

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

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TATTERSALL AT TYMBER CREEK THE GABLES AT TOWN CENTER

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ~~THE GABLES AT TOWN CENTER HOMEOWNERS ASSOCIATION, INC~~ ~~TATTERSALL AT TYMBER CREEK HOMEOWNERS ASSOCIATION, INC~~ (“Declaration”) is made and entered into this ____ day of _____, 2023~~4~~, by ~~PAYZEN PC, LLC~~ ~~PAYLIN TYMBER 1 & 2 LLC~~, a Florida limited liability company (“Declarant” or “Developer”).

WITNESSETH

WHEREAS, Declarant owns all of the real property, located in ~~Volusia~~ ~~Flagler~~ County, Florida described in **Exhibit “A”** attached hereto and incorporated herein by reference (“Property”); and

WHEREAS, Declarant intends to organize and develop a homeowners association under Chapters 720 and 617, Florida Statutes, and, in connection therewith, create and incorporate ~~TATTERSALL AT TYMBER CREEK HOMEOWNERS ASSOCIATION, INC~~ ~~THE GABLES AT TOWN CENTER HOMEOWNERS ASSOCIATION, INC.~~, a Florida Non-Profit Corporation, as the homeowners association charged with maintenance, operation, preservation, and architectural control of the Property in order to promote the health, safety, and welfare of the residents of the Property; and

WHEREAS, Declarant intends to develop the Property as a phased residential development and may be improved with residences of difference sizes and types; and

WHEREAS, the Property is subject to the ~~master development agreement~~ ~~PUD ORDINANCE ???~~ ~~for the Town Center at Palm Coast Planned Unit Development dated December 16, 2003, recorded in Book 1025, Page 1405,~~ of the Public Records of ~~Flagler~~ ~~Volusia~~ County, Florida, and subsequent amendments to the same.

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NOW THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, conveyed, leased, mortgaged, and otherwise dealt with subject to the covenants, conditions, easements, restrictions, reservations, liens, and charges hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property. The covenants, conditions, easements, restrictions, reservations, liens, and charges set forth herein shall run with the Property; shall be binding upon all parties having and/or acquiring any right, title or interest in the Property, or in any part thereof; and shall inure to the benefit of each and every person or entity, from time to time owning or holding an interest in the Property.

ARTICLE I
DEFINITIONS

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions, except as otherwise specified herein, and shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of the Association and the Property. The following capitalized terms shall be defined as set forth below.

- 1.01 **“Administrative Assessment”** shall mean and refer to Assessments levied in accordance with Article VI, Section 6.06.
- 1.02 **“Ancillary Vehicles”** includes motorcycles, motor scooters, motorbikes, golf carts, boats, canoes, jet skis, kayaks, all-terrain vehicles, and similar conveyances.
- 1.03 **“Architectural Review Committee” or “ARC”** shall mean and refer to the committee established and described in Article VII.
- 1.04 **“Articles”** shall mean and refer to the Articles of Incorporation of the Association, as they may exist and/or be amended from time to time.
- 1.05 **“Association”** shall mean and refer to ~~TATTERSALL AT TYMBER CREEK The Gables at Town Center~~ Homeowners Association, Inc., a Florida Non-Profit Corporation, its successors and assigns.
- 1.06 **“Base Assessment”** shall mean and refer to Assessments levied on all Lots subject to assessment under Article VI, Section 6.03 to fund Common Expenses for the general expenses and operation of the Association.
- 1.07 **“Board”** shall mean and refer to the Board of Directors of the Association.
- 1.08 **“Bylaws”** shall mean and refer to the Bylaws of the Association, as they may exist and/or be amended from time to time.
- 1.09 **“City”** shall mean the City of ~~Palm Coast~~, ORMOND BEACH, Florida.
- 1.10 **“Commercial Vehicles”** includes trucks, vans and mini vans (other than those deemed Passenger Vehicles, as defined in Article I, Section 1.23), commercial or public service vehicles (meaning those that are not primarily designed and used for passenger transportation for personal or family purposes), and such other vehicles, which by design, nature, size, use or appearance, the Board determines from time to time to be of a commercial nature.
- 1.11 **“Common Area”** shall mean and refer to all real property, together with any and all improvements from time to time located thereon, owned by the Association for the common use and enjoyment of the Owners, including those tracts dedicated to the Association by the Plat. Nothing herein shall be construed so as to create any obligation for Declarant to convey any property improvement to the Association unless otherwise explicitly stated herein.
- 1.12 **“Common Expenses”** shall mean and refer to expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, if any.
- 1.13 **“Declaration”** shall mean and refer to this Declaration of Covenants, conditions, and restrictions of ~~TATTERSALL AT TYMBER CREEK The Gables at Town Center~~.
- 1.14 **“Developer” or “Declarant”** shall mean and refer to Payzen PC, LLC, a Florida limited liability company.

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- 1.15 **“Dwelling”** shall mean and refer to the single-family detached residential structure on a Lot.
- 1.16 **“Governing Documents”** shall mean and refer to this Declaration; the Articles; the Bylaws; and any and all rules, regulations, guidelines, and/or policies of the Association, all of the foregoing as amended, supplemented, and/or promulgated by the Association from time to time.
- 1.17 **“Individual Assessment”** shall mean and refer to Assessments levied in accordance with Article VI, Section 6.05.
- 1.18 **“Institutional Lender”** shall mean and refer to the bona fide owner and holder of a first mortgage encumbering a Lot, which is a bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, national banking association, an agency of the United States government, private or public pension fund, Veteran’s Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a credit union, real estate or mortgage investment trust, or a lender generally recognized in the community as an institutional lender.
- 1.19 **“Lease”** shall mean and refer to an Owner’s grant to another of a temporary right of use and possession of such Owner’s Lot for valuable consideration. The term “Lease” shall not include or refer to the term “Short Term Vacation Rental” as hereafter defined.
- 1.20 **“Lot”** shall mean and refer to each residential building site created by the recorded plat of the Property and intended to be improved with a single family, detached residence, together with any improvements from time to time located thereon.
- 1.21 **“Member”** shall mean and refer to each Member as provided in Article III.
- 1.22 **“Mitigation and/or Conservation Area”** shall mean and refer to a system operated, maintained, and managed by the Association to provide drainage, water storage, conveyance, survival, and growth of aquatic plant material.
- 1.23 **“Owner”** shall mean and refer to the owner, as shown by the records of the Association, (whether it be one or more persons, firms, or legal entities) of fee simple title to any Lot located within the Property. Owner shall not mean or refer to the holder of a mortgage or security interest, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term “Owner” mean or refer to any lessee or tenant of an Owner.
- 1.24 **“Passenger Vehicles”** includes cars; station wagons; passenger vans and mini vans (the cargo capacity of which is devoted primarily to seating for passengers); sport utility vehicles; and pick-up trucks, which are intended for and used primarily as personal transportation; plus such other non-specified passenger vehicles primarily intended and used as transportation for personal and family purposes.
- 1.25 **“Person”** shall mean and refer to any individual, corporation, limited liability company, government agency, business trust, estate, trust, trustee, partnership, association, sole proprietorship, joint venture, two or more persons having a joint or common interest, or any other legal entity or legally recognized form of ownership.

- 1.26 "Plat(s)" shall mean the recorded Plat of The Gables at Town Center Subdivision, as recorded in Plat Book _____, Pages _____ through _____, inclusive, of the Public Records of ~~Flagler~~ Volusia County, Florida. In the event an Additional Plat is recorded in the Public Records of the County, then the term "Plat" as used herein shall also mean the Additional Plat or Plats.
- 1.27 "Property" shall mean and include the real property described in Exhibit "A" attached hereto.
- 1.28 "Recreational Vehicles" includes trailers, motorhomes, busses, boat trailers, truck campers, popup campers, camper vans, and conversion vans.
- 1.29 "Special Assessment" shall mean and refer to Assessments levied in accordance with Article VI, Section 6.04.
- 1.30 "Water Management District" or "District" shall mean and refer to the St. Johns River Water Management District.

ARTICLE II
PROPERTY RIGHTS

- 2.01 **Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title of every Lot, subject to the following:
- (a) The right of Declarant and/or the Association to grant easements and rights of way as may be appropriate for the proper development and maintenance of the Property, including, without limitation, Developer's right to reserve easements for itself, its successors and assigns for ingress, egress, maintenance, drainage and utilities over all Common Property.
 - (b) The right of the Association to dedicate or sell all or any part of the Common Area (including leasehold interests therein) to any public agency, authority, utility, or private concern for such purposes and subject to such conditions as may be agreed upon by the Members. No dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, approved by at least fifty-one percent (51%) of the Members, is recorded.
 - (c) The right of the Association, upon Board approval, to borrow money from any lender for the purpose of improving and/or maintaining the Stormwater Management System, Common Area, and any improvements from time to time located or to be located thereon, and providing services authorized herein and, in aid thereof, to mortgage said Property.
 - (d) By taking title to any property within the Property, each Owner covenants and agrees with all other Owners and with the Association that no Owner, or such Owner's family, guests, invitees, tenants, and/or licensees, shall engage in picketing, protest marches, sit-in demonstrations, protest speeches or other forms of public protest, including without limitation, displaying signs or placards within public view; upon any Lot; within or upon any Common Area; upon any easement or street adjacent to any Lot; affixed to the exterior of any vehicle or

the interior of the windows thereof; or any apparatus upon or adjacent to any Lot street, easement, or Common Area. This prohibition shall not affect the right of any Person to participate in any other form of public protest conducted outside the Property. No Owner, or such Owner's family, guests, invitees, tenants, licensees, shall engage in conduct that tends to vilify, ridicule, denigrate, or impugn the character of any other Owner if such conduct occurs on any Lot, Common Area, easement, or any other portion of the Property. Each Owner, by taking title to any property within the Property, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on his or her constitutional right of free speech and to recognize and agree that all Owners have the right to the peaceful enjoyment of their property; the right of privacy; the right to practice their own religion; the freedom of association; the right to engage in a profession, business, or lifestyle of their own choosing, provided that the conduct of such profession, business, or lifestyle is not illegal and does not otherwise violate any provision of the Governing Documents.

