board, shall have the right to levy Special Assessments, from time to time, against all Owners and Lots or one (1) or more Lots or one (1) or more Owners to the exclusion of other Lots and Owners for any of the following purposes: (i) the cost of reconstructing, replacing, or improving the Common Areas, or any portion thereof or Improvements thereon, or any other portion of the Property for which the Association is responsible; (ii) any casualty loss affecting the Association, the Common Areas, or any portion thereof or Improvements thereon, or any other portion of the Property for which the Association is responsible to the extent such loss exceeds the insurance proceeds, if any, receivable by the Association as a result of such loss; (iii) any judgment against the Association (or against any director or officer if and to the extent such director or officer is entitled to be indemnified by the Association therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Association as a result of such judgment, or an agreement by the Association (or such director or officer to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such director or officer) to the extent such settlement exceeds the insurance proceeds, if any, received by the Association as a result of such settlement agreement; (iv) Legal Fees incurred by the Association in connection with litigation (whether incurred for the preparation, filing, prosecution, or settlement thereof or otherwise), except those Legal Fees incurred by the Association in connection with the collection of Assessments or as may be the subject of an Individual Assessment; and (v) in the event of a deficit in the Association's operating account(s) resulting from inadequate payment of General

Assessments or the Association's expenditures exceed the amount(s) budgeted for the then-current fiscal year. Prior to Turnover, Special Assessments may be levied by the Association with the approval of (i) a majority of the entire Board; and (ii) fifty-one percent (51%) of the Owners present, in person or by proxy, at a duly noticed meeting of the Members at which a quorum is attained. After Turnover, no vote of the Owners shall be required for the levy of Special Assessments, unless such Special Assessment is made for a nonessential, discretionary Improvement. Until the Community Completion Date, no Special Assessments shall be imposed without the written consent of the Declarant. Special Assessments levied hereunder shall be due within the time specified and in the amount specified by the Board in the action levying such Special Assessment. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Special Assessments through the Community Completion Date to the extent permitted by law. If, however, the Declarant is held responsible for payment of any Special Assessment prior to the Community Completion Date, the Developer shall only be responsible for payment of such Special Assessment on Vacant Lots and Spec Lots at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. Special Assessments shall be subject to all of the applicable provisions of this Article XI including, without limitation, interest charges, administrative late fees, lien filing, and foreclosure procedures.

11.6 Individual Assessments. The Association, by and through the Board, shall have the right to levy Individual Assessments, from time to time, against one (1) or more Lots or one (1) or more Owners to the exclusion of other Lots and Owners for any of the following purposes: (i) the costs, fees, and expenses incurred by the Association for the repair or replacement of damage to the Common Areas, or any portion thereof or Improvements thereon, or any other portion of the Property for which the Association is responsible caused by the misuse, negligence, or other action or inaction of an Owner, resident, tenant, guest, or invitee; (ii) the costs, fees, and expenses incurred by the Association for the maintenance, repair, or replacement to a Lot and/or Home conducted by the Association in the event an Owner fails to properly maintain, repair, or replace their Lot or Home in a manner required by this Declaration; (iii) charges for costs and expenses of the Association which are not Common Expenses but which are attributable to a specific Lot or Lots and which are designated as a special charge, including, but not limited to, Legal Fees attributable to a specific Lot or Lots and non-payment of Master Association assessments; (iv) "Use Fees" (as such term is hereinafter defined); and (v) other fines, expenses, and charges incurred against particular Lots and/or Owners to the exclusion of others as may be contemplated in this Declaration. Individual Assessments levied hereunder shall be due within the time specified and in the amount specified by the Board in the action levying such Individual Assessment. Notwithstanding any provision in this Declaration to the contrary, the Declarant shall not be responsible for the payment of Individual Assessments through the Community Completion Date. Individual Assessments shall be subject to all of the applicable provisions of this Article XI, including, without limitation, interest charges, administrative late fees, lien filing, and foreclosure procedures.



11.7 Use Fees. The Association shall have the authority to charge any specific fees, dues, or charges to be paid for any special services, for any special or personal use of the Common Areas, or to reimburse the Association for the expenses incurred in connection with such service or use ("Use Fees"). Use Fees are assessable against the Lot and the Owner as an Individual Assessment. The Association may establish, from time to time, by resolution, rule or regulation, or by delegation to an officer or agent, including, a professional management company, Use Fees. The sums established shall be payable by the Owner utilizing the service or facility as determined by the Association.

11.8 Designation of Assessments. The designation of Assessment type and amount shall be made by the Board. Prior to the Community Completion Date, any such designation must be approved in writing by the Declarant. Such designation may be made on the budget prepared by the Board. The designation shall be binding upon all Owners.

11.9 Initial Contribution. The first purchaser of each Home from the Declarant, at the time of closing of the conveyance from the Declarant to the purchaser, shall pay to the Declarant an initial contribution in the amount of one (1) quarter's General Assessments at the time of closing (the "Initial Contribution"). The funds derived from the Initial Contributions shall be used at the discretion of the Declarant for any purpose, including, without limitation, to offset and lessen the Declarant's funding obligations, support costs, and start-up costs.

11.10 Resale Contribution. For each conveyance of a Home by an Owner to a purchaser after the Home has been conveyed by the Declarant, there shall be collected from the purchaser at the time of closing of the conveyance from the Owner to the purchaser a resale contribution in the amount of one (1) quarter's General Assessments at the time of closing payable to the Association (the "Resale Contribution"). The funds derived from the Resale Contributions are income to the Association and shall be used at the sole discretion of Board for any purpose, including, without limitation, future and existing capital improvements, Common Expenses, support costs, and start-up costs. The Resale Contribution shall not be deemed advance payment of Assessments, nor shall Resale Contribution have any effect on future Assessments. The Resale Contribution shall not be applicable to conveyances from the Declarant.

11.11 Declarant's Funding Obligations. Each Owner acknowledges and agrees that because General Assessments, Special Assessments, and Reserves (if any) are allocated in accordance with this Article XI, it is possible the Association may collect more or less than the amount budgeted for Common Expenses. Prior to Turnover, the Declarant shall have the option, in its sole discretion, to: (i) pay any Common Expenses incurred by the Association that exceed the Assessments received from Owners and other receivables and income of the Association, including, without limitation, the Initial Contributions and Resale Contributions, late fees, and interest charges as set out in section 720.308(1)b), Florida Statutes (the "Deficit"), or (ii) pay General Assessments on Vacant Lots and Spec Lots at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. Notwithstanding any other provision of this Declaration to the contrary, the Declarant shall never be required to (i) pay Assessments if the Declarant

has elected to fund the Deficit instead of paying Assessments on Vacant Lots or Spec Lots; (ii) pay Special Assessments, Individual Assessments, or Reserves; and/or (iii) fund any deficit caused by Owners who have failed to pay Assessments and/or any other monetary obligation due to the Association and/or the Master Association. The Declarant shall elect annually whether it will pay General Assessments or fund the Deficit. Notwithstanding the foregoing, the Declarant may at any time give thirty (30) days' prior written notice to the Association changing its funding obligation election. Any of the Declarant's funding obligations to the Association may be satisfied in the form of monetary payment or by "in kind" contributions of services or materials, or by any combination of the foregoing. The Deficit, if any, to be paid by the Declarant pursuant to this Section 11.11 shall be determined by looking at the Declarant control period as a whole, without regard to quarterly, annual, or any other accounting or fiscal periods and without regard to intraperiod allocations. In that regard, in the event it is determined at Turnover that there is a Deficit and the Declarant has previously advanced funds to the Association in excess of the Deficit during the Declarant control period, the Declarant shall be entitled to the immediate repayment from the Association of the amount of funds advanced by the Declarant in excess of the Deficit. After Turnover, the Declarant shall pay General Assessments on Vacant Lots and Spec Lots at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. To the extent not prohibited by law, the Declarant shall not be responsible for any Reserves, Special Assessments, or Individual Assessments, even after Turnover; but, if the Declarant is held responsible for any of the foregoing prior to the Community Completion Date, the Developer shall only be responsible for payment of same at the applicable rate of General Assessments set forth in Section 11.4.2.1 above. Upon transfer of title of a Lot owned by the Declarant, the Lot shall be assessed in the amount established for Lots owned by Owners other than the Declarant, prorated as of and commencing with, the month following the date of transfer of title. THE DECLARANT DOES NOT PROVIDE A GUARANTEE OF THE LEVEL OF ASSESSMENTS. AS SUCH, THERE IS NO MAXIMUM GUARANTEED LEVEL OF ASSESSMENTS DUE FROM OWNERS. AS SUCH, THE PROVISIONS OF SECTIONS 720.308(2) THROUGH 720.308(6), FLORIDA STATUTES, ARE NOT APPLICABLE TO THE DECLARANT OR THE CALCULATION OF THE DEFICIT OR OTHER AMOUNTS DUE FROM THE DECLARANT.

11.12 Declarant Subsidy of the Association's Budget. Prior to the Community Completion Date and/or based on the number of Lots owned by Owners, the Declarant may seek to keep Assessments lower than they otherwise may be by subsidizing the Association's budget by making voluntary contributions in amounts determined in the Declarant's sole discretion. The amount of any such voluntary contributions may vary from time to time or may be discontinued and recommenced by the Declarant from time to time. The determination to subsidize the Association's budget, the amount of any such voluntary contribution, the discontinuance and/or commencement of any such voluntary contributions shall all be made by the Declarant, without obligation and in the Declarant's sole discretion. Each Owner shall be solely responsible to review the Association's budget then in effect to determine if and to what extent the Declarant is making any voluntary contributions to subsidize the budget and thus lower the Assessments payable by the Owners that would otherwise be higher based on the Common Expenses. Any voluntary

contribution made by the Declarant may be applied to offset the Deficit remaining at Turnover.

11.13 Surplus. Any surplus Assessments collected by the Association may be allocated towards the next year's Common Expenses or, in the Board's sole and absolute discretion, to the funding of Reserves, whether or not budgeted. Under no circumstances shall the Association be required to pay surplus Assessments to Owners.

11.14 Estoppel Certificates. No Owner shall sell or convey such Owner's interest in a Lot unless all sums due to the Association have been paid in full and an estoppel certificate shall have been received from the Association by such Owner. The Association shall prepare and maintain a ledger noting Assessments due from each Owner. The party requesting the estoppel certificate shall be required to pay the Association a reasonable fee for the preparation and delivery of such estoppel certificate in accordance with section 720.30851, Florida Statutes.

11.15 Non-Use. No Owner may be exempt from personal liability for Assessments duly levied by the Association. No Owner may release the Lot owned by such Owner from the liens and charges hereof either by waiver or suspension of the use and enjoyment of the Common Areas and Improvements thereon or by abandonment of such Owner's Lot, by refusal to provide the Association with access to the Owner's Lot for the purpose of performing maintenance upon such Lot in accordance with this Declaration, or by voluntarily undertaking any maintenance upon such Lot which is otherwise the responsibility of the Association in accordance with this Declaration.

11.16 Payment of Other Obligations. Each Owner shall pay all taxes and obligations relating to its Lot which, if not paid, could become a lien against the Lot that is superior to the lien for Assessments created by this Declaration. A Lender shall give written notice to the Association if the mortgage held by such Lender is in default. The Association shall have the right, but not the obligation, to cure such default within the time periods provided in the mortgage held by such Lender. In the event the Association makes such payment on behalf of an Owner, the Association shall, in addition to all other rights reserved herein, be subrogated to all of the rights of the Lender. All amounts advanced on behalf of an Owner pursuant to this Section 11.16 shall be assessable against the Owner and the Lot as an Individual Assessment.

11.17 Subordination of the Lien to Mortgages. The lien for Assessments shall be subordinate to a bona fide first mortgage held by a Lender on any Lot recorded in the County's Official Records prior to the recordation of a claim of lien for unpaid Assessments hereunder. A Lender having a bona fide first mortgage, its successor or assignee, obtaining title to a Lot as a result of the foreclosure of its first mortgage or by deed in lieu of such foreclosure, shall hold title subject to the liability and lien of any Assessment becoming due after such foreclosure or deed in lieu of foreclosure. Further, any such Lender who acquires title to a Lot as the result of the foreclosure of its first mortgage or by deed in lieu of such foreclosure shall be liable for any past due Assessments or any other unpaid sums due and payable to the Association that are

attributed to the Lot in such amounts as provided for in section 720.3085, Florida Statutes, so long as such Lender initially named the Association as a defendant in its foreclosure action. Any unpaid Assessments for which such Lender, its successor or assignee, obtaining title is not liable shall be reallocated and assessed to all Owners (including such Lender, its successor or assignee) as a part of the Common Expenses. Any other person or entity acquiring title to the Lot through the foreclosure of the first mortgage (or deed in lieu of such foreclosure) shall owe all sums due on the Lot, including, but not limited to, interest charges, administrative late fees, and Legal Fees, as any subsequent Owner owes in accordance with section 720.3085, Florida Statutes. Any sale or transfer pursuant to a foreclosure (or by deed in lieu of foreclosure) shall not relieve the Owner from liability for, nor the Lot from, the lien of any Assessments made thereafter.

11.18 Non-Payment of Assessments. If any Assessment is not paid within ten (10) days (or such other period of time established by the Board from time to time) after the due date, then the Association, by and through the Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

(i) Charge an administrative late fee in the maximum amount permitted by the Homeowners' Association Act.

(ii) Charge interest at the highest rate permitted by law on such Assessment from the date it becomes due until the date it is paid.

(iii) Accelerate Assessments then due for up to the next ensuing twelve (12) month period based upon the then existing amount and frequency of Assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the General Assessments, for all Special Assessments, Individual Assessments, and/or for all other amounts payable to the Association, even if levied after acceleration.

(iv) Suspend the rights to use the Common Areas and/or to vote on any matter on which Owners have the right to vote in accordance with Article XIV of this Declaration.

(v) Record a claim of lien against the Lot and file an action in equity to foreclose its lien at any time after the effective date thereof in the name of the Association and in like manner as a foreclosure of a mortgage on real property.

(vi) File an action at law to collect said Assessments, interest charges, administrative late fees, and all costs of collection thereof, including, without limitation, Legal Fees, without waiving any lien rights or rights of foreclosure of the Association.

(vii) Collect any monetary obligation due to the Association from the rents paid by any tenant occupying the Home if the Owner has leased the Home in accordance with section 720.3085, Florida Statutes.

11.19 Application of Payments. All payments received and applied by the Association on accounts shall be first applied to any interest charges accrued, then to any administrative late fees, then to any costs incurred in collection, including, without limitation, all Legal Fees, and then to the delinquent Assessment. The foregoing allocation of payments shall apply notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment, or any purported accord and satisfaction in any amount less than the total amount due to the Association.

11.20 Exemption. Notwithstanding anything to the contrary herein, governmental entities shall not be responsible for the payment of Assessments. Additionally, the Board shall have the right to exempt any portion of the Property from Assessments, provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes: (i) any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; and (ii) any of the Property exempted from ad valorem taxation by the laws of the State of Florida or exempted from Assessments by other provisions of this Declaration.

11.21 Collection by Declarant. If for any reason the Association shall fail or be unable to levy or collect Assessments, then in such event, the Declarant shall at all times have the right, but not the obligation, to: (i) advance such sums as a loan to the Association to bear interest and to be repaid as hereinafter set forth; and/or (ii) to levy and collect such Assessments by using the remedies available as set forth above, including, but not limited to, recovery of the costs of collection, including, without limitation, Legal Fees. Such remedies shall be deemed assigned to the Declarant for such purposes. If the Declarant advances sums, it shall be entitled to immediate reimbursement, upon written demand, from the Association for such amounts so paid, plus interest thereon at the then-applicable Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection, including, without limitation, Legal Fees.

11.22 Rights to Pay Assessments and Receive Reimbursement. The Association, the Declarant, and any Lender shall have the right, but not the obligation, jointly and severally, and at their sole option, to pay any Assessments or other charges which are in default and which may or have become a lien or charge against any Lot or Home. If so paid, the party paying the same shall be subrogated to the enforcement rights of the Association with regard to the amounts due. If paid by the Declarant and/or a Lender, the Declarant and/or Lender, as applicable, will be entitled to immediate reimbursement, upon written demand, from the Association for such amounts so paid, plus interest thereon at the then-applicable Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection, including, without limitation, Legal Fees.

11.23 Mortgagee Right. Each Lender may request in writing to the Association that the Association notify such Lender of any default of the Owner of the Lot subject to

the Lender's mortgage which default is not cured within thirty (30) days after the Association learns of such default. A failure by the Association to furnish notice to any Lender shall not result in liability of the Association because such notice is given as a courtesy to the Lender and the furnishing of such notice is not an obligation of the Association to the Lender.

## **ARTICLE XII**

### **ARCHITECTURAL CONTROL**

12.1 ACC Membership. The ACC shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions relating to the Community. The ACC shall be the Declarant, until the Community Completion Date. From and after the Community Completion Date, the ACC shall consist of a minimum of three (3) members, who must be Owners, appointed by the Board, and who shall serve at the pleasure of the Board. From and after the Community Completion Date, the Board shall have the right to change the number of members on the ACC, and to appoint, remove, and replace all members of the ACC.

12.2 ACC Authority. The ACC shall have the authority to approve or disapprove all Improvements and alterations and additions thereto throughout the Property conducted by Owners. The ACC shall have the right to evaluate all plans and specifications as to harmony of exterior design, landscaping, location of any proposed Improvements, relationship to surrounding structures, topography, and conformity with such other reasonable requirements as shall be adopted by the ACC. The ACC may condition its approval of plans and specifications as it deems appropriate and may require submission of additional plans and specifications or other information prior to approving or disapproving any plans and specifications submitted by an Owner. The ACC shall have the power to promulgate such architectural guidelines, standards, rules, and regulations, including, without limitation, establishment of fees, as it deems necessary to carry out the provisions and intent of this Article XII. The ACC may impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning, or other local governmental codes. The ACC may, from time to time, adopt standards governing the performance or conduct of Owners, contractors, subcontractors, and their respective employees within the Community. The ACC may also promulgate requirements to be inserted in all contracts relating to construction within the Community, and each Owner shall include same therein. Prior to the Community Completion Date, any additional standards or modification of existing standards shall require the consent of the Declarant, which may be granted or denied in the Declarant's sole discretion.

12.3 Approval Required. No Improvements of any type or kind whatsoever shall be constructed, installed, erected, placed, removed, planted, painted, altered, modified, replaced, or changed on a Lot visible from the exterior of the Home until the plans and specifications showing the nature, kind, shape, height, materials, plans, color scheme, and location of the proposed work have been submitted to and approved in writing by the ACC. The ACC shall not, however, be responsible for reviewing any plans, specifications,

or designs as to structural safety or conformance with building or other codes. Each Owner is solely responsible for compliance with all applicable building or other codes and ordinances of the Village, the County and any other governmental agency having jurisdiction and shall obtain all required building and other permits from all governmental authorities having jurisdiction. Nothing in this Declaration shall be interpreted as an exemption from compliance with all applicable building or other codes and ordinances of the Village, the County, and any other governmental agency having jurisdiction.

12.4 Architectural Guidelines. Each Owner and its contractors, subcontractors, and their employees shall observe, and comply with, the Architectural Guidelines that now or may hereafter be promulgated by the Declarant or the ACC. The Architectural Guidelines shall be effective from the date of adoption, shall be specifically enforceable by injunction or otherwise in addition to all other available remedies, and shall have the effect of covenants as if specifically set forth herein. The Architectural Guidelines shall not require any Owner to alter the Improvements approved by the ACC and previously constructed unless such Improvement is to be altered, changed, or modified by a subsequent request. Until the Community Completion Date, the Declarant shall have the right to approve and amend the Architectural Guidelines prior to their effectiveness, which approval, may be granted in its sole discretion. In accordance with section 720.3035, Florida Statutes, proposed architectural plans, Improvements, and such other similar requests, plans, specifications, and designs submitted by, or on behalf of, an Owner and, to the extent the Association has not adopted Architectural Guidelines or other published architectural guidelines and standards, then the standards to be used by the ACC in reviewing any such request shall be in accordance with the location, size, and appearance as already existing in the Property.

12.5 ACC Meetings. The ACC shall meet from time to time as may be necessary to perform its duties hereunder. The ACC may from time to time, by resolution unanimously adopted in writing, designate a 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 ACC, except the granting of variances pursuant to Section 12.8 below. In the absence of such a designation, a majority of the ACC shall constitute a quorum to transact business at any meeting, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ACC.

12.6 ACC Procedure. An Owner desiring to obtain the approval of the ACC shall observe the following:

12.6.1 The Owner shall submit an application to the ACC with respect to any proposed Improvement or alteration, modification, or change to an Improvement, together with the required application(s) and other fee(s) as established by the ACC, including, without limitation, a security deposit as set forth in Section 12.7 below. The applications shall include such information as may be required by the application form adopted by the ACC. The ACC may also require submission of samples of building materials and colors proposed to be used. At the time of such submissions, the Owner shall, if requested, submit to the ACC, such site plans and/or plans and specifications for

the proposed Improvement, prepared and stamped by a registered Florida architect or residential designer, and landscaping and irrigation plans, prepared by a registered landscape architect or designer showing all existing trees and major vegetation stands and surface water drainage plan showing existing and proposed design grades, contours relating to the predetermined ground floor finish elevation, pool plans and specifications, and the times scheduled for completion, all as reasonably specified by the ACC.

12.6.2 In the event the information submitted to the ACC is, in the ACC's opinion, incomplete or insufficient in any manner, the ACC may request and require the submission of additional or supplemental information. The Owner shall, within fifteen (15) days thereafter, comply with the request. The ACC shall not review any application submitted for approval until all plans and specifications and all other information as may be required by the ACC has been properly submitted to the ACC.

12.6.3 No later than thirty (30) days after receipt of all information required by the ACC for final review, the ACC shall approve or deny the application in writing. The ACC shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in the ACC's sole discretion, for aesthetic or any other reasons or to impose qualifications and conditions thereon. In approving or disapproving such plans and specifications, the ACC shall consider the suitability of the proposed Improvements, the materials of which the Improvements are to be built, the site upon which the Improvements are proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the ACC fails to respond within said thirty (30) day period, the plans and specifications shall be deemed disapproved by the ACC.

12.6.4 In the event that the ACC disapproves any plans and specifications, the Owner may request a rehearing by the ACC for additional review of the disapproved plans and specifications. The meeting shall take place no later than thirty (30) days after written request for such meeting is received by the ACC, unless the Owner waives this time requirement in writing. The ACC shall make a final written decision no later than thirty (30) days after such meeting. In the event the ACC fails to provide such written decision within said thirty (30) days, the plans and specifications shall be deemed disapproved.

12.6.5 Upon final disapproval (even if the members of the Board and the ACC are the same), the Owner may appeal the decision of the ACC to the Board within thirty (30) days of the ACC's written review and final disapproval. Review by the Board shall take place no later than thirty (30) days subsequent to the receipt by the Board of the Owner's request therefor. If the Board fails to hold such a meeting within thirty (30) days after receipt of request for such meeting, then the plans and specifications shall be deemed disapproved. The Board shall make a final decision no later than sixty (60) days after such meeting. In the event the Board fails to provide such written decision within said sixty (60) days after such meeting, such plans and specifications shall be deemed disapproved. The decision of the ACC, or, if appealed, the Board, shall be final and binding upon the Owner and the Owner's heirs, legal representatives, successors, and assigns.



12.7 Security Deposit. An Owner desiring to make Improvements may be required by the ACC, in its sole and absolute discretion, depending upon the Improvements being requested and the manner of installation of such Improvements, to provide to the ACC, at the time of the Owner's submission of plans and specifications for review and approval by the ACC, a security deposit to: (i) cover all or any part of the costs of incidental damage caused to the Common Areas, an adjacent Home or Lot, or any other property (whether real or personal) by virtue of such Owner's work, and (ii) to pay for the review and inspection fees if and to the extent not paid by the Owner. The security deposit shall initially be One Thousand Dollars (\$1,000.00) and may be changed by the ACC from time to time without need to amend this Declaration. The Association shall not be obligated to place the security deposit in an interest-bearing account.

12.7.1 The Owner shall be entitled to the return of the security deposit upon: (i) such Owner's written notice to the ACC that the Improvements covered by the security deposit have been completed in accordance with the plans and specifications approved by the ACC; (ii) the ACC's inspection of such Improvements confirming completion; provided, however, should any incidental damage be caused by virtue of such Owner's construction of Improvements to the Common Areas or any other portion of the Property for which the Association is responsible, the security deposit shall not be returned to the Owner until such damages have been repaired; and (iii) the Owner's payment of all review and inspection fees. In the event that the Owner has not repaired damages to the Common Areas or any other portion of the Property for which the Association is responsible to the satisfaction of the ACC, the Association shall have the right, without obligation, after five (5) days' notice to the offending Owner, to repair such incidental damage and to use so much of the security deposit held by the Association to reimburse itself for the costs of such work. Further, the offending Owner hereby agrees to indemnify and reimburse the Association for all reasonable costs expended by the Association that exceed the security deposit, including, without limitation, Legal Fees, incurred in connection therewith. All amounts incurred or paid by the Association to repair damages caused by and not repaired by an Owner as set forth in this Section 12.7 shall, in addition to the other rights of the Association, be subject to an Individual Assessment levied by the Association against such Owner, which Individual Assessment shall be collectible in the same manner as other Assessments as set forth in this Declaration.

12.7.2 Should any incidental damage be caused to an adjacent Lot or Home by virtue of such Owner's work, the Owner of the adjacent Lot (the "Adjacent Lot Owner") may, at such Adjacent Lot Owner's sole option: (a) remedy such damage and submit to the Association a receipt, invoice, or statement therefor for reimbursement from the offending Owner's security deposit; or (b) allow the offending Owner to repair such incidental damage to the Adjacent Lot Owner's Lot or Home, at the offending Owner's sole cost and expense, and upon receipt by the Association of written notice from the Adjacent Lot Owner that such incidental damage has been repaired, the offending Owner shall be entitled to a return of the balance of the security deposit being held by the Association, if any.

12.7.3 The Association's return of the security deposit does not and shall not be construed to constitute a determination by members and representatives of the ACC, the Declarant, and/or the Association of the structural safety, approval or integrity of any Improvement, conformance with building or other codes or standards, the proper issuance of governmental permits and approvals for any Improvement, or compliance with this Declaration.

12.7.4 The ACC, the Declarant, and the Association shall not be liable or responsible to anyone for any damages, losses, or expenses resulting from the Association's holding of the security deposit or disbursement thereof. In the event of any disagreement relating to the security deposit held by the Association or the disbursement thereof, the Association shall be entitled (but not obligated) to refuse to disburse the security deposit (or any portion thereof) as long as such disagreement may continue, and the Association shall not become liable in any way for such refusal. The Association shall have the right at any time, after a dispute has arisen, to pay the security deposit (or any portion thereof) held by it into any court of competent jurisdiction for payment to the appropriate party, whereupon the Association's obligations hereunder shall terminate, and the Association shall be automatically released of any and all obligations.

12.8 Variances. The ACC shall have the power to grant variances from any requirements set forth in this Declaration or from the Architectural Guidelines, on a case-by-case basis, provided that the variance sought is reasonable and results from a hardship upon the Owner. The granting of a variance shall not nullify or otherwise affect the right to require strict compliance with the requirements set forth in this Declaration or in the Architectural Guidelines on any other occasion, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of the Lot, including, but not limited to, zoning ordinances, easements, setback lines, or requirements imposed by any governmental or municipal authority.

12.9 Construction Activities. Work regarding all Improvements by Owners shall be completed within the time period set forth in the application as approved by the ACC. Each Owner shall deliver to the ACC, if requested, copies of all construction and building permits as and when received by the Owner. Each construction site in the Community shall be maintained in a neat and orderly condition throughout construction. Construction activities shall be performed on a diligent, workmanlike and continuous basis. Roadways, easements, swales, Common Areas and other such areas in the Property shall be kept clear of construction vehicles and construction materials and debris at all times. All refuse and debris shall be removed or deposited in a dumpster on a daily basis. No materials shall be deposited or permitted to be deposited in any Common Areas or other Lots or be placed anywhere outside of the Lot upon which the construction is taking place. No hazardous waste or toxic materials shall be stored, handled, and used, including, without limitation, gasoline and petroleum products, except in compliance with all applicable federal, state, and local statutes, regulations, and ordinances, and shall not be deposited in any manner on, in, or within the construction site or adjacent property. All construction activities shall comply with the Architectural Guidelines. There shall be provided to the ACC, if requested, a list (name, address, telephone number and identity of contact

person), of all contractors, subcontractors, materialmen, and suppliers and changes to the list as they occur working within the Property. Contractors, subcontractors, and their employees shall utilize those roadways and entrances into the Property as are designated by the ACC for construction activities. The ACC shall have the right to require that contractors, subcontractors, and their employees check in at the designated construction entrances and to refuse entrance to persons and parties whose names are not registered with the ACC.