- (e) All provisions of this Declaration, any plat of any part of the Property, and the Articles and Bylaws of the Association.
- (f) The rules and regulations governing the use and enjoyment of the Common Property adopted by the Association.
- (g) All easements and restrictions of record affecting any part of the Common Property.

2.02 Drainage, Retention and Utility Easements. Drainage, Retention and Utility Easements and right-of-way, over, parallel to, alongside of, and immediately on Lots as identified on the subdivision plat for the Property are hereby exclusively reserved for the use of drainage and utility easements in addition to those easements platted or in use. Public utilities serving the Property and the Lots have been, or will be, installed in the Common Area and within or upon the Property for the use, benefit, and service of the Property, the Lots, and all improvements on the Property. A permanent, perpetual, mutual, and non-exclusive easement shall exist over, across, and into the Property, Lots, and all improvements upon the Property for installation, maintenance, and repair of all utilities for lines, wires, pipes, equipment, and other items necessary for supplying light, heat, air conditioning, water, sewer, power, telephone, and CATV and other means of communication to the Property, Lots, and improvements upon the Property. Any and all use of the said utility easements shall be in accordance with the application provisions of this Declaration.

2.03 Conservation Easements. Conservation easements over, parallel to, alongside of, and immediately on Lots as identified on the subdivision plat for the Property are hereby exclusively reserved for preservation of trees and natural vegetation and to prevent any use that will impair or interfere with the area environmental value.

2.04 Public Easements. Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Area.

- 2.05 Lot Easements.** Unless the Association elects to maintain easement areas on the Property, each Owner shall be responsible for the maintenance of all easements situated on her/his respective Lot(s) for conservation, utility and/or drainage purposes.
- 2.06 Association's Right of Entry.** The Association, and its duly authorized representatives and/or agents, shall have and possess the right, but not the obligation, to enter onto any part of the Property, including the Common Area and any Lot, for the purpose of fully and faithfully discharging the duties of the Association. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner of a Lot upon which such entry by the Association is made. Non-exclusive easements are hereby granted in favor of the Association throughout the Property as may reasonably be necessary for the Association to perform its services required and authorized hereunder, so long as none shall unreasonably interfere with the use of any Lot. Furthermore, an easement is hereby granted in favor of the Association, including its agents and designees, for purposes of carrying out all obligations and/or rights of the Association pursuant to this Declaration. Furthermore, a nonexclusive easement in perpetuity in favor of the Association, including its agents and designees, to utilize for all proper purposes of the Association is hereby created over all utility easements and drainage easements located on any Lot, whether now existing or hereafter created, including but not limited to all utility easements and drainage easements contained on the plat.
- 2.07 Access.** Association and all Owners, including their respective tenants, guests, and invitees, have and possess perpetual, non-exclusive easements of ingress and egress over and across any access ways constructed on the Common Area from time to time.
- 2.08 Dedication of Streets and Roads.** Declarant reserves the right to dedicate the streets and roads within the Property and associated road drainage easements and facilities to the City for the perpetual use of the public and maintenance by the City.
- 2.09 Declarant's Rights.** Declarant, its successors and assigns shall have the unrestricted right, without approval or joinder of any other person or entity: (i) to designate the use of, alienate, release, or otherwise assign the easements shown in the plat of the Property or described herein, (ii) to plat or replat all or any part of the Property owned by Declarant, (iii) change the local government zoning of any portion of the Property owned by Declarant, and (iv) to widen or extend any right of way shown on any plat of the Property or convert a Lot to use as a right of way, provided that Declarant owns the lands affected by such change.
- 2.10 Common Area.**
- (a) Developer shall retain title to the Common Area until such time as Developer conveys such Common Area or any portion thereof to the Association by recorded instrument, free and clear of the monetary liens or encumbrances. All remaining Common Area not deeded to the Association shall be deemed conveyed to the Association, without further act or deed by Developer at such time as Developer no longer owns any Lots. Notwithstanding the foregoing, once Common Area has been conveyed to the Association, no part may be conveyed to any party by the Association, dedicated to the public (other than the roads and easements as shown on the plat of the Property or as otherwise necessary or convenient for the development of the Property), mortgaged, or otherwise encumbered without the approval of two thirds (2/3rds) of the Class A members,

as defined hereafter, present in person or by proxy at a duly constituted meeting or by written consent.

- (b) Developer shall be responsible for the construction of the streets and roads as depicted on the approved subdivision plat for the Property. Upon completion of construction for said streets and roads, Developer shall dedicate same to the City for the perpetual use of the public and maintenance by the City.

2.12 Survival. Any and all easements or other rights granted or reserved pursuant to this Article shall survive any termination or expiration of this Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

3.01 Membership.

- (a) Each Owner of a Lot that is subject to assessment as provided in Article VI, by acceptance of a deed or other instrument evidencing an ownership interest in such Lot, accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide and be bound by the provisions of the Governing Documents. Provided further that for so long as Declarant owns any Lots, Declarant shall also be a member of the Association. Membership shall be appurtenant to and may not be separated from title to each Lot. Membership shall be transferred automatically by conveyance of the title to any Lot, whereupon the membership of the previous Owner shall automatically terminate.
- (b) When any Lot is owned of record in the name of two (2) or more Persons, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two (2) or more Persons have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs, and a copy thereof is filed with the Secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall provide written notice to the Secretary of the Association of the name of such individual.
- (c) Members shall be responsible to ensure their occupants, tenants, guests, invitees, and/or family members comply with the Governing Documents.

3.02 Voting Rights. The Association shall consist of two classes of voting Members:

- (a) **Class A.** Class "A" Members shall be all Owners, with the exception of Declarant while the Class B Membership exists. Each Class "A" Member shall have one (1) vote for each Lot which she/he owns; provided, there shall be only one (1) vote per Lot. If there is more than one (1) Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine amongst themselves and advise the Secretary of the Association in writing prior to the

close of voting. Absent such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

- (b) **Class B.** Class "B" Member shall be Declarant and shall be entitled to the sole right to vote in all Association matters until the occurrence of the earlier of the following events ("Turnover"):
- (1) Three (3) months after ninety percent (90%) of the Lots in the Property that will ultimately be operated by the Association have been conveyed to Class "A" Members.
 - (2) Such earlier date as Declarant, in its sole discretion, may determine in writing.

After Turnover, the Class "A" Members may vote to elect the members of the Board. After Turnover, Declarant shall be a Class "A" Member with respect to the Lots which it owns, and shall have all the rights and obligations of the Class "A" Members.

3.04 Change of Membership. A Member's interest in the Association (i) shall not be assigned, hypothecated, or transferred in any manner except as an appurtenant to the real property interest of such Member; and (ii) shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

3.05 General Matters. When reference is made herein, or in the Articles, Bylaws, rules and regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be referenced to a majority or specific percentage of the votes of the Members and not of the Members themselves.

ARTICLE IV **PROPERTY SUBJECT TO THIS DECLARATION**

4.01 Property Subject to Declaration. The Property is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration.

4.02 Additions to the Property.

- a. Prior to Turnover, the Declarant may, but shall not be obligated to, subject additional land to this Declaration provided only that (1) any additional land subjected to this Declaration shall be contiguous to the Property then subject to this Declaration (for purposes of this Section, property separated only by private roads, water bodies, or open space shall be deemed contiguous), and (2) the owners of property within additional lands made subject to this Declaration shall be and become subject to this Declaration. Such annexation shall become effective upon the recording, in the Public Records of Flagler-Volusia County, Florida of a Supplement to this Declaration. Declarant reserves the right to supplement this Declaration to add land to the scheme of this Declaration pursuant to the foregoing provisions without the consent or joinder of any Owner or mortgagee of land within the Property.

- b. After Turnover, the Association reserves the right, upon approval of two-thirds (2/3) of the Members, to add or cause to be added other real property, not now included within the Property, to the Property, and such additional real property shall be subject to the provisions of this Declaration. Such annexation shall become effective upon the recording, in the Public Records of Volusia Flagler County, of a Supplement to this Declaration.

4.03 Merger. Nothing in this Declaration is intended to limit or restrict in any way the Association's rights or ability to merge with any other association as the Board may feel is in the best interests of the Association and its Members. A merger or consolidation must have the approval of fifty-one percent (51%) of the Members of the Association. Upon a merger or consolidation of the Association with another association, all Common Area, rights, and obligations shall, by operation of law, be transferred to the surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association, by operation of law, may be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants established by this Declaration within the Property, together with the covenants and restrictions established by any supplement upon any other properties, as one scheme. No such merger or consolidation, however, shall cause a revocation, change, or addition to the covenants in Declaration as it pertains to the Property, except as hereinafter provided.

ARTICLE V
FUNCTIONS OF THE ASSOCIATION

- 5.01 The Association.** The Association is the entity responsible for management, maintenance, operation, and control of the Common Areas. The Association also has the primary responsibility for administering and enforcing the Governing Documents.
- 5.02 Implied Rights; Board Authority.** The Association shall have the power to do all lawful things that may be authorized, assigned, required, permitted, or inferred to be done by the Governing Documents, and to do and perform any and all acts that may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the administration of the Property. Except as otherwise specifically provided in the Governing Documents or by law, all of the Association's rights and powers may be exercised by the Board without the vote of the membership; the Members shall only have such power or rights of approval or consent as is expressly specified herein, or in the Articles or Bylaws.
- 5.03 Required Services.** In addition to those other responsibilities specified in the Articles or Bylaws, the Association shall be required to provide the following services as and when deemed necessary and appropriate by the Board and shall have easement rights necessary to perform same:
- (a) All maintenance of the Common Area, and all improvements thereon, as and when deemed necessary by the Board.
 - (b) Maintenance and care for all landscaped areas within the Common Area.
 - (c) Taking any and all actions necessary to enforce all covenants, restrictions, and easements affecting the Property and performing any of the functions or services

delegated to the Association in any covenants, conditions, or restrictions applicable to the Property, or in the Articles or Bylaws.