12.10 Inspection. There is specifically reserved to the Association and the ACC and to any agent or member of either of them, the right of entry and inspection upon any portion of the Property at any time, within reasonable daytime hours, and without notice for the purpose of determining whether there exists any violation of the terms of any approval or the terms of this Declaration or the Architectural Guidelines. Upon the completion of any work approved by the ACC, the applicant shall give the ACC written notice of such completion. Within forty-five (45) days of receipt of the written notice of completion, the ACC, or its authorized representative, may inspect the work. If the ACC finds the work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of the noncompliance specifying the particulars of the noncompliance. Within thirty (30) days of such noncompliance notice, the Owner shall remedy the noncompliance to the satisfaction of the ACC. If the Owner fails to comply, the ACC shall have the right, without obligation, to enter the Lot and remove the noncompliant Improvement or remedy the noncompliance, at the ACC's sole option. All costs, expenses, and fees incurred by the ACC in removing the noncompliant Improvement or remedying the noncompliance, including, without limitation, Legal Fees, shall be taken from the security deposit (if any) and/or shall be assessable against the Owner and the Lot as an Individual Assessment.

12.11 Violation. Without limitation of any other remedies available to the Association, if work is performed in violation of this Article XII, the Owner, shall, upon demand of the Association or the ACC, cause such Improvement to be removed, and/or restored to its preexisting condition until approval is obtained or in order to comply with the plans and specifications originally approved by the ACC. In the event the Owner fails to comply with such demand within the time specified therein, the Association shall have the right, without obligation, to enter the Lot, restore the noncompliant Improvement to its preexisting condition, and/or remove the noncompliant Improvement or remedy the noncompliance, at the Association's sole option. All costs, expenses, and fees incurred by the Association in removing the noncompliant Improvement, restoring the noncompliant Improvement to its preexisting condition, and/or remedying the noncompliance, including, without limitation, Legal Fees, shall be taken from the security deposit (if any) and/or shall be assessable against the Owner and the Lot as an Individual Assessment. Additionally, each Owner is responsible for ensuring compliance with all terms and conditions of these provisions and of the Architectural Guidelines by all of the Owner's contractors, subcontractors, and their employees. In the event of any violation of any such terms or conditions by any of the foregoing, the ACC shall have, in addition to all other remedies available to the ACC, the right to prohibit the violating contractor,

subcontractor, and/or employee from entering the Property and/or performing any further services within the Property.

12.12 Exemption. Notwithstanding anything to the contrary contained in the Governing Documents, Improvements of any kind made on behalf of or by the Declarant, its contractors, subcontractors, employees, agents, and assigns, within the Property shall not be subject to the Governing Documents or review and approval by the ACC, the Association, or the Owners. Further, the Architectural Guidelines shall not be applicable to any property owned by the Declarant, including, without limitation, Vacant Lots and Spec Lots.

12.13 No Waiver of Future Approvals. The approval of the ACC of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that Owner or another Owner. Similarly, the denial by the ACC of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to approve or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that Owner or another Owner.

12.14 Exculpation. By submitting a request for review and approval by the ACC, the Owner, individually and on behalf of the Owner's heirs, successors, and assigns, shall be deemed to have and does automatically agree to indemnify, defend, and hold harmless the ACC and its members and representatives, the Association Parties, and the Declarant Parties from and against any and all Losses arising from, relating to, or in any way connected with the Improvement or alteration to an Improvement for which such request was submitted and/or the security deposit therefor. The ACC and its members and representatives, the Association Parties, and the Declarant Parties shall not be liable for any cost or damages incurred by any Owner or any other party whatsoever, due to any mistakes in judgment, negligence, or any action of the ACC or its members or representatives, the Association Parties, or the Declarant Parties in connection with the approval or disapproval of plans and specifications. Each Owner agrees, by acquiring title to a Lot, that it shall not bring any action or suit against the Declarant Parties, the Association Parties, or the ACC or its members or representatives in order to recover any damages caused by the actions of the Declarant Parties, the Association Parties, or the ACC or its members or representatives in connection with the provisions of this Article XII. The Association does hereby indemnify, defend, and hold the Declarant Parties and the ACC and its members and representatives, harmless from all Losses of all nature resulting by virtue of the acts of the Owners, the Association Parties, the ACC or its members or representatives. The Declarant Parties, the Association Parties, the ACC and its members and representatives, and any person acting on behalf of any of them, shall not be liable for the safety, soundness, workmanship, materials, or usefulness for any purpose of any Improvement or alteration to any Improvement proposed by plans or specifications and shall not be responsible for any defects in any plans or specifications or the failure of same to comply with applicable laws or code nor for any defects in any

Improvement or alteration to any Improvement constructed pursuant thereto. Each Owner submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

### **ARTICLE XIII** **AMENDMENTS**

13.1 Declarant Amendment. Prior to Turnover, this Declaration may be amended only by an instrument in writing signed by the Declarant and joined by the Association, except as limited by applicable law or except as expressly set forth herein.

13.2 Membership Amendment. After Turnover, this Declaration may be amended by the affirmative vote of two-thirds (2/3<sup>rds</sup>) of all Members, except as otherwise required by applicable law as it exists on the date this Declaration is recorded in the County's Official Records or except as expressly set forth herein.

13.3 Scrivener's Errors. Amendments to this Declaration for correction of scrivener's errors or other nonmaterial changes may be made by the Board after Turnover without the consent of the Owners.

13.4 Compliance with Governmental and Lender Requirements. Notwithstanding any provision of this Declaration to the contrary, prior to Turnover, the Declarant shall have the right to amend this Declaration, from time to time, to make such changes, modifications, and additions herein and hereto as may be requested or required by any Lender, SJRWMD, or any other governmental agency or body as a condition to, or in connection with such agency's or body's regulatory requirements or agreement to make, purchase, accept, insure, guaranty, or otherwise approve loans secured by mortgages on Lots. No approval or joinder of the Association, the Owners, or any other party shall be required or necessary to such amendment. After Turnover, but subject to Section 13.5 below, the Board shall have the right to amend this Declaration, from time to time, to make such changes, modifications, and additions herein and hereto as may be requested or required by any Lender, SJRWMD, or any other governmental agency or body as a condition to, or in connection with such agency's or body's regulatory requirements or agreement to make, purchase, accept, insure, guaranty, or otherwise approve loans secured by mortgages on Lots. No approval or joinder of the Owners, or any other party shall be required or necessary to any such amendments by the Board. Any such amendments by the Board shall only require the approval of a majority of the entire Board.

13.5 General Restrictions on Amendments. No amendment to this Declaration shall abridge, prejudice, amend, alter, or otherwise affect the rights of the Declarant or the Master Association without the prior written consent of the Declarant or the Master Association, respectively, which consent may be withheld for any reason whatsoever. Any attempt to amend contrary to this prohibition shall be of no force or effect whatsoever. No amendment shall alter the provisions of this Declaration benefiting Lenders without the prior approval of the Lender(s) enjoying the benefit of such provisions. Any proposed amendment to this Declaration which would affect the Stormwater Management System,

affect the operation and maintenance of the Stormwater Management System, or water management portions of the Common Areas shall be submitted to the Master Association and SJRWMD for review and approval prior to finalization of the amendment. SJRWMD shall determine if the proposed amendment will require modification of the SJRWMD Permit. If a permit modification is necessary, SJRWMD will so advise the permittee. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to this Declaration, then the prior written consent of such entity or agency must also be obtained. No amendment that withdraws property from the terms of this Declaration shall be recorded unless approved in writing by the City Attorney's office. Nothing contained herein shall create an obligation on the part of the City Attorney's Office to approve any amendment.

13.6 Recording. Amendments to this Declaration adopted pursuant to this Article XIII shall be recorded among the Official Records of the County.

13.7 Notice of Amendment. Within thirty (30) days after recording an amendment to this Declaration, the Association shall mail, deliver, or electronically transmit a copy of the amendment to the Members. However, if a copy of the proposed amendment is provided to the Members before the amendment's adoption consistent with this Article XIII, and the proposed amendment is not changed before the vote, the Association, in lieu of providing a copy of the amendment, may provide notice to the Members that the amendment was adopted, identifying the Official Records Book and Page number of the recorded amendment, and that a copy of the amendment is available at no charge to the Member upon written request to the Association. Notwithstanding the foregoing, the failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

13.8 No Vested Rights. Each Owner, by acceptance of a deed to a Lot, irrevocably waives any claim that such Owner has any vested rights pursuant to case law or statute with respect to this Declaration or any of the other Governing Documents. It is expressly intended that the Declarant and the Association have the broad right to amend this Declaration and the other Governing Documents, except as limited by applicable law as it exists on the date this Declaration is recorded in the County's Official Records or except as expressly set forth herein.

## **ARTICLE XIV** **ENFORCEMENT**

14.1 Enforcement. All Owners, tenants, residents, guests, and invitees shall be governed by and shall comply with the Governing Documents, all of which may be enforced by the Declarant until the Community Completion Date, the Association, any Owner, and any Lender in any action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. In the event the Declarant and/or the Association engages the services of an attorney to seek enforcement of any of the provisions of the Governing Documents, the Declarant and the Association shall be entitled to reimbursement of their Legal Fees incurred to bring about

compliance, regardless of whether litigation is necessary or commenced for the enforcement. The prevailing party in any such litigation shall be entitled to reimbursement of all costs thereof including, but not limited to, Legal Fees, from the non-prevailing party. The Legal Fees incurred by the Declarant and/or the Association to bring about compliance and/or to obtain a judgment should litigation be necessary shall be levied as an Individual Assessment and collectible in the same fashion as any other Assessment as provided in this Declaration.

14.2 Default by Owners. No default by any Owner in the performance of the covenants and promises contained in the Governing Documents shall be construed or considered to be (i) a breach by the Declarant or the Association of any of their promises or covenants in the Governing Documents; (ii) an actual, implied, or constructive dispossession of another Owner from the Common Areas; or (iii) an excuse, justification, waiver, or variance of the covenants and promises contained in the Governing Documents.

14.3 Voting Right Suspension. Pursuant to section 720.305, Florida Statutes, if an Owner is more than ninety (90) days delinquent in the payment of any monetary obligation due to the Association, the Board may suspend the voting rights of the Owner for such nonpayment. A voting rights suspension shall be approved by the Board at a properly noticed Board meeting. Once approved by the Board, the Board shall notify the Owner of the voting rights suspension in writing. A voting interest which has been suspended may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action pursuant to the Governing Documents. The voting rights suspension shall end upon full payment of all monetary obligations then due to the Association. Notwithstanding the foregoing, no voting right suspension shall be imposed against the Declarant through and until the Community Completion Date.

14.4 Use Rights Suspension for Nonpayment. Pursuant to section 720.305, Florida Statutes, if an Owner is more than ninety (90) days delinquent in the payment of any monetary obligation due to the Association, the Board may suspend the rights of the Owner, the Owner's tenants, residents, guests, and invitees, to use Common Areas for such nonpayment. A use rights suspension due to nonpayment shall be approved by the Board at a properly noticed Board meeting. Once approved by the Board, the Board shall notify the Owner of the use rights suspension due to nonpayment in writing. The suspension of the right of an Owner, the Owner's tenants, residents, guests, and invitees, to use the Common Areas shall not apply to that portion of the Common Areas used to provide vehicular and pedestrian access or utility services to such Owner's Lot. Notwithstanding the foregoing, no use right suspension for nonpayment shall be imposed against the Declarant through and until the Community Completion Date.

14.5 Use Rights Suspension and Fines. Pursuant to section 720.305, Florida Statute, the Board may suspend, for a reasonable period of time, the rights of any Owner,

the Owner's tenants, residents, guests, and invitees, to use the Common Areas and/or may levy a reasonable fine, which may exceed One Hundred Dollars and No Cents (\$100.00) per violation, against any Owner, the Owner's tenants, residents, guests, and invitees, for any violation of the Governing Documents. Each day of a continuing violation shall be deemed a separate violation, and the fine shall continue to accrue per day per violation, which may exceed One Thousand Dollars and No Cents (\$1,000.00), until the violation(s) are brought into compliance. Fines shall be assessable against the Owner and the Lot as an Individual Assessment and collectible in the same manner as all other Assessments, including, without limitation, the filing of a claim of lien and foreclosure. The rights of an Owner, the Owner's tenants, residents, guests, and invitees, to use the Common Areas may be suspended and/or a fine may be levied against such Owner, the Owner's tenants, residents, guests, and invitees, by the Board at a properly noticed meeting of the Board. However, the suspension and/or fine may not be imposed until the individual sought to be suspended and/or fined has had a hearing before a compliance committee (the "Compliance Committee"), which shall take place not sooner than fourteen (14) days from the date the notice of the hearing is mailed to the violating individual. The notice must include a description of the alleged violation; the specific action required to cure such violation, if applicable; and the date and location of the hearing. The Compliance Committee shall consist of other Owners appointed by the Board, who are not directors, officers, or employees of the Association, or the spouse, parent, child, brother, or sister of a director, officer, or employee of the Association. Only if the Compliance Committee, by majority vote, approves the proposed suspension and/or fine at such hearing can the suspension and/or fine be imposed. After the hearing, the Compliance Committee shall provide written notice to the Owner and to the Owner's tenants, residents, guests, employees, invitees, and agents, if applicable, of the Compliance Committee's findings related to the violation, including any applicable fines or suspensions that the Compliance Committee approved or rejected, and how the violation may be cured, if applicable. The fine is effective upon providing written notice to the violating individual of the fine or such earlier date as set out in the written notice which fine shall not commence earlier than the date of the Board's levy of the fine. The use rights suspension is effective upon providing written notice to the violating individual of the use rights suspension. The suspension of the right of an Owner, the Owner's tenants, residents, guests, and invitees, to use the Common Areas shall not apply to that portion of the Common Areas used to provide vehicular and pedestrian access or utility services to such Owner's Lot. Notwithstanding the foregoing, no use right suspension or fine shall be imposed against the Declarant through and until the Community Completion Date.

14.6 No Waiver. The failure to enforce any right, provision, covenant, or condition in the Governing Documents, shall not constitute a waiver of the right to enforce such right, provision, covenant, or condition in the future.

14.7 Rights Cumulative. All rights, remedies, and privileges granted to the Declarant, the Association, and the ACC pursuant to the Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude any of them from pursuing such additional remedies, rights, or privileges as may be granted or as it might have by law.



**ARTICLE XV**  
**ADDITIONAL RIGHTS OF DECLARANT**

15.1 Construction and Sales Offices. The Declarant shall have the perpetual right to take such action reasonably necessary to transact any business necessary to consummate the development of the Property and sales, re-sales, leases, or encumbrances of Lots, Homes, and/or other properties owned by the Declarant or others outside of the Property. This right shall include, without limitation, the right to maintain models, sales/leasing offices and parking associated therewith, have signs on any portion of the Property, have employees in the models and offices without the payment of rent or any other fee, maintain offices in models and use of the Common Areas, to show Lots or Homes to prospective purchasers of Lots, Homes, or other properties owned by the Declarant outside of the Community. The sales/leasing office, signs, and all items pertaining to development and sales shall remain the property of the Declarant shall not be considered a part of the Common Areas. The Declarant further reserves the right to make repairs to the Common Areas and to carry on construction activity for the benefit of the Property. The Declarant shall have all of the foregoing rights without charge or expense and without notice to the Association or the Owners. The rights reserved hereunder shall extend beyond Turnover. In the event a clubhouse is constructed by the Declarant, the Declarant shall have the right to use one (1) or more offices of the Declarant's choosing within the clubhouse for sales/leasing purposes and shall have the right to use a location within the entry area for display of sales/leasing materials through Turnover. After Turnover, the Declarant shall have the right to use one (1) office of the Declarant's choosing within the clubhouse for sales/leasing purposes for a fee of One Hundred Dollars and No Cents (\$100.00) per month and shall have the right to use a location within the entry area for display of sales/leasing materials until the Declarant abandons such right in writing to the Association or until the Community Completion Date, whichever is later.

ALL OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES OF THE PROPERTY ARE HEREBY PLACED ON NOTICE THAT THE DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, AND OTHER DESIGNEES MAY BE, FROM TIME TO TIME, CONDUCTING EXCAVATION, CONSTRUCTION, AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE PROPERTY. BY THE ACCEPTANCE OF A DEED, TITLE, OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE, OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTY, EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE, FOR THEMSELVES AND EACH OF THEIR RESPECTIVE HEIRS, LEGAL REPRESENTATIVES, AND ASSIGNS, AUTOMATICALLY ACKNOWLEDGES, STIPULATES, AND AGREES AS FOLLOWS: (i) THAT NONE OF THE DECLARANT'S ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION, TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO THE

PROPERTY WHERE THE ACTIVITIES ARE BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS); (iii) THAT THE OWNER, TENANT, RESIDENT, GUEST, AND INVITEE IS AT RISK OF SUFFERING INJURY TO BOTH THEIR PERSON AND/OR PROPERTY AS A RESULT OF ENTRY UPON ANY PROPERTY WITHIN OR IN PROXIMITY TO THE PROPERTY WHERE THE ACTIVITIES ARE BEING CONDUCTED, AND EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE EXPRESSLY ASSUMES FULL RESPONSIBILITY FOR THE RISK OF BODILY INJURY, DEATH, OR PROPERTY DAMAGE SUFFERED AS A RESULT OF THE CONSTRUCTION AND OTHER ACTIVITIES; (iv) THAT EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE HEREBY RELEASES, WAIVES, DISCHARGES, AND HOLDS HARMLESS THE DECLARANT, ITS PARTNERS AND AFFILIATES, AND EACH OF THEIR RESPECTIVE PARTNERS, AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, AND ASSIGNS, AND ANY SUBSEQUENT DECLARANT, FROM ALL LOSSES, CLAIMS, COSTS, LIABILITIES, DAMAGES, INCLUDING COMPENSATORY, CONSEQUENTIAL, PUNITIVE, OR OTHERWISE, AND INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE OR BODILY INJURY OR DEATH, WHETHER CAUSED BY NEGLIGENCE OR AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH THE CONSTRUCTION AND OTHER ACTIVITIES; (v) ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (vi) THAT THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO THE DECLARANT TO SELL, CONVEY, LEASE, AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE PROPERTY.

NO PERSON OR ENTITY SHALL INTERFERE WITH THE COMPLETION AND SALE OF LOTS. WITHOUT LIMITING THE FOREGOING, EACH OWNER, BY ACCEPTANCE OF A TITLE TO A LOT, AGREES THAT ACTIONS OF OWNERS, TENANTS, RESIDENTS, GUESTS, AND INVITEES MAY IMPACT THE VALUE OF LOTS. THEREFORE, EACH OWNER IS BENEFITED BY THE FOLLOWING RESTRICTIONS: PICKETING AND POSTING OF NEGATIVE SIGNS IS STRICTLY PROHIBITED IN ORDER TO PRESERVE THE VALUE OF THE LOTS IN THE COMMUNITY AND THE RESIDENTIAL ATMOSPHERE THEREOF.

15.2 Modification. The development and marketing of the Community will continue as deemed appropriate in the Declarant's sole discretion, and nothing in the Governing Documents, or otherwise, shall be construed to limit or restrict such development and marketing. It may be necessary or convenient for the development of the Property to, as an example and not a limitation, modify the boundary lines of the Common Areas; change the zoning of any portion of the Property now existing or hereafter changed to be other than single-family residential and/or to make such uses of all or any part of the Property as shall be permitted by applicable zoning regulations as they may exist from time to time; grant easements, dedications, agreements, licenses, restrictions, reservations, covenants, rights-of-way, and to take such other actions which the Declarant, or its agents, affiliates, or assignees, may deem necessary or appropriate.

The Association and the Owners shall, at the request of the Declarant, execute and deliver any and all documents and instruments which Declarant deems necessary or convenient, in its sole and absolute discretion, to accomplish the same.

15.3 Community Approvals. The Declarant hereby has, shall have, and hereby reserves the right to enter upon the Property in order for the Declarant to final-out and/or close-out any and all approvals, permits, orders, conditions, and/or requirements that have been issued or imposed by any governmental entity in connection with the development and construction of the Community and all Improvements therein (collectively, the "Community Approvals"), and for the Declarant to comply and adhere to the same. Without limiting the generality of the foregoing, in exercising any such rights, the Declarant shall have the right to remove and/or relocate any and all items (including, without limitation, landscape materials, fences, and/or other Improvements) that may be required to be removed and/or relocated to final-out and/or close-out any and all Community Approvals without compensation to the Association or the Owners. The Association is and shall be responsible for complying, and causing all Common Areas to comply, with the Community Approvals including, without limitation, those Community Approvals that may be in the Declarant's name and not yet transferred to the Association. All fees, costs, and expenses of complying with the Community Approvals shall be deemed Common Expenses of the Association. In the event the Declarant is unable to: (i) final-out and/or close-out any and all such Community Approvals as a result of Association's failure to timely and/or properly perform any of its operation, maintenance, and/or repair obligations pursuant to this Declaration and/or any other applicable governmental laws, regulations, codes, approvals, and/or rules; or (ii) obtain a return of any bond or surety posted by the Declarant in connection with the development and construction of the Community, then the Declarant shall have the immediate right, but not the obligation, in its sole discretion, to (a) commence an enforcement action against the Association, including, without limitation, monetary penalties and injunctive relief, to compel the Association to maintain such portions of the Community as required by this Declaration and/or the Community Approvals, as applicable; or (b) take any and all actions necessary, at the Association's sole cost and expense, to comply with and adhere to any such Community Approvals. The Association hereby agrees to indemnify and reimburse the Declarant (within ten (10) days of receipt of a written invoice from the Declarant) for all costs and expenses incurred by the Declarant in the event the Declarant takes actions in accordance with this Section 15.3. The rights granted to the Declarant hereunder shall survive Turnover and continue for such period of time as is necessary for the Declarant to fully comply with all Community Approvals.

15.4 Right to Approve Sales Materials. All sales, promotional, and advertising materials for any sale of property within the Community prior to the Community Completion Date by any party shall be subject to the prior written approval of the Declarant. The Declarant shall deliver notice of the Declarant's approval or disapproval of all such materials and documents within thirty (30) days of receipt of such materials and documents, and, if disapproved, set forth the specific changes requested. If the Declarant fails to do so within such thirty (30) day period, the Declarant shall be deemed to have waived any objections to such materials and documents and to have approved

the foregoing. Upon disapproval, the foregoing procedure shall be repeated until approval is obtained or deemed to be obtained.

15.5 Promotional Events. Prior to the Community Completion Date, the Declarant, its agents, affiliates, or assignees, shall have the right, at any time, to hold marketing, special, and/or promotional events within the Property without any charge for use. The Declarant, its agents, affiliates, or assignees, shall have the right to market the Community in advertisements and other media by making reference to the Community, including, but not limited to, pictures or drawings of the Property and any and all Improvements within the Property.

15.6 Trademarks. All logos, trademarks, and designs used in connection with the Community are the property of the Declarant. No person or entity shall use the name of the Community, its logo, or any derivative of such name or logo in any printed or promotional material without the Declarant's prior written approval. The Association shall have no right to use the foregoing prior to the Community Completion Date, except with the express written permission of the Declarant. After the Community Completion Date, such right shall automatically pass from the Declarant to the Association. Notwithstanding the foregoing, Owners may use the name of the Community in printed or promotional materials where such term is used solely to specify that particular property is located within the Community.

15.7 Refund of Taxes and Other Charges. Unless otherwise provided herein, the Association agrees that any deposits, taxes, fees, or other charges paid by the Declarant to any governmental authority, utility company, or any other entity which at a later date are refunded in whole or in part, shall be returned to the Declarant in the event such refund is received by the Association. In the event the Association fails or refuses to return any such deposits, taxes, fees, or other charges to the Declarant within ten (10) days of receipt, the Declarant, without limitation of other available remedy, shall be issued a credit in the same amount of any such deposits, taxes, fees, or other charges against its financial obligations in favor of the Association.

15.8 Additional Covenants. The Declarant may record additional covenants, conditions, restrictions, and easements applicable to portions of the Property, and may form condominium associations, sub-associations, or cooperatives governing such property. No person or entity shall record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without the Declarant's prior review and prior written consent. Evidence of the Declarant's prior written consent shall be obtained in the form of a joinder executed by the Declarant and recorded with such instrument. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect whatsoever unless subsequently approved by written consent signed by the Declarant and recorded in the County's Official Records.

15.9 Declarant as Attorney-In-Fact. Each Owner, by reason of having acquired ownership of a Lot, whether by purchase, gift, operation of law, or otherwise, and each

tenant and resident of a Home, by reason of his or her occupancy, is hereby declared to have acknowledged and agreed: (i) to his or her automatic consent to any rezoning; replatting; creation of one (1) or more special taxing districts; amendment, modification, and/or termination of the Title Documents (if any); covenant in lieu of unity of title; change, addition, or deletion made in, on, or to the Community by the Declarant (collectively, the "Modifications"); and (ii) to have waived any right to object to or comment on any matter regarding the Modifications, including, without limitation, the form or substance of any Modification. In respect thereto, each Owner of a Lot and tenant and resident of a Home hereby designates the Declarant to act as agent and attorney-in-fact on behalf of such Owner, tenant, and resident to consent to any such Modification. If requested by the Declarant, each Owner shall evidence his or her consent to a Modification in writing (provided, however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). Further, each Owner, by reason of having acquired ownership of a Lot, hereby agrees to execute, at the request of the Declarant, any document and/or consent which may be required by any government agency to allow the Declarant and/or its affiliates to complete the plan of development of the Community, as such plan may be hereafter amended, and each such Owner hereby further appoints the Declarant as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of each such Owner, any and all of such documents and/or consents. This power of attorney is coupled with an interest and is therefore irrevocable.

15.10 Right to Contract for Telecommunications Services. The Declarant prior to Turnover, and thereafter, the Association, shall have the right, but not the obligation, to enter into one (1) or more contracts for the provision of one (1) or more Telecommunications Services for all or any part of the Property. Prior to the Community Completion Date, all contracts between a Telecommunications Provider and the Association shall be subject to the prior written approval of the Declarant. If any such contract is established, the fees for the Telecommunications Services payable to the Telecommunications Provider shall be Common Expenses.

15.11 Affirmative Obligation of the Association. In the event the Association believes that the Declarant has failed in any respect to meet the Declarant's obligations under this Declaration or under law or the Common Areas are defective in any respect, the Association shall give written notice to the Declarant detailing the alleged failure or defect. The Association agrees that once the Association has given written notice to the Declarant pursuant to this Section 15.11, the Association shall be obligated to permit the Declarant and its agents to perform inspections of the Common Areas and to perform all tests and make all repairs/replacements deemed necessary by the Declarant to respond to such notice at all reasonable times, including, without limitation, during normal business hours. The rights reserved in this Section 15.11 include the right of the Declarant to repair or address, in the Declarant's sole option and at the Declarant's expense, any aspect of the Common Areas deemed defective by the Declarant during its inspections of the Common Areas.

15.12 Duration of Rights. The rights and privileges of the Declarant as set forth in this Article XV are in addition to, and are no way a limit on, any other rights or privileges

of the Declarant. The rights of the Declarant set forth in this Declaration shall, unless specifically provided to the contrary herein, extend for a period of time ending upon the earlier of: (i) the Community Completion Date; or (ii) a relinquishment by the Declarant in an amendment to this Declaration. Neither the Association nor any Owner, nor group of Owners, may record any document that, in any way, affects, limits, or restricts the rights of the Declarant or conflict with the provisions of the Governing Documents.

15.13 Amendment and Assignment. This Article XV may not be suspended, superseded, or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by the Declarant. All or any part of the rights, exemptions, powers, and reservations of the Declarant herein contained may be conveyed or assigned, in whole or in part, to other persons or entities by an instrument in writing duly executed, acknowledged and, at Declarant's option, recorded in the County's Official Records.