- (d) Adopting, publishing, and enforcing such reasonable rules and regulations as the Board deems necessary.
- (e) Conducting business of the Association, including arranging for ancillary administrative services such as legal, accounting and financial, and communication services such as notice of meetings and other important events.
- (f) Purchasing insurance as may be required hereby or by the Bylaws and any other insurance to the extent deemed necessary or desirable by the Board.

5.04 Authorized Services. The Association shall be authorized, but not required, to provide the following functions and services and shall have easement rights necessary to perform the same:

- (a) Such other services as are authorized in the Governing Documents.
- (b) Cleanup, landscaping, maintenance, dredging, water treatment, or other care of canals or other property (public or private) adjacent to or near the Property to the extent such care would, in the reasonable determination of the Board, be beneficial to the Property and to the extent that the Association has been granted the right to so care for the affected property by the owner thereof or other person(s) authorized to grant such right, including, but not limited to, any appropriate governmental authority.
- (c) Emergency repairs and other work on Lots reasonably necessary for the proper maintenance and operation of any Surface Water or Stormwater Management System.
- (d) Operate, maintain, and manage any Mitigation and/or Conservation Areas.

5.05 Actions by Association. Anything herein to the contrary notwithstanding, no general funds of the Association shall be utilized for bringing, supporting, investigating, or otherwise abetting any legal action, claim, or extra-judicial action except for (i) imposition, enforcement, and collection of Assessments, including lien rights, pursuant to Article VI hereof; (ii) collecting of debts owed to the Association; (iii) actions brought by the Association to enforce the provisions of this Declaration; and (iv) counterclaims brought by the Association in proceedings instituted against it, unless such legal action, claim, or extra-judicial action shall be specifically approved for such purposes by two-thirds (2/3) of the total votes of all Members of the Association who are voting in person or by proxy at a meeting duly called for this purpose. Nothing within this Article V, Section 5.05 shall be deemed to limit or prevent the Association from undertaking any action in defense of a legal action, claim, or extra-judicial action brought against the Association, and any such action taken in defense thereof shall not require the approval of the membership.

ARTICLE VI
COVENANT FOR MAINTENANCE ASSESSMENTS

6.01 Budgeting and Allocating Common Expenses.

- (a) At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year.
- (b) The Association is hereby authorized to levy Base Assessments equally against all Lots subject to assessment to fund the Common Expenses. The Base Assessment shall be set at a level that is reasonably expected to produce total income for the Association equal to not less than the total budgeted Common Expenses, including reserves, if any. In determining the total funds to be generated through Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association.
- (c) The Board shall send to each Owner notice that the budget has been prepared and is available for Owner review at least seven (7) days prior to the beginning of the fiscal year for which it is to be effective. Such budget shall become effective upon its adoption by the Board at a Board meeting duly noticed and called for such purpose.
- (d) If the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year, increased five percent (5%), shall continue for the current year.

6.02 Personal Obligation.

- (a) Each Owner, by accepting a deed or other written instrument purporting to transfer title to a Lot, is deemed to covenant and agree to comply with all provisions of the Governing Documents and to pay all assessments authorized in this Declaration regardless whether it shall be expressed in any such deed, written instrument, or other conveyance. All assessments, together with interest from the due date of such assessment at the maximum rate available under Florida law (to wit: currently 18% per annum), reasonable late charges in such amount as is established by resolution of the Board, costs, and reasonable attorneys' and paralegals' fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 6.06. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' and paralegals' fees, also shall be the personal obligation of the person/entity who was the Owner of such Lot at the time the assessment arose. The personal obligation of the then Owner to pay such assessments, interest, charges, costs and fees shall remain that Owner's personal obligation, and the Owner's successor(s) in title shall be jointly and severally liable therefor. In the case of co-ownership of a Lot, all of such co-Owners shall be jointly and severally liable for the entire amount of the assessment, as well as all interest, late charges, costs, and reasonable attorneys' and paralegals' fees.
- (b) Failure of the Board to fix assessment amounts or rates or to deliver or mail to each Owner as assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments.

- (c) No Owner may exempt himself or herself from liability for assessments by nonuse of Common Area, abandonment of the Owner's Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

6.03 Base Assessments.

- (a) The Board is hereby authorized to levy assessments against each Lot subject to assessment, to be used exclusively for the purpose of implementing the corporate purposes and powers of the Association, including but not limited to:
 - (1) payment of Common Expenses; and
 - (2) to perform all obligations and services that the Association is authorized and/or required to providing, including but not limited to:
 - (i) payment of taxes and insurance premiums;
 - (ii) payment of costs related to construction, repair and/or replacement of improvements, if any;
 - (iii) payment of costs to acquire labor, equipment, materials, management, and supervision necessary to carry out its authorized functions; and
 - (iv) for the payment of principal, interest, and any other charges connected with loans made to or assumed by the Association for the purpose of enabling the Association to perform its authorized or required functions.

The Owners hereby acknowledge and agree that this list is not an exhaustive list of all the items contemplated within the amount of the Base Assessments.

- (b) The Association may establish reserve funds to be held in reserve, in an interest-bearing account or investments, as a reserve for (i) major rehabilitation or major repairs to Common Area that must be replaced on a periodic basis; (ii) emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss; (iii) insurance premiums or taxes; and (iv) such other items as the Board may deem appropriate
- (c) Base Assessments shall be paid in such manner and on such dates as the Board may establish. Unless the Board otherwise provides, the Base Assessment shall

be payable in advance in monthly installments, due on the first day of each month.

- (d) As of the date hereof, the Base Assessment shall be levied in uniform amount as to all Lots that are subject to assessment. The Base Assessment may be increased each year subsequent hereto either by (i) a majority vote of the Board – without a vote of the Owners – so long as the amount of increase does not exceed five percent (5%) per year; or (ii) in excess of a five percent (5%) increase only upon approval of two-thirds (2/3) of the Owners voting in person or by proxy at a meeting duly called for such purpose.

6.04 Special Assessments.

- (a) In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including but not limited to any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Area, including the fixtures and personal property related thereto, or for any other purposes as determined by the Board.
- (b) The Association may also levy Special Assessments from time to time to balance the budget, provided that such Special Assessment to balance the budget shall be approved by a majority of the Board at a duly called Board meeting for this purpose. Notice of such Board meeting to discuss the potential levying of a Special Assessment in order to balance the budget shall be sent to the Members at least thirty (30) days in advance and shall set forth the specific purpose of the meeting.
- (c) Special Assessments 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 Special Assessment is approved.

6.06. Real Estate Taxes. In the event the Common Property is taxed separately from the Lots, the Association shall include such taxes as part of the Base Assessments. In the event the Common Property is taxed as a component of the value of the Lot owned by each Owner, it shall be the obligation of such Owner to promptly pay such taxes prior to their becoming a lien on the Property.

6.05 Individual Assessment. The Board shall have the power to levy Individual Assessments against a particular Lot or Lots constituting less than all Lots within the Property, as follows:

- (a) To cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their tenant, licensees, invitees, or guests.
- (b) The Association may also levy an Individual Assessment against any Owner responsible for damaging or destroying the Common Area.

6.06 Administrative Assessment.

- (a) In addition to estoppel fees set forth, amended and agreed to from time to time with a management company, an Administrative Assessment of TBD and changes from time to time Dollars (\$__.00) shall be due and payable upon each transfer of title to a Lot to a new owner. Such fee shall not be due upon the lease or rental of a Lot, nor upon the transfer of a Lot when transferred for nominal consideration to the Owner's spouse or children, or to a family trust.
- (b) The amount of the Administrative Assessment may be increased by five percent (5%) each five (5) years subsequent to the date of execution hereof.
- (c) Notwithstanding any other provision of this Declaration to the contrary, the Administrative Assessment shall be treated in all respects as an assessment against the Lot due from the new Owner, and may be the subject of a lien and foreclosure action in the same manner provided in this Article VI for collection of other assessments.
- (d) The Administrative Assessment shall be deemed delinquent if not received by the Association within fourteen (14) days after the date of transfer of the Lot and, if delinquent, shall be subject to interest, late fees, costs, and attorneys' fees and paralegals' fees as provided elsewhere herein this Article VI.

6.07 Non-Payment of Assessments; Lien for Assessments.

- (a) If any assessment is not paid within thirty (30) days after the date due, then such assessment shall be deemed delinquent and shall (i) bear interest – at the maximum rate allowable by law (to wit: as of the date hereof, 18% per annum) – from the date of delinquency; and (ii) shall incur reasonable late charges in such amount and frequency as is established by resolution of the Board, continuing until all such monies due and owing to the Association (including costs of collection and/or attorneys' fees and paralegals' fees incurred, whether or not legal proceedings are instituted) have been paid in full.
- (b) If the assessments against any Lot remain unpaid ninety (90) days after the date due, the Association shall, upon written notice to the delinquent Owner of such Lot, have the right to accelerate and require such delinquent Owner to immediately pay all assessments coming due against his/her Lot for the next twelve (12) months following the date of such notice. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in any of the assessments levied during the period of acceleration.
- (c) All assessments authorized in this Article VI shall constitute a lien against the Lot against which they are levied until paid. The lien shall also secure payment of interest, late charges, and cost of collection (including attorneys' and paralegals' fees, regardless whether legal proceedings are instituted). Such lien shall be superior to all other liens, except (i) the liens of all local and/or state taxes, bonds, assessments, and other levies, which by law would be superior; and (ii) the lien or charge of any first priority Institutional Lender of record made in

good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under Florida law.

- (d) The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure no right to vote shall be exercised on its behalf.