## **ARTICLE XVI**

### **MASTER ASSOCIATION**

16.1 Membership. In addition to membership in the Association, the Owner of the fee simple title of record of each Lot shall be a mandatory member of the Master Association in accordance with the Master Association's Articles of Incorporation. Each Owner shall have an interest in the Master Association upon acceptance of a deed to the Lot.

16.2 Master Declaration. The Property and the use thereof shall be subject to all of the provisions of the Master Declaration and all other Master Governing Documents. As such, the Owners, tenants, residents, guests, and invitees shall abide by all of the provisions as set out in the Master Governing Documents.

## **ARTICLE XVII**

### **GENERAL PROVISIONS**

17.1 Delegation. The Association may delegate all or a portion of its obligations hereunder to a licensed manager or professional management company selected by the Board, from time to time. The Association specifically shall have the right to pay for management services on any basis approved by the Board (including, without limitation, bonuses or special fee arrangements for meeting financial or other goals) as Common Expenses.

17.2 Binding Effect. Subject to the Declarant's right to amend this Declaration prior to Turnover and the Association's right to amend this Declaration after Turnover, the covenants, conditions, and restrictions of this Declaration shall run with and bind the land and shall be binding upon and inure to the benefit of and be enforceable by the Declarant, the Association, and the Owners, and their respective legal representatives, heirs, successors, and assigns. However, the same are not intended to create nor shall they be

construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary.

17.3 Compliance with Provisions. All present and future Owners, tenants, residents, guests, and invitees shall be subject to and shall comply with the provisions of the Governing Documents. The acceptance of title to or interest in a Lot, the occupancy of a Home, or the leasing of a Home shall constitute an adoption, consent, and ratification by such Owner, tenant, resident, guest, and invitee of the provisions of the Governing Documents, whether or not any reference to the Governing Documents is contained in any instrument by which such person acquired title to or an interest in a Lot, in any occupancy agreement, or in any lease agreement. The Declarant shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than the Declarant.

17.4 Interpretation. The provisions of the Governing Documents shall be liberally construed to effectuate their purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Property. Article, section, and paragraph captions, headings, and titles inserted throughout the Governing Documents are intended as a matter of convenience only and in no way shall such captions, headings, or titles define, limit, or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of the Governing Documents. Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

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

17.6 Disputes as to Use. In the event there is any dispute as to whether the use of the Property or any portion thereof complies with the covenants, restrictions, easements, or other provisions contained in the Governing Documents, such dispute shall be referred to the Declarant prior to the Community Completion Date, and thereafter, to the Board, and a determination rendered by the Declarant, or thereafter, the Board, with respect to such dispute shall be final and binding on all parties concerned therewith.

Notwithstanding anything to the contrary herein contained, any use by the Declarant of the Property shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

17.7 Notices. Any notice or other communication required or permitted to be given to any person, firm, or entity under the provisions of the Governing Documents shall be deemed to have been properly sent when mailed, postage prepaid, to: (i) each Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; (ii) the Association, certified mail, return receipt requested, at the Association's mailing address as reflected in the records of the Florida Department of State, Division of Corporations, or such other address as the Association shall hereinafter notify the Declarant and the Owners of in writing; and (iii) the Declarant, certified mail, return receipt requested, at 2300 Glades Road, Suite 202E, Boca Raton, Florida 33431, or such other address as the Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in the Declarant's address being deemed notice to the Owners.

17.8 Florida Statutes. The Governing Documents are governed by the laws of the State of Florida. Whenever the Governing Documents refer to the Florida Statutes, it shall be deemed to refer to the Florida Statutes as they exist and are effective on the date this Declaration is recorded in the County's Official Records, except to the extent provided otherwise in the Governing Documents as to any particular provision of the Florida Statutes.

17.9 Venue. Venue for any action, proceeding, or litigation arising out of or concerning the Governing Documents shall be brought and heard in a court located in the County to the exclusion of all other venues and the Owners, tenants, residents, guests, and invitees hereby expressly waive their rights to venue elsewhere.

17.10 Jury Waiver. EACH OWNER, TENANT, RESIDENT, GUEST, AND INVITEE HEREBY KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO ENFORCE, DEFEND, OR INTERPRET ANY RIGHT OR REMEDIES UNDER, OR ARISING IN CONNECTION WITH AND/OR RELATING TO, WITHOUT LIMITATION, THE GOVERNING DOCUMENTS, USE OF THE PROPERTY, COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, OR VALIDATION, PROTECTION, OR ENFORCEMENT ACTION OR OMISSION OF ANY PARTY.

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



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

17.12 Reliance. BEFORE ACCEPTING TITLE TO OR INTEREST IN A LOT, EACH OWNER HAS THE RIGHT TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THE GOVERNING DOCUMENTS. BY ACCEPTANCE OF TITLE TO OR INTEREST IN A LOT, EACH OWNER ACKNOWLEDGES HE OR SHE HAS SOUGHT AND RECEIVED SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. THE DECLARANT IS RELYING ON EACH OWNER CONFIRMING IN ADVANCE OF ACQUIRING A LOT THAT THE GOVERNING DOCUMENTS ARE VALID, FAIR, AND ENFORCEABLE. SUCH RELIANCE IS DETRIMENTAL TO THE DECLARANT. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXISTS PROHIBITING EACH OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THIS DECLARATION IS INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR THE DECLARANT TO SUBJECT THE PROPERTY TO THE GOVERNING DOCUMENTS, EACH OWNER DOES HEREBY RELEASE, WAIVE, COVENANT NOT TO SUE, ACQUIT, SATISFY, AND FOREVER DISCHARGE THE DECLARANT PARTIES FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES, AND DEMANDS WHATSOEVER, IN LAW OR IN EQUITY, WHICH AN OWNER MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR, OR ASSIGN OF THE OWNER HEREAFTER CAN, SHALL, OR MAY HAVE AGAINST ANY OF THE DECLARANT PARTIES FOR, UPON, OR BY REASON OF ANY MATTER, CAUSE, OR THING WHATSOEVER RESPECTING THE GOVERNING DOCUMENTS. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

17.13 Official Records to Lenders. In accordance with section 720.303(5)(d), Florida Statutes, the Association shall make available for inspection upon written request, during normal business hours or under reasonable circumstances, the books, records, and financial statements of the Association to a Lender.

17.14 Notice to Lender. Upon written request by a Lender, identifying the name and address of the Lender and the name and address of the applicable Owner, the Lender shall be entitled to timely written notice of: (i) any condemnation loss or casualty loss which affects a material portion of the Lot to the extent the Association is notified of the same; (ii) any delinquency in the payment of Assessments owed by an Owner of a Home subject to a first mortgage held by the Lender which remains uncured for a period of sixty (60) days; (iii) any lapse, cancellation, or material modification of any insurance policy or fidelity coverage maintained by the Association; and (iv) any proposed action that specifically requires the consent of the Lender. In the event the Association fails to provide the Lender with written notice of any of the foregoing, the Declarant and the Association shall not be liable for such failure.

17.15 Consent and Release for Use of Likeness. Each Owner, by obtaining title to a Lot, and each resident and tenant of a Home, by occupancy of a Home, and each guest and invitee of an Owner, resident, or tenant, by use of any portion of the Property and/or participation in or attendance at any event of the Association or the Declarant, is hereby deemed to have consented and agreed to the following: (i) the taking and use, including, without limitation, in marketing materials and/or media publications, of photographs and/or videos of such persons during any use of any portion of the Property and/or during any participation in any and all activities sponsored, promoted, or arranged by or through the Declarant and/or the Association, whether or not such activities take place on the Property or elsewhere; and (ii) waiver of any and all rights to inspect, approve, or receive compensation for the taking and use of such person's photographs and/or videos and the use of such person's likeness in any marketing materials, media publications, or other advertising.

17.16 Duration. All of the covenants, conditions, restrictions, and provisions of this Declaration shall run with and bind the Property for a term of fifty (50) years from the date of recording this Declaration among the Official Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless an instrument executed by at least eighty percent (80%) of the total voting interests of the Association and by all mortgagees having a first mortgage encumbering any Lot has been recorded among the Official Records of the County agreeing to terminate this Declaration.

17.17 Conservation Lands. The boundaries of the Association may be adjacent to local, state and/or federal conservation lands. The following provisions apply to these conservation lands:

17.17.1 Conservation lands may be maintained by the use of prescribed burns that generate smoke

17.17.2 Conservation lands may be accessed via designated entry points by foot, bicycle, or horseback only

17.17.3 The use of motorized vehicles on conservation lands is prohibited

17.17.4 Bicycles used on conservation lands must be pedaled at all times; may include Class 1 electric bicycles; and may not be electric and/or gas powered without pedals and that operate by means of a throttle

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**[SIGNATURE PAGES FOLLOW]**

**IN WITNESS WHEREOF**, JKM Acquisitions, LLC, a Florida limited liability company, has caused this instrument to be signed on this \_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

**JKM ACQUISITIONS, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
Adam P. Freedman, its Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_  
\_\_\_\_\_

**STATE OF FLORIDA                    )**  
  **) ss:**  
**COUNTY OF PALM BEACH        )**

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2025, by Adam P. Freedman as Manager for **JKM ACQUISITIONS, LLC**, a Florida limited liability company, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

My Commission Expires:

**JOINDER TO DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION**

**LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation (the "Association"), does hereby consent to and join in the **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LOTIS PALM BAY 3 HOMEOWNERS** (the "Declaration") to which this Joinder is attached. The terms, provisions, covenants, conditions, and restrictions of the Declaration are and shall be binding upon the undersigned and its successors and assigns. This Joinder shall evidence the Association's acknowledgement, understanding, and acceptance of the rights and obligations as set forth in the Declaration. Notwithstanding this Joinder, this Joinder shall not affect the validity of the Declaration as the Association has no right to approve the Declaration.

**IN WITNESS WHEREOF**, Lotis Palm Bay 3 Homeowner's Association, Inc., a Florida not for profit corporation, has caused this instrument to be signed on this \_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

**STATE OF FLORIDA**                    )  
  ) **ss:**  
**COUNTY OF PALM BEACH**        )

The foregoing instrument was acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by James S. Gielda as President for **LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

**ASSOCIATION:**

**LOTIS PALM BAY 3 HOMEOWNER'S  
ASSOCIATION, INC.** a Florida not for profit  
corporation

By: \_\_\_\_\_  
James S. Gielda, its President

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LOTIS PALM BAY 3  
HOMEOWNER'S ASSOCIATION PROPERTY**



**EXHIBIT "B"**

**ARTICLES OF INCORPORATION OF LOTIS PALM BAY 3  
HOMEOWNER'S ASSOCIATION, INC.**

**ARTICLES OF INCORPORATION OF LOTIS PALM BAY 3  
HOMEOWNER'S ASSOCIATION, INC.**

In order to form a not for profit corporation under and in accordance with the provisions of Chapter 617, Florida Statutes, the undersigned hereby incorporates this not for profit corporation for the purposes and with the powers hereinafter set forth, and to that end, the undersigned by these Articles of Incorporation, certifies as follows:

**ARTICLE I  
DEFINITIONS**

All initially capitalized terms used herein shall have the same meaning as set out in the Declaration of Covenants, Conditions, and Restrictions for Lotis Palm Bay 3 Homeowners, as amended from time to time (the "Declaration"), unless an alternative definition is provided herein.

**ARTICLE II  
NAME AND ADDRESS**

The name of the corporation is **LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION, INC.** (the "Association"). The principal address and mailing address of the Association shall be 2300 Glades Road, Suite 202E, Boca Raton, Florida 33431, or such other principal address or mailing address and may be designated, from time to time, by the Board.

**ARTICLE III  
OBJECTS AND PURPOSES**

The objects and purposes for which the Association is formed are those as authorized by the Governing Documents, including, without limitation, the operation, maintenance, and control of the Common Areas and all Improvements thereon, to conduct and transact generally the business of a not for profit corporation, and to do all things and exercise all powers and perform all functions that a not for profit corporation is authorized or empowered to do, exercise, or perform under and by virtue of the Florida Not For Profit Corporation Act and the Homeowners' Association Act.

**ARTICLE IV  
POWERS**

Without limitation, the powers of the Association shall include and be governed by the following provisions:

4.1 Common Law and Statutory Powers. The Association shall have all common-law and statutory powers of a not-for-profit corporation under the laws of Florida



which are not in conflict with the Declaration, these Articles, and the By-Laws, including those powers under and pursuant to the Florida Not For Profit Corporation Act and the Homeowners' Association Act. In the event of any conflict between the provisions of the Florida Not For Profit Corporation Act and the Homeowners' Association Act, the Homeowners' Association Act shall apply. In the event of any conflict between these Articles and the By-Laws, these Articles shall control; and in the event of any conflict between these Articles and the Declaration, the Declaration shall control.

4.2 Necessary Powers. The Association shall also have those powers reasonably necessary to fulfill the purposes for which the Association is formed, which powers shall include, but not be limited to, the following:

(a) To make Assessments for the operation, management, maintenance, repair, replacement, improvement, and reconstruction after casualty of the Common Areas pursuant to the Declaration; and to collect Assessments, including, without limitation, by lien filing and foreclosure procedures.

(b) To purchase equipment, supplies, material, and other personal property as may be required in the maintenance, repair, replacement, improvement, operation, and management of the Common Areas pursuant to the Declaration.

(c) To buy, accept, own, operate, lease, sell, trade, and mortgage both real and personal property as may be necessary or convenient in the administration of the Association.

(d) To acquire and pay for insurance on the Common Areas, as set forth in the Declaration, for the protection of the Association and the Common Areas and to acquire and pay for directors and officers liability insurance to protect the directors and officers of the Association.

(e) To make, amend, alter, rescind, and promulgate reasonable rules and regulations for the use and appearance of the Property for the benefit, health, safety, and welfare of the Members.

(f) To provide for management, maintenance, repair, replacement, improvement, and operation of the Common Areas pursuant to the Declaration and to delegate to a management entity or management agent those powers and duties which are not specifically required by these Articles to be retained by the Board.

(g) To employ and dismiss vendors, contractors, attorneys, accountants, engineers, architects, and other professionals and personnel to perform the services required for proper operation of the Property and the Association.

(h) To negotiate, enter into, amend, and terminate contracts and agreements, including, without limitation, with governmental authorities.

(i) To use and expend the monies collected by the Association to effectuate its purposes and powers, including, but not limited to, the payment of utilities and all taxes and assessments made by public bodies which may be levied upon the Common Areas.