6.08 Subordination of the Lien to Mortgages; Mortgagees' Rights. The lien of the assessments provided for herein is subordinate to the lien of any purchase money mortgage given to an Institutional Lender now or hereafter placed upon a Lot recorded prior to the recording of a notice of lien pursuant to this Article VI. Provided, however, that such subordination of the lien shall (i) apply only to an Institutional Lender that acquires title to a Lot via mortgage foreclosure in which the Association has been included as a defendant from the outset of such lawsuit, or by virtue of a deed-in-lieu executed and recorded subsequent to initiation of such a mortgage foreclosure action; (ii) be contingent upon such Institutional Lender providing, to Association's approval, evidence of having been the bona fide holder of the note and mortgage of any such purchase money mortgage; and (iii) apply only to the extent of the assessments which have become due and payable prior to such Institutional Lender acquiring title via such a mortgage foreclosure action or deed-in-lieu transfer of title. Notwithstanding, such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment

An Institutional Lender holding a secured purchase money mortgage lien on a Lot, upon delivery of written request from such Institutional Lender to the Association, shall be entitled to written notification from the Association of any default of an Owner of any obligation hereunder which is not cured within sixty (60) days. The Association may provide such notice without receiving a request from the Institutional Lender without further notice to the Owner.

6.09 Exempt Property. The following properties subject to this Declaration shall be exempted from the Common Expenses, Base Assessments, Special Assessment, Individual Assessments, Administrative Assessments, any other Assessment charges, and liens created herein: (a) all properties dedicated to and accepted by a governmental body, agency or authority; and (b) all Common Property. All Lots, Property or Additional Property owned by the Developer (including, without limitation, any Lot used or leased by the Developer, and any Lots owned by a builder constructing a Residence thereon for sale to third parties, or used by the Developer or a builder as a model home, construction facility, or other use) shall be exempt from payment of Assessments for so long as Developer funds any deficit in the annual budget. Developer shall fund such expenses only as they are actually incurred by the Association during the period that Developer is funding the deficit. A deficit shall have occurred if in any fiscal year of the Association the expenses of the Association exceed the Assessments plus other income receivable by the Association. Developer's obligation to fund any deficits shall terminate at such time as Developer, in its sole discretion, elects to pay the Assessment for each Lot owned by it which has been subjected to the Declaration, or after Turnover, whichever shall first occur. Developer may, but is not obligated to, assign this exemption right to any entity it may determine, including without limitation any builder owning Lots solely for the purpose of constructing Residences intended to be sold to ultimate purchasers. Any such

assignment of Developer's exemption shall have no effect on Developer's exemption hereunder.

- 6.10 Expenses.** Notwithstanding the foregoing, in the event the Association incurs any expense not ordinarily anticipated in the day-to-day management and operation of the Property, including but not limited to expenses incurred in connection with lawsuits against the Association or in connection with damage to property, or injury or death to any person, which are not covered by insurance proceeds, the liability of Developer for such expenses shall not exceed the amount that it would be required to pay if it was liable for Assessments for common expenses as any other Owner, and any excess amounts payable by the Association shall be assessed to the other Owners

6.11 Capital Contribution. In addition to all other obligations and assessments outlined in this Declaration, each Owner, by accepting a deed or other written instrument purporting to transfer title to a Lot, agrees pay a non-refundable contribution to the capital of the Association in an amount equal to two (2) years of the then current year's Base Assessment ("Capital Contribution Transfer Fee"). The Capital Contribution Transfer Fee shall be shown on any estoppel certificate issued by or on behalf of the Association in connection with the conveyance of the Lot, shall be nonrefundable and in addition to, and not in lieu of, all other assessments levied on the Lot. Further, the Capital Contribution Fee shall not be considered an advance payment of any portion of Assessments and may be used for any of the purposes and services set forth in this Declaration, including the reduction of the Declarant's deficit funding. The Capital Contribution Transfer Fee shall be due and payable at closing of the sale of each Lot. Notwithstanding the foregoing, the Declarant and/or any of its affiliate builder entities shall not be subject to payment of the Capital Contribution Transfer Fee.

ARTICLE VII **ARCHITECTURAL CONTROL**

- 7.01 Purpose.** The purpose of the Association's architectural control is to enforce the architectural standards of the Association and to approve or disapprove plans for improvements proposed within the Property and to control to exterior appearance of each residence to blend and remain in compliance according to the standards set forth by the developer and maintain such standards throughout the life of the community and as further set forth herein.
- 7.02 Applicability.** All real property within the Property is subject to architectural review and control by the Association as set forth in this Article VII. The ASSOCIATION shall perform architectural review, approval, and enforcement of such rights within the scope of this Article VII and pursuant to any further design guidelines promulgated by the Association. The Declarant and affiliates shall be exempt from submittal of application and deemed pre-approved so long as all restrictions and covenants are followed, and anything constructed does not change the overall theme of the community. Declarant and

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affiliates shall submit a site plan for all homesites upon permitting for recordkeeping and reference only

- 7.03 Approval Requirement.** No site work, landscaping (excluding flowers and shrubs), utility installation or extension, drainage improvement, paving, driveway, swimming pool, pool enclosure, building, fence, wall, sidewalk, dock, lighting, equipment, or any other physical or structural improvement in the Property, nor any exterior alteration or addition to any of the foregoing, or any alteration of color or feature that changes overall look of the exterior, as deemed by the ARC or the Board, shall be permitted, commenced, erected, or maintained until the Association has received, reviewed, and provided written approval of the plans thereof in accordance with this Article VII.
- 7.04 Submissions.** A complete set of such plans and specifications, including a clear and legible site plan showing the nature, kind, shape, height, color, materials, and location of a proposed alteration of a Lot shall be submitted to the ARC. Manufacturer or sample may be required at the discretion of the ARC. ARC required submittals are subject to change from time to time.
- 7.05 Architectural Review.** Any proposed alteration of a Lot shall be subject to the Association's review, through its Architectural Review Board ("ARC").
- (a) The ARC shall consist of at least three (3) but not more than five (5) persons, all of whom shall be appointed by the Board for a term of one (1) year. At least one (1) member of the ARC shall be a Director of the Association.
 - (b) Notwithstanding the term of each ARC member, the ARC shall serve at the Board's sole discretion, and the Board shall have the right and authority to remove any member of the ARC with or without cause at any point during such term.
 - (c) If additional expertise is required for the ARC to review a particular application, the ARC may, with the prior written approval of the Board and concurrence of the Owner that submitted an alteration request, retain architects, engineers and/or other professionals to assist in the review of such application. The Association may charge the Owner any fee incurred for such assistance.
 - (d) The ARC may consider (but shall not be restricted to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plan life, compliance with the general intent of this Declaration and design guidelines, if any, quality of workmanship, and architectural merit. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. _____
 - (e) The ARC shall, within thirty (30) days after receipt of an Owner's submission for requested alteration, provide written notice to such Owner, at an address specified by such Owner at the time of submission, of the approval, disapproval, or conditional disapproval (specifying the segments or features which are

objectionable and suggestions, if any, for the curing of such objections) thereof. ~~In order to consider such application approved by the ARC, each page of both sets of the plans must bear the ARC's stamp of approval.~~ In the event the ARC fails to timely provide the written notice to an Owner, the Owner must give the ARC written notice of such failure to respond, stating that unless the ARC responds within twenty-one (21) days of receipt of such notice, approval shall be deemed granted. Upon such further failure by the ARC, approval shall be deemed to have been given. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with this Declaration and/or any design guidelines, unless a variance has been granted in writing pursuant to Article VII, Section 7.09 herein. Notice shall be deemed to have been given (i) if by mail, at the time the envelope containing such notice, property addressed, and postage prepaid, is deposited with the U.S. Postal Service; or (ii) if by personal service, at the time of delivery. Requirements of submittal for ARC consideration include the proper application to be obtained by the Association Management as well as all other requirements as written and according to the rules of the application and Management such as site plan showing location of any improvements, color choices, floorplans, etc. Management and the ARC has the right to change submittal requirements without notice.

7.06 Design Guidelines. The Association may establish design and construction guidelines (“Design Guidelines”) to provide guidance to Owners in considering any alteration to an Owner’s Lot.

1. All single-family garages shall be designed with adequate space to park at least two standard size vehicles; and be a minimum of 1,500 sq. ft. in living area
2. The Association may adopt rules and regulations that may change from time to time that may contain design guidelines to be applied
3. Any owner who submits for ARC approval must ensure that all work is covered under any permit that may be required by the applicable governmental agency.

The ARC shall ensure approvals are in compliance with the above standards including additional standards that may be added from time to time.

- (b) The Design Guidelines, if any, shall not be the exclusive basis for decisions under Article VII, and compliance with the Design Guidelines shall not guarantee approval of the ARC. Any such Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions that vary from one portion of the Property to another depending upon the location, type of construction or use and unique characteristics of the property.

- (b) The Design Guidelines shall be subject to amendment from time to time in the sole discretion of the Board. Amendments to the Design Guidelines shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; amendments may remove requirements previously imposed or otherwise make the Design Guidelines more or less restrictive in whole or in part. To clarify, in the event approval was granted to or no action was taken on a restriction, requirement or appearance of a previous project or property, it does not automatically grant approval of the restriction, requirement or appearance of a previous project or property currently being considered.