(j) To select depositories for the Association funds and to determine the manner of receiving, depositing, and disbursing corporate funds.

(k) To enforce by legal means the provisions of the Governing Documents.

(l) To possess, enjoy, and exercise all powers necessary to implement, enforce, and carry into effect the powers above described, including the power to acquire, hold, convey, and deal in real and personal property.

(m) To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of the purposes and powers of the Association under the Governing Documents.

## **ARTICLE V**

### **MEMBERS**

5.1 Membership. Except as set forth herein, every person or entity who is a record owner of a fee or undivided fee interest in any Lot shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member. No Member may assign, hypothecate, or transfer in any manner membership in the Association except as an appurtenance to the Lot. Any Member of the Association who conveys or loses title to a Lot by sale, gift, bequest, judicial decree, or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of membership resulting from ownership of such Lot.

5.2 Voting Rights. The Association shall have two (2) classes of voting membership:

5.2.1 Class A. Except as set forth herein, Class A Members shall be all Members, with the exception of the Declarant while the Declarant is a Class B Member. Each Member shall be entitled to one (1) vote for each Lot owned by such Member, which vote shall not be divisible and shall be cast in the manner provided by the By-Laws.

5.2.2 Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to one thousand (1,000) votes. Class B membership shall cease and be converted to Class A membership upon Turnover.

**ARTICLE VI**  
**TERM**

The term for which the Association is to exist shall be perpetual. Except as otherwise set forth in the Declaration, in the event of dissolution of the Association, other than incident to a merger or consolidation, the Common Areas shall be conveyed to a local government body. In the event the local government body does not accept such conveyance, the Common Areas shall be conveyed to a non-profit organization with similar purposes. Any Member may petition the local Circuit Court for the appointment of a receiver to manage the affairs of the dissolved Association and to manage the Property and Improvements thereon, in the place and stead of the Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and the Property. Further, the Property shall continue to be subject to the provisions of the Declaration, including, without limitation, Assessments levied in accordance with the Declaration. Each Owner shall continue to be personally obligated to the successors or assigns of the Association for Assessments to the extent that Assessments are required to enable the successors or assigns of the Association to properly maintain, operate, and preserve the Common Areas as then-existing and as then-continues to be used for the common use and enjoyment of the Owners.

**ARTICLE VII**  
**INITIAL SUBSCRIBER**

The name and address of the initial subscriber to these Articles is as follows:

JKM Acquisitions, LLC

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

**ARTICLE VIII**  
**BOARD OF DIRECTORS**

The property, business, and affairs of the Association shall be managed by the Board, which shall consist of not less than three (3) directors, nor more than seven (7) directors, which number shall always be odd as may be determined by the Board from time to time. Except for directors appointed by the Declarant, directors shall be Members of the Association or shall be the authorized representative, officer, or employee of corporate Members of the Association. All directors shall be natural persons who are eighteen (18) years of age or older and shall comply with all additional eligibility requirements set forth in the Homeowners' Association Act. The directors shall be elected in the manner set forth in the By-Laws. The following are the names and addresses of the persons appointed to act as directors until their successors are elected and qualified:

Adam P. Freedman

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

James S. Gielda

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

Jeff Johnson

2300 Glades Road, Suite 202E  
Boca Raton, Florida 33431

## **ARTICLE IX** **OFFICERS**

The affairs of the Association shall be managed by a President, a Vice President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time designate in the Board's sole discretion, the powers and duties of which shall be designated by the Board as the Board deems necessary in its sole discretion, all of whom shall serve at the pleasure of the Board. Upon Turnover, all officers must be Members of the Association. All officers shall be natural persons who are eighteen (18) years of age or older and shall comply with all additional eligibility requirements set forth in the Homeowners' Association Act. The names and addresses of the current officers of the Association, who shall hold office until their successors are duly elected in the manner set forth in the By-Laws are as follows:

PRESIDENT	James S. Gielda	2300 Glades Road, Suite 202E Boca Raton, Florida 33431
VICE PRESENT	Adam P. Freedman	2300 Glades Road, Suite 202E Boca Raton, Florida 33431
SECRETARY/ TREASURER	Jeff Johnson	2300 Glades Road, Suite 202E Boca Raton, Florida 33431

## **ARTICLE X** **INDEMNIFICATION**

Each and every director, officer, and duly appointed member of a committee ("committee member") of the Association shall be indemnified by the Association against all costs, expenses, and liabilities, including Legal Fees, reasonably incurred by or imposed upon him/her in connection with any negotiation, proceeding, arbitration, litigation, or settlement in which he/she becomes involved by reason of his/her being or having been a director, officer, or committee member of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a director, officer, or committee member at the time such fees, costs, or expenses are incurred. Notwithstanding the above, in the event of a settlement in connection with any of the foregoing, the indemnification provisions provided in this Article X shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the fees, costs, and expenses of such settlement as being in the best interest of the Association. In the event a director, officer, or committee member admits that he/she is guilty of or is adjudged guilty of willful misconduct or gross negligence in

the performance of his/her duties, the indemnification provisions of this Article X shall not apply. The foregoing right of indemnification provided in this Article X shall be in addition to and not exclusive of any and all rights of indemnification to which a director, officer, or committee member of the Association may be entitled under statute or common law.

Upon the resignation of a director who has been designated, appointed, or elected by the Declarant, or the resignation of an officer or committee member who was elected or appointed by the Declarant-controlled Board, the Association and the Members shall remise, release, acquit, and forever discharge such director, officer, and committee member of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, claims, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages (except to the extent and such damages are covered by insurance), judgments, executions, claims, and demands whatsoever, in law or in equity, which the Association or the Members, their successors, assigns, heirs, and personal representatives, had, now have, or will have against such director, officer, or committee member by reason of having been a director, officer, or committee member. Notwithstanding, the foregoing shall not apply in the event of a criminal act where such director, officer, or committee member pled guilty or nolo contendere or was adjudicated guilty.

## **ARTICLE XI**

### **BY-LAWS**

The By-Laws may be altered, amended, or rescinded in the manner set forth in the By-Laws; provided, however, that at no time shall the By-Laws conflict with these Articles or the Declaration. Any attempt to amend contrary to these prohibitions shall be of no force or effect.

## **ARTICLE XII**

### **AMENDMENTS**

12.1 Declarant Amendment. Prior to Turnover, these Articles may be amended only by an instrument in writing signed by the Declarant and joined by the Association, except as expressly set forth herein.

12.2 Membership Amendment. After Turnover, these Articles may be amended by the affirmative vote of two-thirds (2/3<sup>rd</sup>s) of all of the Members. The approval of the Members of a proposed amendment may be obtained by written consent in lieu of a membership meeting pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

12.3 Proviso. No amendment to these Articles shall conflict with the terms of the Declaration or the By-Laws. No amendment to these Articles shall be adopted which shall abridge, prejudice, amend, or alter the rights of the Declarant, as determined in the sole discretion of the Declarant, without the prior written consent of the Declarant. Any attempt to amend contrary to this prohibition shall be of no force or effect whatsoever.

12.4 Filing and Recording. Amendments to these Articles adopted pursuant to this Article XII shall be recorded among the Official Records of the County and filed in the Office of the Secretary of State of the State of Florida.

12.5 Notice of Amendment. Within thirty (30) days after recording an amendment to these Articles, the Association shall mail, deliver, or electronically transmit a copy of the amendment to the Members. However, if a copy of the proposed amendment is provided to the Members before they vote on the amendment, and the proposed amendment is not changed before the vote, the Association, in lieu of providing a copy of the amendment, may provide notice to the Members that the amendment was adopted, identifying the Official Records Book and Page number of the recorded amendment, and that a copy of the amendment is available at no charge to the Member upon written request to the Association. Notwithstanding the foregoing, the failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

### **ARTICLE XIII** **REGISTERED AGENT**

The name and address of the registered agent of the Association who shall serve until his/her successor is properly appointed by the Board shall be PG Law, PL, 5030 Champion Boulevard, Suite G11-281, Boca Raton, Florida 33496. The Association shall have the right to designate subsequent registered agents without amending these Articles.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGE FOLLOWS]**

8

**ACCEPTANCE BY REGISTERED AGENT**

Having been named to accept service of process for **LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, at the place designated in these Articles of Incorporation of Lotis Palm Bay 3 Homeowner's Association, Inc., the undersigned hereby agrees to act in this capacity and further agrees to comply with the provisions of all statutes relative to the proper and complete discharge of his duties.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

PG LAW, PL

By: \_\_\_\_\_  
Stephen J. Grave De Peralta, Manager  
(Registered Agent)



**EXHIBIT "C"**

**SJRWMD PERMIT**

**EXHIBIT "D"**

**BY-LAWS OF  
LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION, INC.**

**BY-LAWS OF  
LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION, INC.**

**ARTICLE I  
IDENTIFICATION**

These are the By-Laws of **LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION, INC.** (the "Association"). The Association is a not for profit corporation organized pursuant to and under Chapter 617, Florida Statutes, and a homeowners' association pursuant to and under Chapter 720, Florida Statutes, for the purpose, among other things, of administering, managing, operating, and maintaining the residential community known as "**LOTIS PALM BAY 3 HOMEOWNERS**" located in Brevard County, Florida. If utilized by the Association, the seal of the Association shall bear the name of the Association; the word "Florida;" the words "Corporation Not for Profit."

**ARTICLE II  
DEFINITIONS**

All initially capitalized terms used herein shall have the same meaning as set out in the Declaration of Covenants, Conditions, and Restrictions for Lotis Palm Bay 3 Homeowners, as may be amended from time to time (the "Declaration"), to which these By-Laws of Lotis Palm Bay 3 Homeowner's Association, Inc. are attached as Exhibit "D", as may be amended from time to time (these "By-Laws"), unless an alternative definition is provided herein.

**ARTICLE III  
MEMBERSHIP AND MEMBERSHIP MEETINGS**

3.1 Membership. The qualification for membership, the manner of admission to the membership, the voting rights of such membership, and the termination of such membership shall be as set forth in the Articles.

3.2 Annual Meeting. The annual meeting of the Members shall be held at the office of the Association, or at such other place in the County as the Board may determine, at least once each calendar year on such date and at such time as designated by the Board, for the purpose of electing directors and transacting any other business authorized to be transacted by the Members. Such annual meeting shall not take place later than thirteen (13) months from the date of the preceding annual meeting.

3.3 Special Meetings. Special meetings of the Members shall be held whenever called by the President, the Vice-President, or by a majority of the Board and must be called by such officers upon receipt of a written request from at least ten percent (10%) of the voting interests of the Members. The business conducted at a special meeting of the Members shall be limited to that stated in the notice of the meeting.

3.4 Notice. Written notice of all membership meetings shall state the date, time, and location of the meeting being called and shall provide an agenda for which the meeting is called as hereinafter set forth. The notice shall be mailed, delivered, or electronically transmitted to each Member at such mailing address, electronic mailing address, or facsimile number of the Member as appears in the official records of the Association and shall be conspicuously posted on the Common Areas at least fourteen (14) days prior to the date set for such meeting, except in the event of an emergency. Proof of mailing, delivering, or electronic transmission of notice shall be given by affidavit of the person who mailed, delivered, or electronically transmitted such notice.

3.4.1. Waiver. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the official records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The attendance of any Member (or person authorized to vote for such Member) shall constitute such Member's waiver of notice of such meeting, except when the attendance of the Member (or person authorized to vote for such Member) is for the express purpose of objecting at the time the meeting is called to order to the transaction of business because the meeting is not lawfully called.

3.4.2 Electronic Transmission. Members desiring to receive notice by electronic transmission shall provide written consent to the Association to receive notice by electronic transmission and shall provide their email address to which notice shall be sent. Once a Member provides their written consent to receive notice by electronic transmission, such authority shall apply to all other communications from the Association. The electronic mailing address provided by the Member shall be accessible to any other Member who makes a lawful request to inspect the official records of the Association.

3.5 Presiding Officer. At meetings of the membership, the President or the President's designee, including, without limitation, the Association's manager or legal counsel, shall preside, or in the President's absence, the Vice-President or the Vice-President's designee, including, without limitation, the Association's manager or legal counsel, shall preside.

3.6 Order of Business. The order of business at the annual meeting of the Members and, as far as practical, at all other meetings of the Members, shall be as follows:

- (a) Call to order.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading and disposal of any unapproved minutes.
- (d) Report of officers.
- (e) Report of committees.
- (f) Election of directors.
- (g) Unfinished business.
- (h) New business.
- (i) Adjournment.

3.7 Quorum and Decisions. A quorum at meetings of the Members shall consist of Members present, in person or by proxy, entitled to cast thirty percent (30%) of the votes of the entire membership. The acts approved by a majority of the votes of the Members present at a meeting at which a quorum is present shall constitute the acts of the Members, except when approval by a greater number of Members is required. Unless otherwise prohibited, Members may vote in person, by limited proxy, or by written consent in lieu of a meeting of the Members pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

3.8 Adjourned Meetings. If any membership meeting cannot be organized because a quorum has not been attained, either a majority of the Members who are present, whether in person or by proxy, or the presiding officer of the meeting acting alone, may adjourn the meeting, from time to time, to a date, time, and location certain until a quorum is present. Any business which might have been transacted at a meeting of the Members as originally called may be transacted at any adjourned meeting thereof. Notice of the date and time of the continued meeting and place for reconvening the meeting shall be given to the Members in the manner prescribed for meetings of the Members.

3.9 Minutes. Minutes of all meetings of the Members shall be maintained in written form or in another form that can be converted into written form within a reasonable time and shall be available for inspection by the Members, after such minutes have been approved, at all reasonable times.

3.10 Proxies. A vote cast by proxy shall only be cast by limited proxy; however, general proxies may be used in order to achieve a quorum of the Members. To be valid, a proxy must (i) be in writing; (ii) state the date on which the proxy was given; (iii) state the date, time, and location of the meeting for which it was given; (iv) be signed by the Member giving the proxy or by the person designated in a voting certificate signed by the Member as the person authorized to cast the vote attributable to such Lot; and (v) be filed with the Secretary before or at the appointed time of the meeting. Limited proxies shall additionally provide the Member's vote for such specific items as are being voted upon by the Members at the meeting for which the limited proxy is given. A proxy shall be valid only for the particular meeting designated thereon, and as the meeting may lawfully be adjourned and reconvened, from time to time, and shall automatically expire ninety (90) days after the date of the meeting for which it was originally given. If the proxy form so provides, the proxy holder may appoint, in writing, a substitute to act in the proxy holder's place. The proxy holder, or substitute proxy holder, must personally attend the meeting for which such proxy is given in order for such proxy to be valid. A proxy is revocable at any time by the Member who executed it, or any other record title owner of the Lot, unless a designated voting certificate is filed with the Association and, if so, then only by the designated voter.