- 7.07 Commencement and Completion of Approved Work.** With the exception of the declarant, if, within Ninety (90) days of approval, the Owner does not commence the approved work, such approval shall be deemed withdrawn and it shall be necessary for the Owner to resubmit a request to the ARC in accordance with such Design Guidelines as are then in effect prior to commencing such work. All work shall be completed within six (6) months of commencement or such other period as may be specified in the notice of approval, unless completion is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the ARC.
- 7.08 No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this Article VII will change from time to time and that decisions regarding aesthetic matters and interpretation and application of the Design Guidelines, if any, to identify objectionable features of proposed work until the work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the ARC may refuse to approve similar proposals in the future. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval.
- 7.09 Variances.** The Board may, but shall not be required to, authorize variances from compliance with any of the provisions of the Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, or when architectural merit warrants such variance, as it may determine in its sole discretion. Such variances shall be granted only when, in the sole judgment of the Board, unique circumstances exist; no Owner shall have any right to demand or obtain a variance. No variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or (c) estop the ARC and/or the Board, as applicable, from denying a variance in other circumstances.
- 7.10 Limitation of Liability.** The standards and procedures established by this Article VII are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property but shall not create any duty on any person charged with review of the same. Neither the Association, nor the Board, nor the ARC shall bear any responsibility for ensuring structural integrity or soundness; compliance with building codes and other governmental requirements; or ensuring that structures on Lots are located so as to avoid impairing views or other negative impact on neighboring Lots. No representation is made that all structures and improvements constructed within the Property are or will be of comparable quality, value, size, or design. Neither the Association, the Board, the ARC,

nor any member of any of the foregoing shall be held liable for soil conditions, drainage problems, or other general site work, nor for defects in any plans or specifications submitted, nor for any structural or other defects in work done according to approved plans, nor for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modifications to any Lots. It is assumed that permits will be obtained when required by local jurisdiction. The approval by the ARC of any project is not meant to override or supercede any building codes and other governmental requirements such as setbacks, easements, etc

7.11 Enforcement.

- (a) Any work performed in violation of this Article VII or in a manner inconsistent with an approved request to the ARC shall be deemed to be nonconforming. Upon written request from the Association, an Owner shall, within thirty (30) days of receipt thereof, remove any nonconforming structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work, all at such Owner's own cost and expense. Should an Owner fail to remove and restore as required, the Board or its agents shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. Upon demand, the Owner shall reimburse all costs incurred by the Association in exercising its rights under this Section.
- (b) The Association may preclude any contractor, subcontractor, agent, employee or other invitee of an Owner that fails to comply with the terms and provisions of this Declaration and the Design Guidelines, if any, from continuing or performing any further activities in the Property. Neither the Association, nor its officers, directors, agents shall be held liable to any person for exercising the rights granted by this paragraph.
- (c) In addition to the forgoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article VII and the decisions of the reviewing entities under this Article VII.
- (d) The Board may adopt procedures and timelines for enforcement at any time.

ARTICLE VIII
UTILITIES

- 8.01 Water System.** The central water system which is operated and maintained by the City provides for water service to the Property and shall be used as the sole source of potable water for all water spigots and outlets located within or on all buildings and improvements located on each Lot. Each Owner shall pay water meter charges established or approved by the supplier thereof, and shall maintain and repair all portions of such water lines located within the boundaries of his Lot. No individual water supply system or well for consumptive purposes shall be permitted on any Lot.

8.02 Sewage System. The central sewage system which is operated and maintained by the City provides for service to the Property and shall be used as the sole sewage system for each Lot. Each Owner shall maintain and repair all portions of such sewer improvements and lines located within the boundaries of his Lot, and shall pay when due the periodic charges or rates for the furnishing of such sewage collection and disposal services made by the operator thereof. No sewage shall be discharged into the open ground or in to any marsh, lake, pond, park, ravine, drainage ditch, canal or roadway.

8.03 Reclaimed Water System. If required by the City, Developer may install lines within the Property to carry reclaimed water to be utilized by the Owners for irrigation of their Lots and by the Association for irrigation of Common Property. The City may require Owners to utilize the reclaimed water system.

ARTICLE VIII **USE RESTRICTIONS**

9.01 Framework for Regulation. This Declaration has been drafted as part of a general plan for the Property in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Property, and vitality of and sense of community within the Property, all subject to the Board's ability to respond to changes in circumstances, conditions, needs and desires within the community.

- (a) The Property is subject to the land development, architectural, and design provisions described herein; the other provisions of this Declaration governing individual conduct and uses of or actions upon the Property; and the guidelines, rules, and restrictions promulgated pursuant to the Governing Documents, all of which establish affirmative and negative covenants, easements and restrictions on the Property.
- (b) The Board may adopt rules that further define the Use Restrictions ("Rules and Regulations"), which shall become effective upon the Board's adoption thereof. The Board shall publish notice of the proposed action by either mailing to each Member at each Member's last known mailing address, in a community newsletter, electronic bulletin board, or by other means which the Board determines will be reasonably effective in disseminating such notice on a community-wide basis, at least fourteen (14) days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

9.02 Acknowledgement and Notice to Purchasers. All Owners and occupants of Lots are given notice that use of the Lots is limited to the Use Restrictions and the Rules and Regulations, if any, as they may be changed from time to time in accordance with this Declaration. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by this provision and that the Use Restrictions and/or Rules and Regulations may change from time to time.

9.03 Violation. If any Owner, the Board, or any other Person shall violate or attempt to violate any of the covenants herein, it shall be lawful for the Association or any person(s) owning real estate subject to these covenants to bring any proceeding at law or in equity against the Person(s) violating or attempting to violate any such covenants, including action to enjoin or prevent such Person(s) from so doing, or to cause the Person(s)

violating such covenants to immediately cease and desist and to correct any existing violation. The party or parties prevailing in any such action shall be entitled to recover such party's or parties' the costs incurred, including reasonable attorneys' fees and costs, whether or not litigation is commenced, and through all appellate levels.

9.04 Use Restrictions. The following restrictions shall apply to all the Property until such time as they are amended, modified, repealed, or limited by rules of the Association adopted pursuant to this Article VIII of this Declaration.

- (a) **Residential Use.** Except as otherwise provided herein, all Lots shall be improved and used solely for single-family residential use. No gainful occupation, profession, trade, or other commercial activity shall be conducted on any Lot. Notwithstanding the foregoing prohibition, upon prior written approval of the Board (which approval may be withheld in the Board's sole and unfettered discretion), Lots may also be used for certain designated home occupations provided (i) they are in accordance with applicable local government ordinances and other legal requirements for home occupations in residential districts, and (ii) they do not generate any pedestrian or vehicular traffic to or from the Lot in excess of that which would customarily be generated by a single-family residential use that does not include a home business. Owners shall be permitted to lease their Dwelling, provided that such lease shall require the tenant thereunder to comply with the Governing Documents and the terms and conditions of this Declaration. For purposes of this Declaration, the term "Short-Term Vacation Rentals" shall mean and refer to the leasing or rental of any Dwelling or Lot to a person or entity for a period of less than twelve (12) consecutive months. Short Term Vacation Rentals may be permitted in accordance with the rules implemented by the Association. If an Owner intending to lease or rent a Dwelling is delinquent in the payment of Assessments, the Association shall be entitled, but not required, to prohibit the Owner from renting or leasing the Dwelling until such delinquency is made current. From time to time, the Association may reserve the right to approve of any form of lease that an Owner provides, or otherwise require inclusion in a lease of certain provisions that the Association may deem necessary or appropriate to assure the tenant's compliance with all the terms and provisions of the Governing Documents. The Association may charge a reasonable administrative fee not to exceed One Hundred and No/100 Dollars (\$100.00) for the required review of any lease or rental agreement, or other such amount as permitted by law from time to time. Dwellings shall be leased in their entirety, and no individual rooms may be leased.
- (b) **Timeshares Prohibited.** Operation of any timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years shall be prohibited.
- (c) **Common Area.**

- (1) No damage to, or waste of, the Common Area or any part thereof, or of the exterior of any building thereon shall be committed by any Owner, or such Owner's family members, tenants, guests, invitees, or licensees; and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from any such damage or waste caused by such Owner and/or Owner's family members, tenants, guests, invitees, or licensees, to the Association or other Owners.
 - (2) Nothing shall be stored or constructed within or upon, nor shall anything be removed from, the Common Area except by the Association.
 - (3) No activities constituting a nuisance shall be conducted upon any Common Area.
 - (4) No rubbish, trash, garbage, or other discarded items shall be placed or allowed to remain upon any Common Area.
 - (5) All capital improvements to the Common Area, save and except (i) maintenance, repair, or replacement of those items originally installed by Declarant; and (ii) personal property of the Association related to the maintenance, repair, or replacement of Common Area, shall require the approval of two-thirds (2/3) of the total votes of all Members who are voting in person, or by proxy, at a meeting duly called for this purpose, unless such capital improvement is required by any applicable Federal, State, or local law or ordinance, or by the District.
- (d) **Construction Standards.**
- (1) **Exterior Materials.** Exterior elevations shall be comprised of natural materials, to wit: cypress, cedar, redwood, or other durable wood types; stone; and/or natural brick. Stucco for all exterior elevations is acceptable; exposed block will not be allowed.
 - (2) **Roofs.** Flat roofs shall not be permitted on areas other than Florida rooms, porches, or patios, unless specifically approved by the Board or the ARC. Built-up roofs are not permitted on pitched surfaces. The pitch must be at least 6/12 unless otherwise approved by the Board or the ARC. Mansard roofs are not permitted unless approved by the Board or the ARC.
 - (3) **Landscaping.** All yards must be sodded with St Augustine breed of sod or landscaped in disturbed areas- All yard must be prepared and maintained with irrigation to cover all areas directly in front of the Lot to the street and directly behind the lot to the waters edge in the event there is a water body with open space behind the lot. All Owners must maintain that portion of the lot directly behind their lot to the waters edge where applicable. All Owners must also maintain that area between the sidewalk and the street in front of their lot where applicable. Vegetable gardens may only be installed in the rear of a Dwelling. The use of Florida-friendly landscaping may be instituted upon ARC approval

thereof. White gravel, shells, and other similar light-colored materials are prohibited for use as groundcover.

- (e) **Laundry Drying/Hanging.** The outside drying or hanging of laundry shall not be permitted anywhere on the Property unless the same shall be placed in the rear yard of a Lot such that it is not visible from the front of such Lot. Any pole, line, or other device used for hanging laundry (in conformance to the requirements herein) shall be portable and shall be removed when not in use.
- (f) **Antennae, Aerials, Discs.**
 - (1) There shall be no exterior radio, antenna, antenna poles, antenna masts, citizen band (CB), amateur band (HAM), or other antenna or device for sending or receiving electromagnetic signals, erected or maintained on the Property without the prior written approval of the ARC. Any such ARC-approved antenna or device shall be located on a Lot such that it cannot be seen from any street and is shielded from view from any adjoining Lot.
 - (2) Satellite television reception devices will be permitted without ARC approval; provided, however, that any such devices shall be mounted in the rear yard or side of the Dwelling, except when such locations prevent adequate signal reception. All installations must be mounted with wires and installation hardware attached neatly and in a professional manner with no exposed hanging wires visible.
 - (3) If, in the Board's determination, use of any such antenna or device is interfering with the electronic reception of any other Lot, then the Board may require the immediate discontinuation of use and removal of such antenna and/or device.
- (g) **Flags.** Any Owner may display, in a respectful manner.
 - (1) one portable, removable United States Flag or official Flag of the State of Florida that is not larger than 4 1/2 feet by 6 feet;
 - (2) one portable, removable official Flag that represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. Such additional flag shall be equal to or smaller than the United States Flag.
- (h) **Flagpoles.** Any Owner may erect one freestanding flagpole no more than twenty feet (20') in height on any portion of the Owner's Lot, provided that the flagpole does not obstruct sightlines at intersections and is not erected within or upon any easement. An Owner may display any of the flags described in Article VIII, Section 9.04(g) above without ARC approval, provided that such flags are in strict conformance to the requirements of Section 9.04(g). No other flag may be displayed from such flagpole without the prior written approval of the ARC.

- (i) **Games and Play Structures.** All attached or permanent game and play structures, shall receive prior approval of the ARC. Basketball hoops and structures must be portable and stored while not in use. Basketball hoops and other portable play equipment must be stored out of view from any adjoining Lot or street when not in use.
- (j) **Subdivision or Partition.** No portion of the Property shall be subdivided, replatted, or separated into smaller Lots by any Owner. Provided however, this restriction shall not prohibit corrective deeds or similar corrective instruments. Developer shall have the right to reconfigure Lots or modify subdivision plats of the Property if Developer owns all the Lots within the legal description of the Property to be subjected to the replat, or if all Owners of Lots which are included within the portion of the plat so modified consent to such modification, which consent shall not be unreasonably withheld or delayed. Further, Developer may re-subdivide lots to be used for streets.
- (k) **Casualty Destruction to Improvements.** In the event an improvement is damaged or destroyed by casualty, hazard, or other loss, the Owner thereof shall promptly rebuild or repair the damaged improvements in accordance with the original architectural plans and specifications, including any ARC-approved alterations thereto, and diligently continue such rebuilding or repairing activities to completion.
- (l) **Surface Water or Stormwater Management System(s).**
 - (1) “Surface Water or Stormwater Management System” means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.
 - (2) The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or, if modified, as approved by the St. Johns River Water Management District.
 - (3) Assessments shall also be used for the maintenance and repair of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage easements.
 - (4) The Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the

Association shall have the right to enter upon any portion of any lot which is a part of the surface water or stormwater management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

- (5) Any amendment to the Covenants and Restrictions which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.
 - (6) The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Covenants and Restrictions which relate to the maintenance, operation and repair of the surface water or stormwater management system.
- (m) **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept within the Property other than common household pets. Under no circumstances shall any commercial or business enterprises involving the use, care, breeding, raising, keeping, or treatment of animals be conducted on the Property. All pets shall be kept on a leash when not on the pet owner's Lot and no pet shall be allowed to roam unattended. No pet shall be permitted to place or have excretion on any portion of the Property other than the Lot of the owner of the pet, unless such pet owner physically removes any such excretion(s) from that portion of the Property. The Association may, from time to time, publish, and impose reasonable regulations setting forth the type and number of animals that may be kept on the Property. Any pet that the Board in its sole discretion determines to be a nuisance or a menace shall be permanently removed from the Lot upon request of the Board.
- (n) **Signs.** No sign of any kind shall be displayed to the public view on any Lot, or mounted to or in any vehicle parked or operated within the Property, without the prior written consent of the ARC, except that:
- (1) "For Sale" sign that is no larger than four square feet (4 sq. ft.) may be erected or displayed to the public view on any Lot;
 - (2) One sign, which is no larger than one square foot (1 sq. ft.), that indicates the name of the resident or realtor involved in selling a Lot may be erected or displayed to the public view on any Lot;
 - (3) A reasonable number of political signs; provided, however, that (i) no such sign exceeds four square feet (4 sq. ft.) and (ii) all such signs are

removed within forty-eight hours after the election for which such sign(s) was placed; and

- (4) With the exception of the Declarant, each Lot may display only one sign per entrance, within ten feet of any entrance to the Dwelling thereon, not more than one square foot, provided by a contractor for security services indicating the use of such services by the Owner of the Dwelling thereof. This rule does not apply to the Declarant and its Assigns who may display signs or banners to be used for sales marketing purposes.

- (o) **Trash and Garbage.** No refuse, rubbish, garbage, or trash shall be dumped, deposited, placed, or allowed to accumulate on any adjoining Lot or any other portion of the Property except in covered or sealed containers. All such garbage and trash containers shall, at all times except on the night before regularly scheduled garbage and trash pick-up days, be stored within a walled-in or landscaped area such that the container(s) are not visible from any adjoining Lot or from any street. All trash containers shall be kept and maintained in a clean condition with no noxious or offensive odors emanating therefrom.

- (p) **Storage Tanks.** Except for propane tanks attached to portable grills, no storage tanks, including but not limited to, those for oil, propane gas or other liquid, fuels or chemicals, including those used for swimming pools or the like, shall be permitted outside of a Dwelling unless the same is approved by the ARC and shall be underground or placed inside of or behind opaque walls, landscaping screens, or similar type enclosures approved by the ARC. In no event shall any of the same be visible from any adjoining Lot or adjacent street(s).

- (q) **Vehicles and Recreational Equipment.** Commercial Vehicles, Recreational Vehicles, Ancillary Vehicles, or any inoperable Passenger Vehicles (which shall include a Passenger Vehicle that is not properly licensed and/or registered to be operated on the public streets of Florida), shall not be parked, kept or stored anywhere on the Property, except as expressly authorized by, or pursuant to, this Declaration. Such vehicles however, may be parked, kept, or stored within the Property if within an enclosed garage. Notwithstanding the foregoing, a vehicle that may be deemed a commercial vehicle merely because of the presence of commercial lettering and/or logos on the exterior thereof may be parked, kept, or stored in the same manner as a Passenger Vehicle.
 - (1) All vehicles, including the operation thereof, within the Property shall comply with all applicable state and local laws and ordinances.
 - (2) No vehicle may be parked overnight in the Common Area.
 - (3) No vehicle may be parked overnight on any street(s) within the Property, unless it is parked in designated on-street parking areas.
 - (4) No Commercial Vehicles, Recreational Vehicles, Ancillary Vehicles, or inoperable Passenger Vehicles shall be permitted to be parked or to be stored at any place on any portion of the Property unless parked within a

garage, or are located on a Lot so that such vehicle(s) cannot be seen from any street and shielded from view from any adjoining Lot. Notwithstanding the prohibitions of this Section 9.04(r)(4), an Owner may store boats and boat trailers on such Owner's Lot as long as the same is parked, kept, or stored in the rear portion of the Lot furthest from the front of such Lot.

- (6) Notwithstanding anything contained herein to the contrary, this Article VIII, Section 9.04(r) shall not be deemed to prohibit (i) the occasional parking of Commercial Vehicles, Recreational Vehicles, or Ancillary Vehicles, being used as transportation by guests, the duration and frequency of which may be regulated by the Rules and Regulations (in no event shall there be any overnight camping or other residential use of a Recreational Vehicle on the Property); (ii) temporary parking of a Commercial Vehicle carrying out the business or service provided to a Lot, such as making deliveries or service calls, or for temporary loading or unloading; (iii) temporary parking of a Recreational Vehicle for loading or unloading, or temporary parking of a Recreational Vehicle of a guest if approved by the Board, or as may be allowed by the Rules and Regulations (in no event to exceed twenty-four hours); or (iv) such parking, storage or use by an occupant of such specified Ancillary Vehicles as may be expressly permitted by the Rules and Regulations, or expressly authorized in advance by the Board.
- (7) Recognizing that the design and use of a vehicle evolves over time, and that on occasion it may be difficult to determine whether a specific vehicle falls into one classification or another, it is the intent of this Article VIII, Section 9.04(r) that vehicles of a customary size, the purpose and use of which is predominantly for personal transportation, shall be deemed a Passenger Vehicle, and vehicles classified as Commercial Vehicles are those which by virtue of design, size, nature, use, or appearance are such as to most nearly fall within the Commercial Vehicle classification, the open parking of which within the Property would tend to degrade the appearance and values of the Property and Units. The Board shall have the authority to adopt and amend standards of interpretation of this Section 9.04(r) as well as the definitions of each of Ancillary Vehicles, Commercial Vehicles, Passenger Vehicles, and Recreational Vehicles – as part of the Rules and Regulations, providing in more detail for the delineation of different vehicles and vehicle types, including further determination of which classification of vehicle is applicable to a specific vehicle. In making such determinations, the Board may consider the general appearance and condition of the vehicle in question. Where any specific vehicle is not clearly and unambiguously addressed by this Section 9.04(r), or by the Rules and Regulations, the Board may determine the restrictions applicable thereto. All such determinations and standards adopted by the Board shall be conclusive for all purposes, and binding on all Owners, occupants, tenants and/or guests.
- (8) Any such vehicle or recreational equipment parked in violation of these or other regulations contained herein, or in the Rules and Regulations

adopted by the Association, may be towed by the Association at the sole risk and expense of the owner of such vehicle or recreational equipment if it remains in violation for (i) a period of twenty-four (24) consecutive hours; or (ii) forty eight (48) non-consecutive hours within any seven (7) day period. The Association shall not be liable to the owner of such vehicle or recreational equipment for trespass, conversion, or otherwise, nor guilty of any criminal act by reason of such towing. Neither the removal of a vehicle or recreational equipment, nor the failure of the owner thereof to receive any notice of said violation, shall be grounds for relief of any kind.