3.11 Voting Member. All voting certificates issued pursuant to this Section 3.11 shall be filed with the Secretary of the Association prior to the meeting at which said vote

is to be cast. In the event any such voting certificate is not filed with the Association as required below, the vote to which such Lot is entitled shall not be considered in determining whether a quorum is present, or for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed. A voting certificate shall be valid until revoked by the Members to the voting certificate, until superseded by a subsequent voting certificate, or until a transfer of title to the Lot to which the voting certificate pertains.

3.11.1 Lot Owned by One (1) Person. A Member who is the only fee simple title holder to a Lot shall cast the vote for such Lot, and no voting certificate shall be required.

3.11.2 Lot Owned by More than One (1) Person. If a Lot is owned by more than one (1) person, a voting certificate designating either Owner as the Member entitled to cast the vote for their Lot and signed by all Owners of the Lot is not required but is permitted. If such voting certificate is not provided, then any Owner may cast the vote for their Lot; however, only one (1) vote is permitted. If more than one (1) Owner votes, then all of their votes are not counted.

3.11.3 Lot Owned by an Entity. If a Lot is owned by a corporation, partnership, limited liability company, estate, trust, or other similar entity, the person of such corporation, partnership, limited liability company, estate, trust, or other similar entity entitled to cast the vote for such Lot shall be designated in a voting certificate signed by an appropriate officer or principal of the corporation, partnership, limited liability company, estate, trust, or other entity.

3.12 Member Attendance and Participation. Subject to the relevant provisions of the Homeowners' Association Act, Members have the right to attend all meetings of the Members. No other residents, tenants, or guests are permitted to attend any meeting of the Members unless otherwise specifically approved by the Board. Members in attendance at a membership meeting shall be entitled to speak for a maximum of three (3) minutes only as to the designated agenda items prior to a vote on such designated agenda items. All Member statements must be made in a respectful and businesslike manner. In the event a Member conducts himself/herself in a manner detrimental to the carrying on of a meeting, as decided by the presiding officer of the meeting in his/her absolute discretion, the Member may be expelled from the meeting by any reasonable means which may be necessary to accomplish such an expulsion. The Board may adopt such other written reasonable rules governing the frequency, duration, and other manner of Member statements as it deems appropriate. Any Member may tape record or videotape meetings of the Members; provided, however, the equipment utilized does not produce distracting sound or light emissions and subject to any rules and regulations which may be adopted by the Board regarding placement, assemblage of audio and video equipment, prior notice to record the meeting, and distraction resulting from moving about during recording of the meeting.

3.13 Electronic Meeting. Notwithstanding anything set forth to the contrary, any meeting of the Members may, at the discretion of the Board, be held on an electronic platform, such as, and for example purposes only, Zoom. In accordance with section 617.0721(3), Florida Statutes, subject to such guidelines and procedures as the Board may adopt, Members who are not physically present at a meeting may, by means of remote communication, participate in the meeting and be deemed to be present in person and vote at the meeting if the Association implements reasonable means to (i) verify that each person deemed present and authorized to vote by means of remote communication is a Member; and (ii) provide such Members with a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Members. Votes of Members taken by means of remote communication must be recorded in the minutes of such meeting to be maintained by the Association among its official records.

## **ARTICLE IV** **DIRECTORS**

4.1 Business Affairs. The property, business, and affairs of the Association shall be managed by the Board, which shall consist of not less than three (3) directors, nor more than seven (7) directors, which number shall always be odd as may be determined by the Board from time to time. All directors shall be natural persons who are eighteen (18) years of age or older and shall comply with all additional eligibility requirements set forth in the Homeowners' Association Act and the Governing Documents. Except for directors appointed by the Declarant, directors shall be Members of the Association or shall be the authorized representative, officer, or employee of corporate Members of the Association. The Board shall exclusively exercise all of the powers of the Association, unless otherwise specifically delegated to the Members.

4.2 Term. The term of each director's service shall be one (1) year commencing with the date of election until his/her successor is duly elected and qualified or until he/she resigns or is removed in the manner provided herein.

4.3 Election. Election of Directors shall be conducted in the following manner:

4.3.1 Declarant Appointment. Notwithstanding anything to the contrary contained herein, prior to Turnover, the Declarant shall have the right to appoint directors by written notice to such effect or by an announcement reflected in the minutes of the annual meeting of the Members. Further, after Turnover, the Members other than the declarant shall be entitled to elect at least a majority of the directors; provided, however, that as so long as the Declarant owns at least one (1) Lot, the Declarant shall have the continued right to appoint at least one (1) director.

4.3.2 Initial Member-Director Election. Members other than the Declarant are entitled to elect at least one (1) director (the "Initial Member-Director") if fifty percent (50%) of the Lots in the entire Community which will ultimately be operated by the Association have been conveyed to non-Declarant Members. The Initial Member-Director, and any successor to the Initial Member-Director, shall be elected by the

Members in the manner set forth in Section 4.3.3 below. In the event Turnover does not occur prior to the annual meeting of the Members held subsequent to the Initial Member-Director's election to the Board, a successor to the Initial Member-Director shall be elected to the Board at each annual meeting of the Members held after the election of the Initial Member-Director. Notwithstanding the foregoing, in the event the annual meeting of the Members held subsequent to the Initial Member-Director's election to the Board is less than six (6) months from the date of the Initial Member-Director's election to the Board, the term of the Initial Member-Director shall extend to the earlier of the next annual meeting of the Members or Turnover. In no event shall the term of the Initial Member-Director, or any successor to the Initial Member-Director, extend beyond Turnover.

4.3.3 Member Election of Directors. The director(s) elected by the Members shall be elected at the annual meeting of the Members.

4.3.3.1 First Notice of Election. At least sixty (60) days before a scheduled election, the Association shall mail, deliver, or electronically transmit to each Member a first notice of the date of the election.

4.3.3.2 Candidacy of Members. Any Member desiring to be a candidate for the Board shall provide written notice of his/her intent to be a candidate to the Association at least forty (40) days prior to the scheduled election. Such notice shall be effective upon receipt of same by the Association. No nominations shall be permitted past such date, and no nominations shall be permitted from the floor of the meeting at which the election is being conducted. Pursuant to the relevant provisions of the Homeowners' Association Act, a Member who is delinquent in the payment of any monetary obligation to the Association on the day that he/she could last nominate himself/herself or be nominated for the Board may not seek election to the Board, and his/her name shall not be listed on the "Ballot" (as such term is hereinafter defined). Additionally, a Member who has been convicted of any felony in the State of Florida or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in the State of Florida, is not eligible for candidacy unless such felon's civil rights have been restored for at least five (5) years as of the date on which such Member seeks election to the Board. The validity of any action by the Board is not affected if it is later determined that a director was ineligible for candidacy or Board membership at the time of such director's election to the Board.

4.3.3.3 Second Notice of Election. In accordance with Section 3.4 of these By-Laws, not less than fourteen (14) days prior to the scheduled election, the Association shall mail, deliver, or electronically transmit a second notice of the election to all Members, together with any candidate's information sheet(s), if any, subject to the provisions of Section 4.3.3.4 below.

4.3.3.4 Candidate Information Sheet. Upon the timely written request of a candidate, the Association shall include the information sheet of the requesting candidate along with the second notice of election. Such information sheet



shall be no larger than a single side of an eight and one half inches by eleven inches (8½" by 11") sheet of paper and shall be provided to the Association by the candidate at least thirty-five (35) days prior to the election. The information sheet may describe the candidate's educational background, employment experience, and/or any other qualifications the candidate deems relevant to his/her service on the Board. The Association shall not be liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of a sheet of paper and may do so in black and white.

4.3.3.5 Ballots. The Board shall be elected by written ballot and limited proxy only. Elections shall be decided by a plurality of votes cast. The ballot, as set forth in the written ballot and limited proxy (the "Ballot"), shall indicate in alphabetical order by surname, each and every Member who desires to be a candidate for the Board and who gave written notice to the Association not less than forty (40) days before a scheduled election, unless such Member has, prior to the mailing of the second notice of election, withdrawn his/her candidacy in writing. No Ballot shall indicate which candidates are incumbents on the Board. No write-in candidates shall be permitted. A Ballot shall not be deemed cast until delivered to the office of the Association or to the presiding officer at an annual meeting of the Members. Upon closing of balloting at an annual meeting of the Members, no Ballot may be rescinded or changed.

4.3.3.6 Conduct of the Election. At the annual meeting of the Members at which the election is held, the Association shall have available blank written ballots for distribution at the annual meeting of the Members. There shall be no quorum requirement; however, at least twenty percent (20%) of the eligible voters must cast a Ballot in order to have a valid election. At the annual meeting, ballots shall be deposited into a ballot box and collected by an "Election Committee." Upon closing of balloting, no further Ballots shall be cast. The Election Committee shall be appointed by the presiding officer during the annual meeting of the Members immediately prior to the collection of Ballots, and the members of the Election Committee shall not be the candidates, directors, officers, or the spouses of the candidates, directors, or officers. The Ballots shall be tallied in the presence of the Members in attendance at the annual meeting of the Members. All Ballots, whether disregarded or not, shall be retained with the official records of the Association. Once the Ballots have been tallied, those candidates who have been elected to the Board shall be immediately announced.

4.3.3.7 Election by Acclimation. Unless more candidates are nominated for an election than there are available positions on the Board, an election is not required. In such event, the candidates will be seated on the day of the annual meeting of the Members.

4.4 Compensation. Subject to the relevant provisions of the Homeowners' Association Act, directors shall not receive or be entitled to any compensation for services as a director, unless approved by a majority of all of the Members. Notwithstanding the foregoing, nothing herein contained shall be construed to preclude a director from serving the Association in any other capacity and receiving compensation therefor, subject to the

disclosure and approval requirements of the Florida Not For Profit Corporation Act regarding conflicts of interest. Further, directors appointed by the Declarant may be compensated by the Declarant as part of their regular employee pay. Directors shall not solicit or accept, directly or indirectly, any gifts, gratuity, favor, loan, or any other thing of monetary value from any company or individual seeking to obtain contractual or other business or financial relations with the Association, or from anyone whose intent is to influence any decision or action on any official matter, except a director may accept food and beverage to be consumed at a business meeting with a value of less than Twenty Five Dollars (\$25.00) per individual, as set forth in section 720.3033, Florida Statutes.

4.5 Organizational Meeting. The organizational meeting of the newly-elected Board shall be held immediately after the annual meeting of the Members. If the majority of the directors elected shall not be present at that time, or if the directors shall fail to elect officers, the organizational meeting shall then be held within ten (10) days after the annual meeting of the Members at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice to or by the Board of the organizational meeting shall be necessary. The singular instance in which the Board may vote by secret ballot shall be for the election of officers, but such vote shall take place in front of the Members.

4.6 Certification of Directors. All directors shall be certified pursuant to the relevant provisions of the Homeowners' Association Act. The written certification or educational certificate is valid for the uninterrupted tenure of the director and shall be kept among the Association's official records for five (5) years after such director's election or appointment. Any director who does not timely file the written certification or educational certificate shall be suspended from the Board until he/she complies with the requirement. The Board may temporarily fill the vacancy during the period of suspension.

4.7 Recall of Directors. Any Director may be removed from office at any time, as authorized by the Homeowners' Association Act, with or without cause, by the affirmative vote of a majority of the entire membership at a special meeting of the Members called for that purpose or as otherwise provided by the Homeowners' Association Act. Notice for such special meeting of the Members shall not be electronically transmitted. If less than a majority of the Board is removed, the vacancy shall be filled by the affirmative vote of a majority of the remaining directors. If a majority or more of the Board is removed, the vacancies shall be filled by the Members voting in favor of the recall. If removal is at a meeting, any vacancies shall be filled by the Members at the meeting. If the recall occurred by agreement in writing or by written ballot, Members may vote for replacement directors in the same instrument in accordance with the relevant provisions of the Homeowners' Association Act, together with procedural rules adopted by the Division of Florida Condominiums, Timeshares, and Mobile Homes. This Section 4.7 shall not apply to any director appointed by the Declarant.

4.8 Resignation and Disqualification of Directors. Directors shall have the absolute right to resign at any time by providing written notice of such resignation to the Board, delivered to the President or the Secretary. Such written notice of resignation shall

be effective upon receipt, unless a later date is provided in the written notice of resignation, then upon such later date the resignation shall become effective. Any director shall be disqualified for any manner as provided by the relevant provisions of the Homeowners' Association Act creating a vacancy in the office to be filled in the manner provided herein.

4.9 Vacancies. Except as to vacancies created by recall, vacancies on the Board occurring between annual meetings of the Members shall be filled by the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. A director elected or appointed pursuant to this Section 4.9 shall have all of the rights, privileges, duties, and obligations as a director elected at an annual meeting of the Members and shall serve for the unexpired term of the vacancy being filled. A vacancy occurring on the Board due to the resignation or disqualification of a Declarant-appointed director shall be filled by the Declarant for so long as the Declarant may have a director on the Board.

4.10 Board Meetings. Meetings of the Board may be held at such date, time, and location within the County as the Board may designate. Meetings of the Board may be called by the President and must be called by the Secretary at the written request of a majority of the directors.

4.11 Notice. Notice of Board meetings shall be conspicuously posted within the Common Areas at least forty-eight (48) hours before such meeting, except in the event of an emergency. All notices shall provide the date, time, and location of the Board meeting being called. A notice for a Board meeting at which an Assessment may be levied shall include a statement that Assessments will be considered and the nature of the Assessments. Notice of any meeting at which Special Assessments will be considered or at which amendments to rules regarding Lot use will be considered must be mailed, delivered, or electronically transmitted to the Members and conspicuously posted within the Common Areas at least fourteen (14) days prior to the Board meeting. Proof of mailing, delivering, or electronic transmission of such fourteen (14) day notice shall be given by affidavit of the person who mailed, delivered, or electronically transmitted such notice. The provisions set forth in Section 3.4.1 above, regarding waiver, and Section 3.4.2 above, regarding electronic transmission, shall apply hereto.