- (r) **Vehicle Repairs.** Maintenance and repairs to vehicles must be completed within an enclosed garage or otherwise shielded from view of other Lots.
- (s) **Temporary Buildings/Structures.** No structure or building of a temporary and/or portable nature or character, including but not limited to, a trailer, tent, shack, shed, barn, tree house, or other outbuilding or accessory building, shall be erected, installed, placed, or permitted to remain on any portion of the Property.
- (t) **Nuisance.** No obnoxious, unpleasant, unsightly, or offensive activity or condition shall be carried on, done, or suffered on any Lot that can be reasonably construed to constitute a nuisance, whether public or private in nature. Any questions with regard to the interpretation of whether an activity and/or condition is a nuisance shall be decided by the Board, in its sole discretion, whose decision shall be final.
- (u) **Mining.** Without the prior written consent of the Association, no portion of the Property shall be used for the purpose of boring, mining, quarrying, exploring for, or removing oil or other hydrocarbons, minerals, gravel, or earth.
- (v) **Shutters; Awnings.** No Owner shall install any shutters (including hurricane shutters), awnings, or other decorative trim to the exterior of a Dwelling unless (i) the same are of a type approved by the Association; and (ii) the Owner has obtained the prior written consent of the ARC for the installation thereof. Hurricane shutters shall be approved by the ARC only if the shutters are removable or enclosed in a box at the top of the opening shield from view and painted to match the home. No accordion type shutters shall be approved.
- (w) **Fences/Walls.** No wall or fence may be erected on a Lot without the prior written consent of the ARC, which consent may be determined on a case by case basis or be mandated, approved and enforced by rules and regulations adopted and modified from time to time. No fences, buildings or other improvements shall be erected on lots or Common Areas without permits as required by the City or any appropriate governmental agency.
- (x) **Lighting.** No exterior lighting fixtures for flood lights and/or spot lights shall be installed on any Dwelling or Lot without adequate and proper shielding of fixtures and without prior written approval of the ARC.
- (y) **Swimming Pools.** Any swimming pool, screening, or fencing related thereto to be constructed on any Lot shall be subject to the approval and requirements of the ARC. Above-ground swimming pools shall not be permitted.

- (z) **Trees.** Tree removal and replacement on any Lot shall be done in a manner consistent with the requirements of the City of Palm Coast Land Development Code, as amended.

9.05 Other Restrictions Established by the Association. The Association shall have the right and authority, as hereinabove expressed, from time to time to include within its promulgated residential planning criteria other restrictions as it shall deem appropriate. Said restrictions shall be governed in accordance with the criteria hereinabove set forth for residential planning criteria promulgated by the Association. However, once the Association promulgates certain restrictions, same shall become as binding and shall be given the same force and effect as the restrictions set forth herein until the Association modifies, changes, or promulgates new restrictions set forth by the Association.

The Association may adopt rules and regulations that may conflict with the uses and restrictions contained in this document. In the event of a conflict, the adopted rules and regulations of this Declaration that are in effect at that time shall supersede and take priority unless mandated as part of the Planned Development agreement adopted by ordinance by the City of Palm Coast, Florida.

In the event of Dissolution of the Association, or failure by the Association to observe the terms of this Declaration with respect maintenance of the development improvements, if required by the City, a special taxing district or other entity acceptable to the City will be formed to assume the maintenance responsibility of the development improvements. In the event a special taxing district is formed, the Owners will be subject to assessments for the costs of services performed within the Property. Each Owner agrees to pay each and every assessment imposed upon the Owner's land in a timely manner, failing to pay such assessment shall result in a lien upon the Owner's land.

9.06 Property Maintenance. Each Owner shall maintain such Owner's Lot, including the vegetation, landscaping, and all improvements thereon in good repair and in a neat and attractive condition.

- (a) The minimum, but not exclusive, standard for maintenance of improvements shall be consistent with the approved plans and specifications for those improvements and with the general appearance of the other Lots in the Property as a whole. The maintenance obligation of each Owner as to building improvements shall include, without limitation, maintenance of all exterior surfaces and roofs, facias and soffits, awnings, trellises, decorative facades, screens, windows, and doors. Owners shall clean, repaint or restrain, as appropriate, the exterior portions of the building improvements (with the same colors as initially approved or with other colors upon ARC approval), including exterior surfaces of garage doors, as often as is necessary to comply with the foregoing standards.
- (b) Each Owner shall also keep, maintain, and irrigate the trees, shrubbery, grass, and other landscape and vegetative material on such Owner's Lot in good repair and in a neat and attractive condition. Care must be exercised in the landscaping and in planting and maintenance of trees and shrubs in order to prevent drainage problems, encroachment on neighbors, or obstruction of sight lines required for vehicular traffic. The minimum, but not exclusive, standard for maintenance of

landscaping shall be consistency with the approval plans and specifications for those improvements and with the general appearance of the other Lots in the Property as a whole when initially landscaped. Landscape maintenance shall include, without limitation, irrigation, fertilization, weeding, mowing, trimming, spraying for insects and disease, and periodic replacement of dead, damaged, or diseased plantings.

- (c) In the event an Owner of any Lot shall fail to maintain the premises and improvements situated thereon in a manner satisfactory to the Association, including, but not limited to, landscaping, grass, and shrubbery, the Owner shall be notified and given thirty (30) days within which to correct or abate the situation. If the Owner fails to timely correct or abate such failure to maintain, the Association shall have the right, but not the obligation, to enter upon the Lot for the purpose of repairing, maintaining, and/or restoring the Lot and the exterior of the Dwelling thereon, and any other improvements on such Lot, at the sole cost of the Owner of such Lot, levied as an Individual Assessment against such Lot.
- (d) Each Owner is responsible to maintain that portion of the sidewalk that is in their front yard.

9.07 Association Waiver. In the event that a violation of any of these restrictions shall inadvertently occur, which violation shall not be of such nature to defeat the intent and purpose of these covenants, the Association shall, in its sole discretion, have the right and authority to waive such violation.

ARTICLE X **DEVELOPMENT APPROVALS**

- 10.01 In General.** The Gables at Town Center is a development within the City limits of the City of Palm Coast in ~~Volusia~~ ~~Flagler~~ County intended to be developed in multiple phases in accordance with the permits and approvals issued by the City, County and governmental agencies (“Development Approvals”) which govern its overall development.
- 10.02 Scope and Affect.** No portion of the Property shall be used for any purpose or in any manner inconsistent with the Development Approvals. Any violation of the Development Approvals shall be a violation hereof and the Developer shall have the right to enforce the provision hereof regarding the Development Approvals against any person in violation thereof. That notwithstanding, no provision this Declaration is intended to impose any requirement on Developer or to enlarge the scope of any provision of the Development Approvals or create any right in any person to enforce the provisions of the Development Approvals accept as may be specifically provided herein or otherwise created by applicable law.
- 10.03 Dedication of Lands.** Developer hereby reserves the right, in addition to any other right reserved by the Developer anywhere herein, to dedicate or cause the Association to dedicate any portion of the Property to an appropriate governmental or quasi-

governmental agency for such purposes as may be provided by the Development Approvals. That notwithstanding, the provisions of this Article are not intended to require, declare, dedicate or to cause the Association to dedicate any portion of the Property to any governmental or quasi-governmental agency, except as the Developer deems appropriate.

- 10.04 Changes to Development Approvals.** Developer reserves the absolute right, power and authority, in addition to any other right reserved by the Developer herein, to inaugurate and implement any variations from, modifications to, or amendments of the Development Approvals in any manner and for any purpose Developer deems appropriate for the development of the Property or the Additional Property. Further, no other person shall have the right to inaugurate or implement any such variations, modifications or amendments of the Development Approvals without the prior written consent of the Developer.
- 10.05 Responsibilities Under the Development Approvals.** Developer hereby reserves the right to the extent permitted by the Development Approvals to delegate or to contract concerning any or all of its responsibilities thereunder, including without limitation, maintenance of Common Property and monitoring of environmental or other conditions to or with the Association or any other person, exclusively or non-exclusively, and on a permanent or temporary basis, which delegation may be subject to such terms and conditions as may be acceptable to Developer. Developer shall have the right, at any time, to terminate such delegation and perform such functions itself or delegate the same to another person. The Association, or any other person having responsibilities regarding any portion of the Property which arise directly under the Development Approvals by delegation from another person having such responsibilities shall cooperate fully with each other and all persons having responsibilities under the Development Approvals to ensure such responsibilities are carried out to the full extent required thereunder. Further, Developer and the Association shall have the right, but not the obligation, to perform any functions required of any person by delegation or directly under the Development Approvals upon such person's failure to properly perform such functions.
- 10.06 Developer Rights.** The Developer hereby reserves for itself, its successors and assigns, and all such builders as Developer may from time to time designate, the right to undertake any and all such activities as are necessary or convenient to develop the Property in any manner permitted pursuant to the Development Approvals, including without limitation, the right to construct improvements within the Property, to sell and market homes within the Property (including the right to install and operate sales trailers) and to engage in any and all activities in connection therewith.

ARTICLE XI **COMPLIANCE AND ENFORCEMENT**

- 11.01 Compliance With Documents.** Each Owner, and such Owner's family members, guests, licensees, invitees, tenants, and all occupants or residents of a Lot, shall be bound and abide by the Governing Documents. The conduct of any and all of the foregoing Persons shall be considered to be the conduct of the Owner responsible for, or connected in any manner therewith, such individual's presence within the Property. Such Owner shall be liable to the Association for the cost of any maintenance, repair, or replacement of any real or personal property rendered necessary by her/his act, neglect, or carelessness, or by

that of any other of the foregoing parties, which shall be levied as an Individual Assessment against such Owner's Lot. Failure of an Owner to notify any Person of the existence of the Governing Documents, or any provision thereof, shall not in any way act to limit or divest the right to enforcement of the Governing Documents against the Owner or such other Person.

11.02 Enforcement. In the event of an Owner, or such Owner's family members, guests, licensees, invitees, tenants, and all occupants or residents of a Lot, violates any provision of the Governing Documents, the Association shall have the right and authority to pursue any and all of the following:

- (a) imposition of sanctions for violations of the Governing Documents, including reasonable monetary fines, and the suspension of the right to vote;
- (b) commencement of any legal proceeding (i) for specific performance to comply with the Governing Documents on the part of an Owner, including such Owner's family members, guests, licensees, invitees, tenants, and all occupants or residents of such Owner's Lot; and/or (ii) to recover damages, including the attorneys fees and costs incurred in enforcement of the Governing Documents; and/or;
- (b) entering onto a Lot to exercise self-help to cure any violation, including taking any and all actions reasonably necessary to correct such violation, which may include (without limitation) removing any building, thing, or improvement on a Lot that fails to comply with this Declaration; to perform any maintenance required to be performed; or to otherwise take any action to bring a Dwelling or Lot into compliance with this Declaration. All expenses incurred in exercise of the Association's right to self-help shall be levied as an Individual Assessments against the Lot upon which such self-help was exercised by the Association.

11.03 Fining.

- (a) **Notice.** No fine may be imposed without at least fourteen (14) days' notice to the Person sought to be fined and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister thereof. If the committee, by majority vote, does not approve a proposed fine, it may not be imposed. If the Association imposes a fine, the Association must provide written notice of such fine by mail or hand delivery to the Person so fined. Notwithstanding the foregoing, the requirements of this Section 10.03(a) shall not apply to any failure to timely pay any Assessment or other monetary obligation due to the Association.
- (b) **Amount of Fine.** For any one-time violation, such fine may not exceed the greater of One Hundred Dollars (\$100.00) or the maximum amount permitted by law. For any violation that is a continuing violation, such fine may be levied on a daily basis each day the violation continues in a daily amount equal to the greater of One Hundred Dollars (\$100.00) or the maximum amount permitted by law, such that the total amount of a fine for a continuing violation shall not exceed the greater of One Thousand Dollars (\$1,000.00) or the maximum amount permitted by law. For purposes of this Article IX, Section 10.03, the term "continuing

violation” shall mean and refer to any activity or condition that is in violation of a provision of the Governing Documents from the moment it is first commenced and continuing until such time that the activity or condition ceases to exist or occur. If an activity or condition that is discontinued and/or ceases to exist is subsequently resumed, such resumed activity or condition shall be deemed a separate violation for each period of time in which it exists or occurs and shall not be deemed to be part of the prior continuing violation.

- 11.04 Rights Cumulative.** The rights of the Association under this Declaration shall be cumulative and not exclusive of any other right or available remedy. The Association’s pursuit of any one or more of its rights or remedies shall not constitute an election of remedies excluding the election of another right, remedy or other remedies, or a forfeiture or waiver of any right or remedy or of any damages or other sums accruing to the Association by reason of any obligated Person’s failure to fully and completely keep, observe, perform, satisfy and comply with all of the covenants, restrictions and easements set forth in this Declaration.
- 11.05 No Waiver.** No waiver by the Association of any right or remedy on one occasion shall be construed as a waiver of that right or remedy on any subsequent occasion or as a waiver of any other right or remedy then or thereafter existing. The Association’s (i) forbearance in pursuing or exercising one or more of its rights or remedies; (ii) failure to enforce any of the covenants, restrictions and easements set forth in this Declaration; or (iii) to promptly pursue and exercise any right or remedy contained in this Declaration, shall not be deemed or construed to constitute a waiver of any other right or remedy or any waiver of the further enforcement or the provision or the exercise of the right or remedy that was the subject of the forbearance or failure.
- 11.06 Certificate as to Default.** For a reasonable charge, upon request by any Owner, or mortgagee holding a mortgage encumbering any Lot, any payment of such charge, the Association shall execute and deliver a written certificate as to whether such Owner and/or Owner’s Lot is in default with respect to compliance with the terms and provisions of this Declaration.

ARTICLE XII **INDEMNIFICATION**

- 12.01 Indemnification.** The Association shall indemnify any Person who was or is a party, or is threatened to be made a party, to any threatened, pending, or contemplated action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such Person is or was a director, employee, officer, or agent of the Association, against expenses (including attorney’s fees and appellate attorneys’ fees), judgment, fines, and amounts paid in settlement actually and reasonably incurred by such Person in connection with such action, suit, or proceeding if such Person acted in good faith and in a manner such Person reasonably believed to be in, or not opposed to, the best interests of the Association; and, with respect to any criminal action or proceeding, if such Person had no reasonable cause to believe her/his conduct was unlawful; or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of such Person’s duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity

for such expenses which such court shall deem proper. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the Person did not act in good faith and in a manner in which such Person reasonably believed to be in, or not opposed to, the best interests of the Association; and with respect to any criminal action or proceeding, that such Person had no reasonable cause to believe that her/his conduct was unlawful.

- (a) To the extent that a director, officer, employee, or agent of the Association is entitled to indemnification by the Association in accordance with this Article X, she/he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by her/him in connection therewith.
- (b) The indemnification provided by this Article X shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of Members, or otherwise. As to action taken in an official capacity while holding office, the indemnification provided by this Article X shall continue as to a Person who has ceased to be a director, officer, employee, or agent, and shall inure to the benefit of the heirs, executors, and administrators of such a Person.
- (c) The Association shall have the power to purchase and maintain insurance on behalf of any Person who is or was a director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as such, whether or not the Association would have the power to indemnify such Person against such liability under the provisions of this Article X.

ARTICLE XIII
GENERAL PROVISIONS

- 13.01 Duration.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association; any Owner; and the respective legal representatives, heirs, successors, and assigns of all of the foregoing thereof, for a period of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically renewed and extended for successive ten (10) year periods.
- 13.02 Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed under this Declaration.
- 13.03 Attorneys Fees.** In connection with any action to enforce the Governing Documents, the prevailing party shall be entitled to its reasonable attorneys' fees and costs at all pre-trial, trial, appellate levels, and post judgment levels, whether or not litigation is commenced.

- 13.04 Severability.** Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.
- 13.05 Amendment.** This Declaration 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 Declarant. This Declaration may be amended at any time by an instrument signed by the President or Vice President and the Secretary or Assistant Secretary of the Association, certifying that such amendment has been approved by at least two thirds (2/3rds) of the Members present in person or by proxy at a duly constituted meeting of the Association or by written consent. The amendment shall become effective upon its filing in the public records of the County. Provided, however, that as long as Developer is an Owner of any Lot, no amendment shall become effective without the written consent of Developer. No amendment to this Declaration shall be approved which conflicts with any land use approvals or permits granted by the City of Palm Coast, or which conflict with the Code of Ordinances or Land Development Code of the City of Palm Coast.
- 13.06 Notice.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. It is the responsibility of the Member or Owner to ensure that the Association has such Member's or Owner's latest and correct mailing address.
- 13.07 Conflict.** In the event of any conflict or inconsistency between this Declaration, the Articles, and/or the Bylaws, (i) the provisions of this Declaration shall control over the provisions of the Articles and the Bylaws; and (ii) the provisions of the Articles shall control over the provisions of the Bylaws.
- 13.08 Construction.** The Article and Section headings contained throughout this Declaration have been inserted for convenience only and shall not be considered in resolving questions of interpretation or construction. All terms and words used in this Declaration, regardless of the number and/or gender in which they are used, shall be deemed and construed to include any other number, and any other gender, as the context or sense requires.
- 13.09 Governing Law.** The provisions of this Declaration shall be construed under and subject to the laws of the State of Florida as constituted as of the date of recordation of the Original Declaration, unless otherwise expressly stated elsewhere herein; provided, though, that if any specific provision of this Declaration expressly states that any amendments to the laws of the State of Florida control, then such amended law only controls with respect to such specific provision so expressly stating.
- 13.10 Interpretation.** The Board shall have the right, except as limited by any other provision of this Master Declaration or the Bylaws, to determine all questions arising in connection with this Master Declaration and to construe and interpret its provisions, and its good faith determination, construction, or interpretation shall be final and binding. In all cases, the provisions of this Master Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.
- 13.11 Waivers, Exceptions, and Variances by Association.** Notwithstanding anything to the contrary set forth in or which may otherwise be implied from the terms and provisions of

this Declaration, the Board shall have the right and authority upon a showing of good cause therefor to: (i) grant waivers with respect to any existing or proposed future deviation from, or violation or infraction of, the restrictions specified in this Declaration where, in the reasonably exercised good faith judgment and discretion of the Board, the Board shall determine or decide that such deviation, violation, or infraction is de minimis, minor, or insignificant; and (ii) grant waivers of, exceptions to, or variances from, the restrictions specified in this Declaration where special conditions and circumstances exist that are peculiar to a particular Lot and not generally applicable to other Lots (*e.g.*, because of its unusual size, configuration, or location) or where a literal interpretation or application of any restriction to a particular Lot would be inappropriate, inequitable, or otherwise work or result in a hardship or deny such Lot and the Owner thereof specific rights that are generally enjoyed by other Lots and Owners; it being expressly provided, however, that in all cases the Board, in the exercise of such right and privilege shall, in its reasonably exercised and good faith judgment and discretion, determine or decide that its grant of any such waiver, exception, or variance shall not result in, represent, be, or constitute a significant deviation of or derogation from (a) the uniform plan of development for the Property, (b) the architectural, ecological, environmental, and aesthetic standards otherwise established for the Property, or (c) the objects and purposes of this Declaration as hereinabove enumerated. To the extent any such waiver, exception, or variance is granted in a particular instance or with respect to any particular Lot pursuant to the provisions of this Article XI, Section 13.11, the same shall not be deemed to be a precedent for the granting of such or any similar waiver, exception, or variance in any other particular instance or any other particular Lot.

- 13.12. Condemnation.** In the event all or part of the Common Property owned by the Association shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to the Association. The Board of Directors shall have the right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation affecting such Property. The damages from such condemnation shall be applied to repair and reconstruction of the improvements. If the improvements cannot be repaired or restored the damages shall be deposited in Association account and be used as approved by the Board.

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IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed in its name, this ____ day of _____, 20__.

Signed, sealed and delivered
in the presence of:

DECLARANT/DEVELOPER

Printed Name: _____

Printed Name: _____

Title: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____,
20__, by _____, as _____, of _____, []
who is personally known to me or [] who has produced the following as identification:
_____ and who did not take an oath.

Notary Public
My Commission Expires:

Exhibit "A"
Property