4.12 Order of Business. The order of business at Board meetings, as far as practical, shall be as follows:

- (a) Proof of due notice of meeting.
- (b) Reading and disposal of unapproved minutes.
- (c) Report of officers.
- (d) Report of committees.
- (e) Election of officers.
- (f) Unfinished business.
- (g) New business.
- (h) Adjournment.

4.13 Presiding Officer. At meetings of the Board, the President shall preside, or in the President's absence, the Vice-President shall preside, or in the absence of both, the directors present shall designate one of their number to preside at such meeting.

4.14 Quorum and Decisions. A quorum of the Board shall consist of a majority of the entire Board. All actions or resolutions approved by a majority of those directors present at a meeting at which a quorum is present shall constitute the acts of the Board, except when approval by a greater number of directors is required. Directors may not vote by proxy or secret ballot; provided, however, that secret ballots may be used for the election of officers. Prior to Turnover, and unless otherwise prohibited, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting by unanimous written consent in lieu of a meeting of the Board pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

4.15 Adjourned Meetings. If at any meeting of the Board there is less than a quorum present, the majority of those directors present may adjourn the meeting, from time to time, until a quorum is present. At any adjourned meeting, any business which might have been transacted at the meeting of the Board as originally called may be transacted without further notice. If for any reason a new date must be fixed for reconvening the meeting after adjournment, notice of the meeting and place for reconvening the meeting shall be given in the manner prescribed for meetings of the Board.

4.16 Member Attendance and Participation. Subject to the relevant provisions of the Homeowners' Association Act, Members have the right to attend all meetings of the Board. No other residents, tenants, or guests are permitted to attend any meeting of the Board unless otherwise specifically approved in writing by the Board. Members in attendance at a Board meeting shall be entitled to speak for a maximum of three (3) minutes only as to the designated agenda items prior to the Board's vote on such designated agenda items and in such manner as determined by the Board. All Member statements must be made in a respectful and businesslike manner and must be directed to the Board. In the event a Member conducts himself/herself in a manner detrimental to the carrying on of a meeting, the Board may, at the sole and unfettered discretion of the meeting chairperson, expel such Member from the meeting by any reasonable means which may be necessary to accomplish such an expulsion. The Board may adopt such other written reasonable rules governing the frequency, duration, and other manner of Member statements as it deems appropriate. Any Member may tape record or videotape meetings of the Board; provided, however, the equipment utilized does not produce distracting sound or light emissions and subject to any rules and regulations which may be adopted by the Board regarding placement, assemblage of audio and video equipment, prior notice to record the meeting, and distraction resulting from moving about during recording of the meeting.

4.17 Minutes. Minutes of all Board meetings shall be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote

or abstention from voting on each matter voted upon for each director present at a Board meeting shall be recorded in the minutes. Minutes shall be available for inspection by the Members, after such minutes have been approved, at all reasonable times.

4.18 Committees. The Board may, by resolution duly adopted, create one (1) or more committees and appoint persons to such committees and delegate to such committees such powers and responsibilities as the Board may deem advisable, subject to any limitations on the Board's right to delegate authority as may exist under general corporate law. Such committees shall consist of at least three (3) Members. The committee(s) shall have such name(s) as may be determined from time to time by the Board, and said committee(s) shall keep regular minutes of their proceedings and report the same to the Board as required. The provisions applicable to Board meetings, including, without limitation, notice provisions and Member attendance and participation provisions, shall be applicable to the meetings of any committee only when a final decision regarding the expenditure of Association funds will be made and for meetings of the ACC.

4.19 Electronic Meeting. Notwithstanding anything set forth to the contrary, any meeting of the Board may, at the discretion of the Board, be held on an electronic platform, such as, and for example purposes only, Zoom. Subject to such guidelines and procedures as the Board may adopt, Members may remotely attend and participate in Board meetings held on an electronic platform. The Association must implement reasonable means to provide Members who are not physically present with a reasonable opportunity to participate in the Board meeting by means of remote communication.

4.20 Master Association Director Appointment. Prior to Turnover, the Declarant shall have the right to appoint two (2) directors to serve on the Master Association's Board of Directors (the "Master Board") as the representative of the Association by written notice to the Master Association. After Turnover, upon receipt of notice from the Master Association requesting the appointment of two (2) directors to the Master Board to represent the Association, the Board shall, by majority vote, appoint two (2) of their number to serve on the Master Board. Eligibility to serve on the Master Board, the term of service on the Master Board, and other provisions governing service on the Master Board are set forth in the Master Governing Documents.

## **ARTICLE V** **OFFICERS**

5.1 The Officers. The officers of the Association shall be a President, a Vice President, a Treasurer, a Secretary, and such other officers as may be designated by the Board from time to time in the Board's sole discretion, the powers and duties of which shall be designated by the Board as the Board deems necessary, in its sole discretion, to manage the affairs of the Association. All officers shall serve at the pleasure of the Board. Except for officers appointed by the Declarant, officers shall be Members or shall be the authorized representative, officer, or employee of corporate Members. An individual officer may hold more than one (1) office; however, however, the individual serving as the President shall not also fill any other office.

5.2 Election of Officers. Officers shall be elected from time to time by the affirmative vote of a majority of the directors present at any Board meeting at which a quorum is present.

5.3 Removal, Resignation, and Disqualification of Officers. Any officer may be removed at any time by the affirmative vote of a majority of the Board present at any Board meeting at which a quorum is present. Without limitation of other lawful remedy, Section 4.8 of these By-Laws regarding the resignation and disqualification of directors shall also apply to officers.

5.4 Compensation. Subject to the relevant provisions of the Homeowners' Association Act, officers shall not directly receive any compensation from the Association for the performance of his/her duties as an officer. Notwithstanding the foregoing, nothing herein contained shall be construed to preclude an officer from serving the Association in any other capacity and receiving compensation therefor, subject to the disclosure and approval requirements of the Florida Not For Profit Corporation Act regarding conflicts of interest. Further, officers appointed by the Declarant-controlled Board may be compensated by the Declarant as part of their regular employee pay. Officers shall not solicit or accept, directly or indirectly, any gifts, gratuity, favor, loan, or any other thing of monetary value from any company or individual seeking to obtain contractual or other business or financial relations with the Association, or from anyone whose intent is to influence any decision or action on any official matter, except an officer may accept food and beverage to be consumed at a business meeting with a value of less than Twenty Five Dollars (\$25.00) per individual, as set forth in section 720.3033, Florida Statutes.

5.5 Duties of Officers. The officers shall perform the duties of such offices customarily performed by officers of like corporations, including, but not limited, to the following:

5.5.1 President. The President shall be a member of the Board and the chief executive officer of the Association. The President shall have all of the powers and duties which are usually vested in the office of a president, including, but not limited to, the responsibility to serve as presiding officer of all meetings. The President shall ensure that all orders and resolutions of the Board are carried out and shall sign all notes, checks, leases, and all other written instruments upon approval of the Board. The President shall set the agenda for all meetings of the Board and all meetings of the Members in consultation with the officers and directors.

5.5.2 Vice President. The Vice President shall be a member of the Board and shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board.

5.5.3 Secretary. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and directors at all reasonable times. The Secretary shall have custody of the seal of the Association and shall affix the same to instruments requiring a seal, when duly approved and signed by the Board. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of secretary and as may be required by the Board or the President.

5.5.4 Treasurer. The Treasurer shall have custody of all of the property of the Association, including funds, securities, and evidences of indebtedness. The Treasurer shall keep the Assessment rolls and accounts of the Members, keep the books of the Association in accordance with good accounting practices, make provision for collection of Assessments, and all other duties incident to the office of treasurer and as may be required by the Board or the President.

## **ARTICLE VI**

### **FISCAL MANAGEMENT**

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year, beginning January 1<sup>st</sup> and ending December 31<sup>st</sup> of each year; provided, however, the Board is expressly authorized to adopt a different fiscal year at such time as the Board deems advisable.

6.2 Accounting Records. The Association shall maintain accounting records in accordance with good accounting practices which shall be open to inspection by Members at reasonable times in accordance with the Homeowners' Association Act.

6.3 Budget. The initial budget prepared by the Declarant is adopted as the budget for the period of operation until adoption of the first annual budget by the Board. THE INITIAL BUDGET OF THE ASSOCIATION IS PROJECTED (NOT BASED ON HISTORICAL OPERATING FIGURES). THEREFORE, IT IS POSSIBLE THAT ACTUAL ASSESSMENTS MAY BE LESS OR GREATER THAN PROJECTED. Thereafter, all annual budgets shall be prepared and adopted by the Board. The Board shall prepare and adopt an annual budget reflecting, among other things, the estimated revenues and expenses for the forthcoming fiscal year and the estimated surplus or deficit for the end of the current fiscal year. After the budget has been adopted by the Board, a copy of the adopted budget shall be mailed, delivered, or electronically transmitted to each Member at the Member's last known address, electronic mailing address, or facsimile number as shown on the books and records of the Association. In lieu of mailing, delivering, or electronically transmitting a copy of the adopted budget, the Association shall mail, deliver, or electronically transmit to each Member at the Member's last known address, electronic mailing address, or facsimile number as shown on the books and records of the Association written notice that a copy of the adopted budget is available upon request at no charge to the Member.

6.4 Budget Deficiency. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Common Expenses not included in the budget or which exceed budgeted amounts, and no Board shall be required to engage in deficit spending. Recognizing that it is extremely difficult to adopt a budget for each fiscal year that exactly coincides with the actual expenses during the year, should there exist any deficiency which results from there being greater Common Expenses than income from Assessments, then such deficits shall be carried into the next year's budget as a deficiency or shall be the subject of a Special Assessment to be levied by the Board in accordance with the Declaration.

6.5 Financial Report. Within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year in accordance with the Homeowners' Association Act. Within twenty-one (21) days after the final financial report is completed by the Association, or received from the third party, but not later than one hundred twenty (120) days after the end of the fiscal year, the Association shall provide each Member with a copy of the annual financial report or a written notice advising that a copy of the report is available upon request at no charge to the Member.

6.6 Depositories. The depository of the Association shall be such bank(s) or other financial institution(s) as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Board. In the absence of such determination by the Board, such checks shall be signed by the Treasurer, and countersigned by the President or the Vice-President.

6.7 Fidelity Coverage. The Association shall maintain insurance or a fidelity bond for all "persons who control or disburse funds of the Association." The fidelity coverage must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this Section 6.7, the term "persons who control or disburse funds of the Association" includes, but is not limited to, persons authorized to sign checks on behalf of the Association, and the President, the Vice-President, the Secretary, and the Treasurer. The Association shall bear the cost of any such fidelity coverage. If annually approved by a majority of the voting interests present at a properly called meeting of the Association, the Association may waive the requirement of obtaining fidelity coverage for all persons who control or disburse funds of the Association.

## **ARTICLE VII**

### **RULES AND REGULATIONS**

The Board may, at a properly noticed meeting of the Board, adopt reasonable rules and regulations for the operation and use of the Community, or amend or rescind any such existing rules and regulations; provided, however, that such rules and regulations shall not be inconsistent with any of the terms or provisions of any of the Declaration, the Articles, or these By-Laws. Copies of any rules and regulations as promulgated,



amended, or rescinded by the Board shall be mailed, delivered, or electronically transmitted to all Members at the last known address, electronic mailing address, or facsimile number of the Members as shown on the books and records of the Association and shall become effective upon such mailing, delivery, or electronic transmission.

## **ARTICLE VIII**

### **PARLIAMENTARY RULES**

Robert's Rules of Order (latest edition) shall govern the conduct of meetings of the Board and meetings of the Members when not in conflict with the Governing Documents, the Homeowners' Association Act, or the Florida Not For Profit Corporation Act.

## **ARTICLE IX**

### **AMENDMENTS**

9.1 Declarant Amendment. Prior to Turnover, these By-Laws may be amended only by an instrument in writing signed by the Declarant and joined by the Association.

9.2 Membership Amendment. After Turnover, these By-Laws may be amended by the affirmative vote of two-thirds (2/3<sup>rd</sup>s) of all Members. The approval of the Members of a proposed amendment may be obtained by written consent in lieu of a membership meeting pursuant to the relevant provisions of the Florida Not For Profit Corporation Act.

9.3 Proviso. No amendment to these By-Laws shall conflict with the terms of the Declaration or the Articles. No amendment to these By-Laws shall be adopted which shall abridge, prejudice, amend, or alter the rights of the Declarant, as determined in the sole discretion of the Declarant, without the prior written consent of the Declarant. Any attempt to amend contrary to this prohibition shall be of no force or effect whatsoever.

9.4 Recording. Amendments to these By-Laws adopted pursuant to this Article IX shall be recorded among the Official Records of the County.

9.5 Notice of Amendment. Within thirty (30) days after recording an amendment to these By-Laws, the Association shall mail, deliver, or electronically transmit a copy of the amendment to the Members. However, if a copy of the proposed amendment is provided to the Members before they vote on the amendment, and the proposed amendment is not changed before the vote, the Association, in lieu of providing a copy of the amendment, may provide notice to the Members that the amendment was adopted, identifying the Official Records Book and Page number of the recorded amendment, and that a copy of the amendment is available at no charge to the Member upon written request to the Association. Notwithstanding the foregoing, the failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

**IN WITNESS WHEREOF**, these By-Laws of Lotis Palm Bay 3 Homeowner's Association, Inc. were executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

**Signed, sealed, and delivered  
in the presence of:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Post Office Address: \_\_\_\_\_

\_\_\_\_\_

**STATE OF FLORIDA                    )**  
  **) ss:**  
**COUNTY OF PALM BEACH        )**

The foregoing By-Laws of Lotis Wellington 2 Homeowner's Association, Inc. were acknowledged before me by means of ☐ physical appearance or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by James S. Gielda as President for **LOTIS PALM BAY 3 HOMEOWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation, who ☐ is personally known to me or ☐ produced \_\_\_\_\_ as identification and who did not take an oath.

**ASSOCIATION**

**LOTIS PALM BAY 3 HOMEOWNER'S  
ASSOCIATION, INC.**  
a Florida not for profit corporation

By: \_\_\_\_\_  
James S. Gielda, its President

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name of Notary Public

My Commission Expires:

My Commission Expires: