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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
HERON LANDING**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**HERON LANDING**

**THIS DECLARATION** is made on the date hereinafter set forth by **MERITAGE HOMES OF FLORIDA, INC.**, a Florida corporation, whose address is 5337 Millenia Lakes Boulevard, Suite 410, Orlando, Florida 32839 (“**Declarant**”) and is joined into and consented to by Arroyo Cap I, LLC, a Delaware limited liability company, whose address is 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071 (“**Land Owner**”), pursuant to the attached Joinder and Consent by Land Owner.

**WITNESSETH:**

**WHEREAS**, Land Owner is the owner of certain real property (“**Property**”) located in the County of Sarasota, State of Florida, described on **Exhibit “A”** attached hereto; and

**WHEREAS**, Land Owner is joining in and consenting to this Declaration to encumber the Property with the terms, conditions, covenants and restrictions contained herein; and

**WHEREAS**, Land Owner and Declarant desire to preserve and enhance the quality of life in the community being developed on the Property, provide for the maintenance of certain common areas and Improvements within the Property, and provide for the development on the Property of detached single family residences; and

**WHEREAS**, Declarant has formed a not-for-profit corporation pursuant to Chapters 617 and 720, Florida Statutes, to own, maintain, operate and/or administer the common areas and improvements within the Property, to administer and enforce this Declaration, and to collect and disburse the assessments and charges hereinafter created, all as set forth herein.

**NOW, THEREFORE**, Land Owner and Declarant hereby declare that the Property described above shall be subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens (hereinafter sometimes collectively termed “**Covenants and Restrictions**”) which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land, and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner of any portion of the Property.

**ARTICLE I  
DEFINITIONS**

Section 1.1 “**Additional Property**” means any real property, other than the real property described on **Exhibit “A”** attached hereto, which is made subject to the provisions of this Declaration when added to the Property as provided by **Article II, Section 2.2** herein below.

Section 1.2 “**Architectural Committee**” means the committee established pursuant to **Section 3.8** of this Declaration.

Section 1.3 “**Architectural Committee Rules**” means the rules adopted by the Architectural Committee, as such rules may be amended from time to time.

Section 1.4 “**Articles**” means the Articles of Incorporation of the Association, which have been filed with the Office of the Secretary of State of the State of Florida, a current copy of which is attached hereto as Exhibit “B,” as may be amended from time to time.

Section 1.5 “**Assessment Lien**” means the lien granted to the Association by this Declaration to secure the payment of Assessments and all other amounts payable to the Association under the Project Documents.

Section 1.6 “**Assessments**” means the annual, special, neighborhood and individual lot assessments levied and assessed against each Lot pursuant to Article IV of this Declaration.

Section 1.7 “**Association**” means Heron Landing Homeowners Association, Inc., a Florida nonprofit corporation organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

Section 1.8 “**Association Rules**” means the rules and regulations adopted by the Association, as the same may be amended from time to time.

Section 1.9 “**Board**” or “**Board of Directors**” means the board of directors of the Association.

Section 1.10 “**Builder**” means a person or entity in the business of, or a person or entity which has an affiliate in the business of, constructing and selling homes or in the business of acting as a land banker that sells lots to persons or entities who construct and sell homes, which purchases a Lot or Lots without Residential Units constructed thereon for the purpose of constructing Residential Units thereon and selling such Lots and Residential Units.

Section 1.11 “**Bylaws**” means the bylaws of the Association, a current copy of which is attached hereto as Exhibit “C,” as may be amended from time to time.

Section 1.12 “**Common Area**” means all real property and real property interests (including, but not limited to, easement rights and interests of the Association and/or for the benefit of the Members) owned by the Association, including but not limited to Tracts A, A-1, A-2, A-3, 105, 106, 107, 108, 109, 110, 111, 112, 112, 114, 116, 117, 200, 200A, 201, 202, 203, 204, 208 and 209 as shown on the Plat, and any other common areas, open spaces, wetland preservation areas, preservation areas, private drainage areas, and recreation areas as designated on the Plat, but such definition shall not preclude the Association from operating, maintaining or repairing any other real property for the benefit of the members of the Association (such as, but not limited to, landscaping in public rights-of-way) or any other real property maintained by the Association pursuant to a written agreement entered into by the Association for the benefit of the members.

Section 1.13 “**Common Expenses**” means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

Section 1.14 “**Community**” means the community being developed on the Property to be known as Heron Landing.

Section 1.15 “**County**” means Sarasota County, Florida.

Section 1.16 “**Declarant**” means Meritage Homes of Florida, Inc., a Florida corporation, and its successors and assigns, and any assignee of Declarant’s rights. Declarant may assign any of its rights by express recorded instrument to a subsequent Owner of all or part of the Property. At any time when there is more than one Declarant, except as otherwise expressly provided in this Declaration, any approval or other action required or permitted by the “Declarant” under this Declaration shall require the written consent of the Declarants owning a majority of all Lots then owned by all Declarants. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by the successive Declarant, in which event the preceding Declarant shall be released from liability. If there is more than one Declarant, the obligations and liabilities of the Declarant under this Declaration shall be limited to the obligations that relate to the Lots within the Project then owned by such Declarant at the time liabilities or obligations arose, such liability shall not be joint or joint and several, and a Declarant shall not be liable for the actions or inactions of another Declarant.

Section 1.17 “**Declaration**” means the provisions of this document and any amendment hereto.

Section 1.18 “**Designated Builder**” means any Builder that is designated by Declarant as a “Designated Builder” in a supplemental declaration or in a written notice given by Declarant to the Association and by such designation receives certain rights as expressly provided in this Declaration.

Section 1.19 “**District Permit**” means the permit and/or approval issued by the Water Management District, as modified from time to time with the approval of the Water Management District, which governs the construction, use, operation and/or maintenance of the Surface Water Management System for the Project. The Association is obligated to accept assignment of, and to assume in writing, all of Declarant’s rights and obligations under the District Permit.

Section 1.20 “**First Mortgage**” means any mortgage (including, but not limited to, any deed of trust or contract for deed, which applicable law would characterize as a mortgage) on a Lot which has priority over all other mortgages on the same Lot.

Section 1.21 “**First Mortgagee**” means the holder of any First Mortgage.

Section 1.22 “**Improvement**” or “**Improvements**” means buildings, roads, driveways, site or subdivision improvements, recreation facilities, pools, amenity centers, parking areas, fences, walls, rocks, hedges, trees, shrubs, other plantings, and all other structures or landscaping improvements of every type and kind.

Section 1.23 “**Land Owner**” means Arroyo Cap I, LLC, a Delaware limited liability company.

Section 1.24     **“Lot”** or **“lot”** means any Lot shown on a Plat. For purposes of voting on any issue required to receive the approval of Lot Owners, if a parcel is (i) designated on a Plat as a tract or parcel other than a Lot or Common Area (such as, but not limited to, a future development tract), (ii) is zoned for residential use, and (iii) is encumbered by this Declaration, then the Owner of such parcel shall be deemed to be the Owner of the maximum number of Lots into which such parcel may be subdivided under then applicable zoning and other legal requirements.

Section 1.25     **“Member”** means any person, corporation, partnership, joint venture or other legal entity who/that is a member of the Association as provided in Article III, Section 3.9 hereof.

Section 1.26     **“New Construction”** means the initial construction of a Residential Unit and related Improvements on a Lot.

Section 1.27     **“New Construction Committee”** means the committee established pursuant to Section 3.7 of this Declaration.

Section 1.28     **“Owner”** or **“owner”** shall mean the record owner, except as provided below, whether one or more persons or entities, of fee simple title to any Lot, excluding one who is buying a Lot under a contract (whether or not notice thereof is recorded) but has not yet acquired title to the Lot, and also excluding others having an interest merely as security for the performance of an obligation.

Section 1.29     **“Plat”** means the Plat of Heron Landing, Phase I, as recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Public Records of the County, and any other any recorded subdivision plat of any portion of the Property and all amendments thereto.

Section 1.30     **“Project”** means the Property together with all Improvements located thereon and all easements, rights and privileges appurtenant thereto.

Section 1.31     **“Project Documents”** means this Declaration and the Articles, Bylaws, Association Rules and Architectural Committee Rules.

Section 1.32     **“Purchaser”** means any person other than a Declarant or a Designated Builder, who by means of a voluntary transfer becomes the Owner of a Lot except for an Owner who purchases a Lot and then leases it to a Declarant for use as a model in connection with the sale of other Lots.

Section 1.33     **“Residential Unit”** means any building situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence by a Single Family.

Section 1.34     **“Single Family”** shall mean an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

Section 1.35 “**Single Family Residence**” shall mean a building, house, or dwelling unit used as a residence for a Single Family, including any appurtenant garage and/or storage area.

Section 1.36 “**Single Family Residential Use**” shall mean the occupation or use of a Single Family Residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

Section 1.37 “**Surface Water Management System**” or “**Stormwater Management System**” shall mean the system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity or quality of discharges from the system, as permitted by Chapters 40A through 40E and 62, Florida Administrative Code, as applicable, and any successor thereto, specifically including, but not limited to 105, 106, 107 and 108 and all drainage easements as shown on the Plat.

Section 1.38 “**Tract**” means any portion of the Property established as a Tract in any Plat.

Section 1.39 “**Turnover**” means that point in time at which the Declarant is incapable of electing a majority of the Board of Directors of the Association. For the purposes of this Declaration, Turnover shall occur upon the termination of the Class B membership pursuant to Article III, Section 3.11 herein below.

Section 1.40 “**Visible from Neighboring Property**” or “**visible from neighboring property**” shall mean that an object is or would be visible to a person six feet (6’) tall standing on a neighboring Lot, Tract, Common Area or street at an elevation not greater than the elevation at the base of the object being viewed.

Section 1.41 “**Water Management District**” shall mean the Southwest Florida Water Management District.

## ARTICLE II PLAN OF DEVELOPMENT

Section 2.1 Property Initially Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold, and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development and use of the Property and hereby evidences his intent that all the restrictions, conditions, covenants, easements, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, lessees and transferees thereof.

Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive, and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and such shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

Section 2.2 Additional Property. So long as the Class B membership (as hereinafter defined) shall exist, the Declarant may, from time to time, bring Additional Property under the provisions hereof by recorded supplemental declarations (which shall not require the consent of any then existing Owners, the Association, or any mortgagee) and thereby add to and include all or such portions of the Additional Property as part of the Property subject to this Declaration, in which event the same shall be entitled to utilize the same Surface Water Management System as the Property. To the extent that Additional Property shall be made a part of the Property as a common scheme, reference herein to the Property should be deemed to be a reference to all of such Additional Property where such reference is intended to include property other than that legally described on Exhibit "A" attached hereto. Nothing herein, however, shall obligate the Declarant to add to the initial portion of the Property, to develop any such future portions under such common scheme, nor to prohibit the Declarant from rezoning and/or changing the development plans with respect to such future portions, nor to prohibit the Declarant from adding additional or other property to the Property under such common scheme.

Section 2.3 Supplemental Declarations. Supplemental declaration(s) may, but need not necessarily, be recorded from time to time by Declarant (or with the express prior written consent of Declarant, in its sole discretion). A supplemental declaration shall be supplemental to this Declaration, and may create a sub-association and/or impose supplemental obligations, covenants, conditions, or restrictions, or reservations of easements, with respect to a particular portion of the Property or other land described in such instrument. This Declaration and any supplemental declaration shall be construed to be consistent with each other to the greatest extent reasonably possible; however, in the event of any irreconcilable conflict, the provisions of this Declaration shall prevail. Any purported supplemental declaration recorded by a person other than Declarant, without the express prior written consent of Declarant, shall be null and void.

Section 2.4 Sub-Associations. Sub-associations may be created from time to time, to administer to particular portions of the Property; provided that no sub-association may be validly organized except pursuant to the authority and jurisdiction of a supplemental declaration as set forth in Section 2.3 above. A duly created sub-association shall be a supplemental homeowners association, organized pursuant to the authority and jurisdiction of a supplemental declaration, with concurrent and supplemental jurisdiction (subject to this Declaration and the other Project Documents) with the Association with respect to a particular portion of the Property.

A sub-association shall have the power to establish standards and conduct activities for the property under its responsibility, subject to the Property Documents and any documents created in connection with the creation and ongoing operations of the sub-association. Notwithstanding the foregoing, the Association shall have the power and authority to veto any action taken or contemplated to be taken by any sub-association which the Board reasonably determines to be in violation of the Project Documents, or adverse or detrimental to the best interests of the



Association, or its Members. The Association also shall have the power to reasonably require specific action to be taken by any sub-association in connection with the sub-association's obligations and responsibilities (for example, without limitation, requiring specific maintenance or repairs, or requiring that a proposed sub-association budget include certain items and that expenditures be made therefor). A sub-association shall take appropriate action required by the Association by written notice, within the reasonable time frame set forth in such notice. If the sub-association fails to so comply, the Association shall have the power and authority to effectuate such action on behalf of the sub-association and to levy special assessments, pursuant to Article IV of this Declaration, to cover the reasonable costs thereof.

Section 2.5 Removal of Property. So long as the Class B membership shall exist, the Declarant shall have the right from time to time, in its sole discretion and without the consent of any person (other than consent of the owner of the property being removed), to delete from the Property and remove from the effect of this Declaration one or more portions of the Property, provided, however, that a portion of the Property may not be deleted from this Declaration unless at the time of such deletion and removal no Residential Units or material Common Area Improvements have been constructed thereon (unless the removal is for the purpose of accomplishing minor adjustments to the boundaries of Lots or the Property). No deletion of Property shall occur if such deletion would act to terminate access to any right-of-way or utility line unless reasonable alternative provisions are made for such access. No deletion of Property shall affect the Assessment Lien on the deleted Property for Assessments accruing prior to deletion. Any deletion of Property hereunder shall be made by Declarant recording written notice thereof.

### ARTICLE III THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Rights, Powers, and Duties. The Association is a Florida non-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents, specifically including all those powers prescribed by Chapters 617 and 720, Florida Statutes, as amended from time to time, together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents, and shall provide (or cause to be provided) the following services:

Section 3.1.1 Maintenance of all Common Areas and/or any Improvements from time to time located thereon, including, without limitation, recreation areas, amenities, grass, landscaping and irrigation systems, screen walls and entry features, all private roads (if applicable), driveways, alleys and parking areas and all lights and landscaping on and around such private roads, driveways, alleys and parking areas within the Property which are not maintained by governmental authorities or located within any Lot. Neither Declarant nor the Association guarantees or represents that any view over and across any lake, pond, stream, river or retention pond (a "**Water Feature**") or an open space from adjacent Residential Units or other property will be preserved without impairment. Without limiting the foregoing, neither Declarant nor the Association shall have the obligation to relocate, prune, or thin trees or other landscaping except as set forth in this Article III. Any express or implied easements for view purposes and/or for the passage of light and air are hereby expressly disclaimed. Notwithstanding anything to the contrary

herein contained, the Association shall maintain all Common Area landscaping in accordance with the landscape plan (if applicable) submitted to and approved by applicable governmental authorities in connection with the approval of the Project, which requirement may not be amended or deleted without the prior approval of the applicable governmental authorities which approved such landscape plan.

Section 3.1.2 Subject to Article XIV below, maintenance, operation and repair of the Surface Water Management System, which shall include the exercise of practices that allow the Surface Water Management System to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the Water Management District. Any repair or reconstruction of the Surface Water Management System shall be as permitted, or if modified as approved, by the Water Management District.

Section 3.1.3 Providing other maintenance upon any portion of the Property (including all Residential Units) and/or any improvement from time to time located thereon which, in the Board's opinion, requires such maintenance because (i) said property is being maintained in a sub-standard manner or (ii) otherwise violates any of the covenants and restrictions contained herein. The Association shall notify the Owner responsible for the Lot in writing, specifying the nature of the condition to be corrected, and if the Owner has not caused the same to be corrected within fifteen (15) days after the date of said notice, the Association may correct such condition at the Owner's sole cost and expense as provided below.

The cost of such maintenance or corrective actions shall be assessed by the Association against the Owner on whose behalf such maintenance or corrective actions are performed, but shall not be considered part of the annual maintenance assessment or charge. Any such special assessment or charge shall be a lien upon the subject Lot (including a Residential Unit), as the case may be, and an obligation of the Owner and shall become immediately due and payable in all respects, together with attorneys' fees, court costs, interest and other fees or costs of collection as required by the Association.

Section 3.1.4 Constructing Improvements on the Common Area and granting easements and licenses as may be required, permitted, recommended or desirable (as determined by the Board in its sole option and discretion to provide the services as authorized in this Article).

Section 3.1.5 The Board shall have the right, in its discretion, to enter into contracts on behalf of the Association for the purpose of carrying out its duties hereunder or which will otherwise be of benefit to the Owners in general, subject to the requirements of Sections 720.3055 and 720.309, Florida Statutes, as amended. The terms of any such contracts shall be negotiated by the Board in its discretion, which may designate an officer of the Association to act on its behalf. It is specifically contemplated that the Board may (but shall not be required to) cause the Association to enter into a contract with a licensed community association management company for the purpose of carrying out the Association's obligations under the Project Documents. It is also contemplated that the Board may (but shall not be required to) enter into one or more agreements controlling the provision of telephone, cable television, internet access and other communications or data transmission services (as the case may be) to and within the Property, and/or such other similar agreements as the Board may deem from time to time to be

necessary and/or desirable. Any expenses associated with contracts entered into by the Board on behalf of the Association shall constitute Common Expenses.

Section 3.1.6 The Association may, but shall not be obligated to, maintain or support various activities within the Property which are intended to foster or promote safety or security. No representation or warranty is made that any fire protection system, burglar alarm system, gate system or other security system installed or security measures undertaken on or about the Property cannot be compromised or circumvented, nor that any such systems or security measures will prevent loss or provide the detection or protection for which they may be designed or intended. Each Owner acknowledges, understands, and covenants to inform all occupants of its Residential Unit, and their respective families and invitees, that neither the Association, the Board, the Declarant, committees, neighborhood associations, nor any other persons involved with the governance, maintenance, and management of the Property are insurers of safety or security within the Property. All Owners and occupants, and their respective families and invitees, assume all risks of personal injury and loss or damage to persons, units, and the contents of units, and further acknowledge that neither the Association, its Board and committees, the management company of the Association, any neighborhood association nor the Declarant have made representations or warranties regarding any attended or unattended entry gate, patrolling of the property, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the property. All Owners and occupants, and their respective families and invitees, further acknowledge that they have not relied upon any such representations or warranties, expressed or implied.

Any gate house or gate attendant service which may exist for the Community is intended to limit access to the Property but is not intended to constitute any assurance that the Property is secure from entry or intrusion by non-owners and non-occupants. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than they otherwise might be. However, neither the Association, the Board, the management agent of the Association, any neighborhood association nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of the above-mentioned parties be held liable for any loss or damage by reason of failure to provide adequate security or for the ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the property (or onsite roving patrol or resources, if applicable) cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

Section 3.1.7 Other provisions of this Declaration grant and give the Association and/or the Declarant the right to grant certain permits, licenses, approvals and easements over the Property and Common Area for utilities, access and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property under the circumstances specified therein.

In furtherance of the foregoing provisions, and in order to promote the health, safety and welfare of the Owners and occupants of the Property and provide for the maintenance and preservation of the Common Area and Property, the Declarant and the Association shall be entitled (but not obligated) to establish and enforce conditions governing the use of the Common Area by

third parties, including (without limitation) parties providing utility or other services to the Property. Accordingly, all third parties utilizing the Common Area shall be required to comply with such conditions as may be determined by the Association and/or the Declarant, as applicable, to be reasonable and necessary to maintain, preserve and protect the Common Area and the Property, and to preserve and protect the safety of persons and property from time to time located upon or within the Property. Conditions may be imposed, in particular, on any person or entity utilizing the Common Area for the installation, maintenance, repair or replacement from time to time of utilities or any other Improvements or facilities (a “**Service Provider**”) pursuant to any easement, permit, license, right of use or similar right or privilege granted by either the Declarant or the Association (whether or not pursuant to the Declaration, the Plat or any other agreement or instrument) in order to accomplish the foregoing purposes and in order to avoid, if possible, the installation of Improvements which interfere with the use of the Common Area and/or detract from the appearance of the Common Area and the Property. Such conditions may include, without limitation, the right of the Association or Declarant to:

(A) Require that the Service Provider submit a written request for authorization to utilize the Common Area, in form and content (and accompanied by such additional documents and information) as are reasonably required by the Association or the Declarant to adequately review and process same;

(B) Require the Service Provider to pay a processing fee in an amount reasonably determined by the Association or the Declarant to compensate it for the cost of processing, reviewing and approving such request;

(C) Require that Improvements be installed below ground to the maximum extent practicable;

(D) Approve the location of any Improvements;

(E) Approve the size and composition of any above-ground Improvements;

(F) Approve the plans and specifications for all Improvements;

(G) Supervise construction, installation, repair and other activities;

(H) Establish appropriate times for such activities to be conducted;

(I) Require screening or landscaping around above-ground Improvements;

(J) Minimize interference with other uses of the Common Area and Property;

(K) Impose safety, security and traffic control requirements;

(L) Establish and enforce reasonable rules and regulations;

(M) Require the Service Provider to reimburse the Association or the Declarant for any actual, out-of-pocket expenses incurred or payable by the Association or the Declarant to others in order to perform any activities contemplated in this Section 3.1.7, including, without

limitation, costs or fees of consultants, contractors and others who may be engaged to perform such activities or to monitor or enforce the provisions of this Section with respect to such Service Provider; and

(N) Take such other actions as are reasonable or appropriate in furtherance of the foregoing.

Nothing contained herein, however, shall be construed to impose upon the Declarant or the Association an affirmative obligation to establish such conditions, nor any particular condition listed above, nor shall either the Declarant or the Association be liable to each other or any Owner, Member or other person for failure to establish or enforce any such conditions.

Section 3.2 Mortgage and Pledge. With the approval of at least two-thirds (2/3) of the Board and the consent of the Class B Members (if any), the Board shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its functions.

Section 3.3 Conveyance by Association. Subject to the provisions hereof, the Association shall be empowered to delegate or convey any of its functions or Property to any governmental unit, public utility or private party approved by at least two-thirds (2/3) of the Board and by the Class B Members (if any), which approval may be withheld by the Class B Members in their sole discretion.

Section 3.4 Action by Association. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board, acting by majority vote unless a different standard is specified in the Project Documents. Copies of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association or its contract manager during reasonable business hours.

Section 3.5 Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint in accordance with the Articles and the Bylaws. Subject to Section 720.307, Florida Statutes, as amended, until termination of the Class B membership Declarant shall have the right to appoint and remove members of the Board. After termination of the Class B membership, the Members shall elect the Board as provided in the Bylaws.

Section 3.6 Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal Association Rules, provided, however, that such Association Rules (or any amendments thereto) shall not be effective as to any Lot or Tract owned by Declarant unless either (i) such Association Rules have been approved by Declarant in writing, or (ii) such Association Rules were adopted (or amended) by a Board having a majority of its members appointed by the Declarant. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner except that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, the Bylaws or applicable law.

Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 3.7 New Construction Committee. The Declarant shall establish a New Construction Committee consisting of one or more members appointed by the Declarant to approve New Construction on each Lot and to perform such other functions and duties as may be imposed upon it by this Declaration or the Declarant related thereto. The New Construction Committee shall be responsible for initial approval of all New Construction on the Lot through and including the issuance of a Certificate of Occupancy for the Residential Unit thereon. So long as Declarant owns at least one (1) Lot in the Property, the Declarant shall have the right to appoint and remove all members of the New Construction Committee. It is expressly provided that the New Construction Committee shall not be a Committee of the Association unless and until Declarant shall assign its rights and obligations with respect thereto in writing to the Association at Declarant's discretion; provided, however, that upon the sale of the last Lot owned by Declarant, if Declarant has not previously assigned such rights and obligations to the Association, the New Construction Committee shall thereupon become a Committee of the Association whose members shall be appointed by the Board, and all rights and obligations of Declarant with respect to the New Construction Committee shall automatically pass to the Association. At such time as the Association acquires the rights and obligations of the New Construction Committee, the Association may, in its discretion, elect to merge the New Construction Committee into the Architectural Committee, in which event the Architectural Committee shall thereafter perform the functions of the New Construction Committee. Notwithstanding the foregoing, all construction on Lots owned by the Declarant shall be exempt from review and approval by the New Construction Committee.

Section 3.8 Architectural Committee. The Board shall establish an Architectural Committee consisting of not less than three (3) members to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration or the Board (excluding approval of New Construction unless otherwise expressly provided in Section 3.7 above). So long as the Class B membership exists, the Declarant shall have the right to appoint and remove all members of the Architectural Committee.

Section 3.9 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. In no event shall any mortgagee or other party holding any type of security interest in a Lot or the Residential Unit constructed thereon be a Member of the Association, unless and until any of said parties obtains or receives fee simple title to such Lot.

Section 3.10 Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books

and records of the Association. The Association shall have the right to charge a reasonable transfer fee to the Purchaser in connection with any transfer of a Lot.

Section 3.11 Classes of Members. The Association shall have two (2) classes of voting membership:

Class A. The Class A Members shall be all Owners, with the exception of the Declarant and each Designated Builder until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B Members shall be the Declarant and each Designated Builder. Each Class B Member shall be entitled to nine (9) votes for each Lot owned by such Member. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) three (3) months after ninety percent (90%) of the Lots in all phases of the Community that will ultimately be operated by the Association have been conveyed to Purchasers; or

(ii) when the Declarant and each Designated Builder notifies the Association in writing that it relinquishes its Class B membership; or

(iii) such earlier date as is required by law or as the Declarant may otherwise determine, in its sole and absolute discretion.

Upon the occurrence of the earlier of the foregoing events, the Class A Members shall be obligated to elect the Board and assume control of the Association (“**Turnover**”). Notwithstanding Turnover, the Declarant shall be entitled to elect at least one (1) member of the Board of Directors of the Association as long as (i) the Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots in all phases of the Community that will ultimately be operated by the Association, or (ii) the Declarant is otherwise permitted by law to do so.

Section 3.12 Joint Ownership; Ownership by Trustee. When more than one person is the Owner of any Lot, all such persons shall be Members. In the case of a Lot where fee simple title is vested in a trustee pursuant to a written trust agreement, the beneficiary or beneficiaries entitled to possession shall be deemed to be the Owner, and all such persons shall be Members. The vote for any Lot described in this Section shall be exercised as the aforesaid Members who own such Lot determine amongst themselves, but in no event shall more than one ballot be cast with respect to any such Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint or beneficial Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 3.13 Corporate Ownership. In the event any Lot is owned by a corporation, partnership, limited liability company, or other association, the corporation, partnership, limited

liability company or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the president, general partner, manager, managing member, or chief executive officer of such corporation, partnership, limited liability company or association shall have the power to vote the membership.

Section 3.14 Suspension of Voting Rights. In the event any Owner is delinquent in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of ninety (90) days, said Owner's right to vote as a Member of the Association shall automatically be suspended, and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current.

Section 3.15 Fines. The Association, acting through its Board of Directors, shall have the right to adopt a schedule of fines for violation of any provision of the Project Documents by any Owner or such Owner's licensees and invitees. No fine shall be imposed without first providing a written warning to the Owner describing the violation and an opportunity to be heard. Only if and to the extent permitted by applicable law, fines shall constitute a lien on all Lots owned by the Owner and shall be paid within thirty (30) days following imposition. Except as otherwise limited by applicable law, failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any assessments under Article IV.

#### **ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 4.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association annual assessments, special assessments, individual lot assessments and any applicable neighborhood assessments. The annual, special, individual lot and neighborhood assessments, together, with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. Except as otherwise expressly provided herein or by applicable law, an Owner is jointly and severally liable with the previous Owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the present Owner may have to recover any amounts paid by the present owner from the previous owner. Notwithstanding anything to the contrary contained in this Section, the liability of a First Mortgagee, or its successor or assignee as a subsequent holder of the first mortgage who acquires title to a parcel by foreclosure or by deed in lieu of foreclosure, for the unpaid assessments that became due before the mortgagee's acquisition of title, shall be limited as and to the extent provided by Section 720.3085, Florida Statutes, as amended from time to time. In the case of co-ownership of a Residential Unit, all of such co-owners shall be jointly and severally liable for the entire amount of the Assessments. The Association shall, upon demand, at any time, furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. The Association



may charge a reasonable fee for such certificate. Such certificate shall be prima facie evidence of payment of any assessment therein stated to have been paid.

Section 4.2 Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for (i) the upkeep, maintenance and improvement of the Common Area, (ii) maintenance, repair, replacement, and operation of rights-of-way and easements within or immediately adjacent to the Property (such as, but not limited to, landscaping and sidewalks within the right-of-way of adjoining streets) to the extent that such actions are required by government entities or deemed appropriate by the Board, (iii) promoting the recreation, health, safety and welfare of the Owners and other lawful occupants of Lots within the Property, and (iv) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents. Notwithstanding the foregoing, neighborhood assessments, if applicable, shall be used only for the benefit of the neighborhood paying such assessments, shall not be used for any purpose that is covered by annual assessments or special assessments in other areas of the Property, and shall be accounted for separately from annual and special assessments.

Section 4.3 Annual Assessment.

(A) For each fiscal year of the Association commencing upon the first to occur of (i) transfer to and acceptance for maintenance by the Association of any Common Area or (ii) conveyance of a Lot to a Purchaser, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes to be required during the ensuing fiscal year to pay all Common Expenses, including, but not limited to, (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Area, the Surface Water Management System and those parts of the Lots, if any, which the Association has the responsibility of maintaining, repairing or replacing under the Project Documents, (ii) the cost of wages, materials, insurance premiums, services, supplies and maintenance or repair of the Common Area, the Surface Water Management System and for the general operation and administration of the Association, (iii) the amount required to render to Owners all services required to be rendered by the Association under the Project Documents, and (iv) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacement.

(B) For each fiscal year of the Association commencing upon the first to occur of (i) transfer to and acceptance for maintenance by the Association of any Common Area or (ii) conveyance of a Lot to a Purchaser, the total amount of the estimated Common Expenses shall be assessed by the Board. Except to the extent that this Declaration expressly provides for (a) neighborhood Assessments only on Lots benefiting from such neighborhood Assessments, (b) reduced Assessments, or (c) exemptions from Assessments, all Assessments shall be equal on all Lots.

(C) A Designated Builder shall be obligated to pay only twenty-five percent (25%) of the annual Assessment attributable to a Lot for each fiscal year of the Association commencing upon the conveyance of the first Lot to a Purchaser, and continuing until the earliest of (i) the date on which a certificate of occupancy or similar permit is issued by the appropriate governmental authority for the Residential Unit on the Lot, (ii) six (6) months from the date on which a building permit is issued by the appropriate governmental authority for construction of a

Residential Unit on the Lot, or (iii) two (2) years after the Lot was conveyed to the Designated Builder by the Declarant. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an annual Assessment is attributable, the annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the assessment period that the Lot qualified for each rate.

(D) The Declarant and Land Owner shall be exempt from payment of annual Assessments on Lots owned by the Declarant or Land Owner, subject to the provisions of Section 4.3(E) below. If a Lot ceases to be owned by Declarant or Land Owner and therefore becomes subject to assessment during the period to which an annual Assessment is attributable, the Assessment shall be prorated based on the basis of the number of days in the assessment period that the Lot is not owned by Declarant or Land Owner.

(E) Pursuant to Section 720.308, Florida Statutes, until Turnover occurs, the Declarant and each Designated Builder paying reduced Assessments pursuant to Section 4.3(C) shall pay to the Association any amounts (hereinafter "**Subsidy Amounts**") which, in addition to the annual Assessments levied by the Association, may be required by the Association to pay any operating expenses incurred that exceed the Assessments receivable from other Members and other income of the Association, such that the Association may be able to fully perform its duties and obligations under the Project Documents, including the obligation to maintain adequate reserve accounts (if any) established by the Board. Notwithstanding the foregoing, neither Declarant nor any Designated Builder shall have any obligation to pay any combination of Subsidy Amounts and Assessments during any calendar year in excess of the total amount that Declarant or such Designated Builder would have paid during such calendar year if such person were paying full Assessments. Any estimated payment by the Declarant or Designated Builder to fund Subsidy Amounts under this Section in excess of such person's actual obligation for Subsidy Amounts under this Section shall, at Declarant's option, be credited toward payment of Declarant's and such Designated Builder's next due Assessment payment(s) or refunded to the payors thereof; for example, if Declarant and such Designated Builders pay \$25,000 to the Association in the middle of a calendar year to fund estimated Subsidy Amounts and the actual Subsidy Amounts required as of the end of the year would have been only \$20,000 in the absence of such payment, Declarant and such Designated Builders shall be entitled to a \$5,000 credit toward their next due Assessment payment or a refund of \$5,000. Any Subsidy Amounts payable by Declarant and Designated Builders under this Section shall be paid solely by Declarant until such time as Declarant has paid Assessments on Lots owned by Declarant and Land Owner at a rate of 25% of the annual Assessment and thereafter allocated among Declarant and Designated Builders paying reduced Assessments on the basis of the respective number of lots owned by (x) Declarant and Land Owner and (y) such Designated Builders as of such date as the Board determines that payment is necessary under this Section 4.3(E). Payments under this Section shall be made by Declarant and Designated Builders paying reduced Assessments on such basis as the Board may determine from time to time, but in no event more often than monthly or less often than annually.

As more particularly set forth in that certain Joinder and Consent of Land Owner (the "**Consent**") from Land Owner, which is attached hereto, Declarant and Land Owner are parties to that certain Option Agreement (as more particularly defined in the Consent). Notwithstanding anything to the contrary in Section 4.3(D) or Section 4.3(E) hereof, in the event a Notice of Termination (as defined in the Consent) is recorded in the Public Records of the County, the

agreement of Meritage Homes of Florida, Inc., a Florida corporation, in its capacity as Declarant hereunder, to pay Subsidy Amounts for Lots owned by Land Owner shall automatically terminate and Land Owner shall immediately thereupon be obligated to either (a) pay the annual Assessments on the Lots it owns, at the discounted rate set forth in Section 4.3(c) above for a Designated Builder, with the date of the Notice of Termination being deemed the date of acquisition by Land Owner, or (b) in the event Land Owner becomes a successor Declarant, by virtue of delivering and recording an Election Notice (as defined in the Consent) in the Public Records of the County, pay Subsidy Amounts for the Lots it owns.

(F) The Board shall give notice of the annual Assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual Assessment established by the Board nor relieve any Owner from its obligation to pay the annual Assessment.

(G) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual Assessment for each Lot shall be ONE THOUSAND EIGHT HUNDRED NINETY SIX AND NO/100 DOLLARS (\$1,896.00). The annual Assessments provided for herein shall be due and payable in advance in equal quarterly or monthly installments on the first day of such period, as may be determined by the Board. The foregoing annual Assessment is in addition to any and all other Assessments and other financial obligations which any Owner may have to the Association.

From and after January 1 of the year immediately following the conveyance of the first Residential Unit to an Owner, the maximum annual Assessment may be increased each year: (a) upon approval by a majority of the Board without a vote of the Members, by an amount not greater than fifteen percent (15%) above the maximum annual Assessment for the previous year, or (b) upon approval of a majority of the total cumulative vote of the Members voting in person or by proxy at a meeting duly called for such purpose, by an amount greater than fifteen percent (15%) above the maximum annual Assessment for the previous year. The Board may fix the annual Assessment at an amount not in excess of the maximum.

(H) If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will become, inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the annual Assessment for that fiscal year and the revised annual Assessment shall commence on the date designated by the Board except that no increase in the annual Assessment for any fiscal year which would result in the annual Assessment exceeding the maximum annual Assessment for such fiscal year shall become effective until approved by Members casting a simple majority of the votes cast by Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present.

Section 4.4 Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any fiscal year, a special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any acquisition, construction, reconstruction, repair or replacement of a capital improvement on the Common Area, including fixtures and personal Property related thereto, or for any other lawful Association purpose, provided that any such special Assessment shall have the assent of the Members casting a simple

majority of the votes cast by Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present. Special Assessments shall be levied at a uniform rate for all Lots.

Section 4.5 Date of Commencement of Annual Assessments; Due Dates. The annual Assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the annual Assessment be paid in installments as provided in Section 4.3(G) above, and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association or the Association's designated agent setting forth whether the Assessments on a specified Lot have been paid.

Section 4.6 Transfer Fee. At each closing of the sale of a Residential Unit, the Purchaser thereof shall pay to the Association a Transfer Fee in the amount of ONE THOUSAND AND 00/100 DOLLARS (\$1,000.00), which shall be used by the Association to offset administration costs in connection with the change in membership as well as pay operating or any other expenses of the Association.

Section 4.7 CIAC Assessment. In addition to the other Assessments provided for herein, the Association shall have the right to collect a recurring Assessment as a contribution in aid of construction ("CIAC Assessment") from the Purchaser or grantee at the time of each conveyance of the fee simple title to any Lot. The first CIAC Assessment (the "Initial CIAC Assessment") with respect to any Lot shall be in the initial amount of ONE HUNDRED AND 00/100 DOLLARS (\$100.00) per Lot and shall be due and payable by the Purchaser or grantee at the time of the first conveyance of the fee simple title to the Lot by the Declarant to an Owner other than the Declarant. The amount of the CIAC Assessment may be adjusted from time to time by the Association but in no event to an amount which would exceed one hundred twenty-five percent (125%) of the corresponding CIAC Assessment in effect during the prior fiscal year). All Initial CIAC Assessments shall, upon receipt by the Association, be promptly disbursed to the Declarant to be used solely for the reimbursement of hard and soft costs associated with the construction of recreational facilities and Common Area Improvements within the Property for the benefit of the Owners, their families and guest. All subsequent CIAC Assessments shall, upon receipt by the Association, be used by the Association for the payment of such expenses as the Association shall determine.

Section 4.8 Effect of Non-payment of Assessments; Remedies of the Association.

(A) Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall bear interest at the rate of at the rate of eighteen percent (18%) per year and have added to such Assessment or installment, the greater of (i) five percent (5%) of the amount of the unpaid Assessment, or (ii) a late charge of twenty-five dollars (\$25.00). Any payment received and accepted by the Association shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent Assessment. Any Assessment, or any installment of an Assessment, which is

delinquent shall become a continuing lien on the Lot against which such Assessment was made. The Assessment Lien may be placed of record by the recordation of a Notice or Claim of Lien which shall set forth (i) the legal description of the Lot against which the claim of lien is made, (ii) the name of the record Owner, (iii) the name and address of the Association, (iv) the amount claimed as of the date of the recording of the notice including late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees, and (v) the due date of such delinquent Assessments. Any Claim of Lien so recorded shall secure all unpaid Assessments that are then due and that may accrue subsequent thereto and before the entry of a certificate of title, as well as interest, late charges and reasonable costs and attorneys' fees incurred by the Association incident to the collection process.

(B) The Assessment Lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration except for (i) liens for ad valorem real property taxes and assessments on the Lot, and (ii) the lien of any First Mortgage (provided, however, that only the Assessment Lien shall be extinguished upon the sale or transfer of a Lot pursuant to a mortgage foreclosure or deed in lieu thereof, and not the Assessments themselves, which shall continue to be the obligation of the Owner of the Lot, including any successor Owner, to the extent provided in Section 720.3085, Florida Statutes, or in such greater amount as is permitted by any successor statute thereto).

(C) Before recording a Notice or Claim of Lien against any Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with late charges, interest, reasonable collection costs and reasonable attorneys' fees, if any, by registered or certified mail, return receipt requested, and by first-class United States mail to the Owner at his or her last address as reflected in the records of the Association. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If the delinquency is not paid within forty-five (45) days after delivery of the demand, the Association may proceed with recording a Notice or Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice or Claim of Lien.

(D) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with late charges, interest, lien recording fees, reasonable collection costs, reasonable attorneys' and paralegals' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessment Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. Provided, however, that no action may be brought by the Association to foreclose an Assessment Lien until forty-five (45) days after the Owner has been provided notice of the Association's intent to foreclose the Assessment Lien and collect the delinquent Assessments by registered or certified mail, return receipt requested, and by first-class United States mail at the Owner's last address as reflected in the records of the Association. Such notice may not be provided until the passage of the forty-five (45) days required by Section 4.8(C)

above. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

Section 4.9 Subordination of the Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage, except as otherwise provided in Section 4.1 and Section 4.8(B) above. The sale or transfer of any Lot shall not affect the Assessment Lien except that the sale or transfer of a Lot pursuant to judicial foreclosure of a First Mortgage or the transfer of the Lot to the holder of the First Mortgage by deed in lieu of foreclosure shall extinguish the Assessment Lien as to payments which became due prior to the sale or transfer except to the extent provided in Section 4.1 and Section 4.8(B) above. However, in such event, only the Assessment Lien shall be extinguished upon the sale or transfer of the Lot pursuant to such a mortgage foreclosure or deed in lieu thereof, and not the Assessments themselves, which shall continue to be the obligation of the Owner of the Lot, including any successor Owner, to the extent provided in Section 720.3085, Florida Statutes, or in such greater amount as is permitted by any successor statute thereto. No sale or transfer shall relieve the Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 4.10 Exemption of Owner. No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.

Section 4.11 Maintenance of Reserve Fund. Out of the annual Assessments and other income, the Board may establish and maintain a reserve fund for the periodic maintenance, repair, and replacement of Improvements to the Common Area.

Section 4.12 No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of the Project Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

Section 4.13 Reserve Account Funding. In addition to the Transfer Fee described in Section 4.6, the first Purchaser of a Lot following construction of a residence on such Lot shall pay to the Association at the time of the purchase an amount equal to fifty percent (50%) of the then current annual Assessment amount. All amounts paid pursuant to this Section shall be deposited by the Association into a reserve account to fund future major repairs and replacements. Declarant and the Association may take forecasts of such payments into account when budgeting the amounts to be funded to reserves from other Association funds. Nothing in this Section shall be construed as prohibiting or mandating additional payments by the Association into reserve accounts from other Association funds. Payments made pursuant to this Section do not apply toward payment of annual Assessments and constitute a separate obligation.

Section 4.14 Neighborhood Assessments. The Board of Directors shall have the right to impose neighborhood Assessments against Lots in any specific area of the Property in order to provide for the repair, replacement, operation and maintenance of Common Areas within such area that are different from or in addition to the types of Common Areas in the balance of the Property

and that are reasonably intended to benefit less than all of the Property (e.g. private streets, separate entryways or gates, enhanced landscaping, community centers, swimming pools). Any such determination by the Board shall be made in a writing specifying the purposes of the neighborhood Assessment and the Lots subject thereto. Any such determination by the Board may also include an additional imposition on such Lots pursuant to Section 4.13 in order to fund a reserve account for the specific Improvements intended to be maintained by the neighborhood Assessment.

Section 4.15 Assessments for Communications Services. The Association shall have the right, at its discretion and from time to time, to negotiate and execute one or more contracts (“**Communications Agreement(s)**”) with a provider (or providers) of its choice offering internet access, telephone, cable television, and other forms of communications and data transmission services to the Property (“**Communications Services**”). In addition to the annual Assessments included within Article IV, the Association may include in the annual Assessment or levy in any assessment year a special Assessment applicable to that year (and the same shall be charged and collected on a monthly, quarterly or yearly basis as determined by the Board) for the purpose of paying the cost of providing Communications Services to the Property. Each Owner acknowledges that the Property is intended to have Communications Services available and that the condition of availability may be such that each Lot must be included in the service plan. Each Owner therefore acknowledges and agrees that each Lot shall, in the event the Association enters into any such Communications Agreements, be subject to an Assessment, either as part of the annual Assessment or in addition to and apart from the annual and any other special Assessments, for the purpose of paying each Lot’s pro rata share of Communications Services provided to the Property regardless of whether or not such Owner subscribes or elects to receive any of such services separately from another provider. At the discretion of the Board, the Assessment authorized and provided for herein may apply only to such service as is defined as “basic” by the provider and any additional services that constitute “expanded basic,” “upgrades” or “enhanced” services shall be subscribed for and paid by each Owner, if desired, on an individual basis.

Section 4.16 Financial Reporting. Within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year. Within twenty-one (21) days after the final financial report is completed by the association or received from the third party, but not later than one hundred twenty (120) days after the end of the fiscal year, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The financial reports shall be prepared in accordance with Section 720.303(7), Florida Statutes, as amended from time to time.

Section 4.17 Individual Lot Assessments. In addition to any other assessments for which provisions are made in this Declaration, the Association shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect against and from a particular Lot and the Owner of such Lot an individual lot Assessment for:

(A) costs and expenses incurred by the Association in bringing a particular Owner or his particular Lot into compliance with the provisions of this Declaration, including any action taken or cost or expense incurred by the Association to cure and eliminate any violation of or noncompliance with the provisions of this Declaration, following the failure of such Owner,

within thirty (30) days following written notice from the Association of the nature of the violation of or non-compliance with this Declaration, to cure or remedy such violation or non-compliance;

(B) costs and expenses, including reasonable attorneys' fees, whether or not suit be brought, incurred by the Association in the enforcement of the provisions of this Declaration against a particular Lot or the Owner of such Lot;

(C) costs and expenses incurred by the Association in furnishing or providing labor, services and materials which benefit a particular Lot or the Owner of a particular Lot; and

(D) reasonable overhead expenses of the Association associated with any individual lot Assessment established, made, levied, imposed, collected and enforced pursuant to this Section 4.17, in an amount not to exceed ten percent (10%) of the actual costs and expenses incurred by the Association for any individual lot Assessment specified in this Section 4.17.

Section 4.18 Declarant Audit Right. Following the termination of the Class B membership and so long as Declarant owns any Lot, the Declarant shall have the right to audit the books and records of the Association.

Section 4.19 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining, including, but not limited to using such surplus to fund reserves. The Association shall not be obligated to reduce the amount of the annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

## ARTICLE V USE RESTRICTIONS

Section 5.1 Compliance by Owners; Association Rules. Every Owner shall comply with the restrictions and covenants set forth herein and any and all Association Rules hereafter adopted by the Association.

Section 5.2 Residential Use. Except as otherwise provided herein, all Lots shall be improved and used only for Single Family Residential Use. No gainful occupation, profession, trade or other commercial activity shall be conducted on any lot; provided, however, the Declarant may use its Lots for such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale of residential units, including, without limitation, a business office, storage areas, construction yards, signs, a model site or sites, and a display and sales office. Notwithstanding the foregoing, home businesses are permitted on the Lots provided (i) they are in accordance with applicable governmental ordinances and other legal requirements for home businesses in residential districts, and (ii) they do not generate any pedestrian or vehicular traffic to or from the home in excess of that which would customarily be generated by a Single Family Residential Use which does not include a home business.

Section 5.3 Building Type and Size. No building shall be constructed or permitted to remain on any lot other than one detached Single Family Residence not to exceed two stories in



height and a private one (1) to five (5) car garage. Unless otherwise approved in writing by the New Construction Committee or Architectural Committee, as applicable, all buildings shall be of new construction and no prefabricated structure shall be placed upon any lot if Visible from Neighboring Property; storage structures and/or a sales or construction offices may be maintained upon any lot or lots by the Declarant or a Designated Builder for the purpose of erecting and selling dwellings on the Property or for the purpose of constructing Improvements on the Common Area, but such temporary structures shall be removed upon completion of construction or selling of a dwelling or the Common Area, whichever is later. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out buildings shall be used on any lot at any time as a residence, either temporarily or permanently. Declarant and its contractors shall have the right to place temporary construction trailers and store materials on the Common Areas for the purpose of constructing Improvements on the Common Areas.

Section 5.4 Signs. No sign of any kind which is Visible from Neighboring Property shall be installed or displayed on any Lot or Common Area without the prior written approval of the Association as to size, color, design, message content, number and location except: (i) such signs as may be used by Declarant in connection with the development and sale of Lots and/or Residential Units or Common Area in the Project; (ii) in the discretion of Declarant, such signs as may be used by Designated Builders in connection with the development and sale of Lots and/or Residential Units or Common Area in the Project, subject to Declarant's prior written approval of same; (iii) such signs as may be required by legal proceedings, or which by law may not be prohibited; (iv) one (1) discreet, professionally prepared "For Sale" or "For Lease" sign of not more than eighteen (18) inches by twenty-four (24) inches may be placed on any Lot, for a period not to exceed sixty (60) days, upon the filing of written notice of the same with the Secretary of the Association; and (v) such signs as may be desired by Declarant or required for traffic control, construction job identification, builder identification, and subdivision identification as are in conformance with governmental requirements. All other signs must be approved in advance in writing by the New Construction Committee or Architectural Committee, as applicable, as provided above. All signs must conform to applicable ordinances and other governmental requirements. Notwithstanding the foregoing, in no event shall any signs advertising residential property for lease or rent be displayed within twenty-four (24) months after the initial conveyance of a Lot with a Residential Unit constructed thereon to an Owner from a Declarant or a Designated Builder.

Section 5.5 Noxious and Offensive Activity. No noxious or offensive activity shall be allowed on the Property nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners and tenants of their respective lots and residences. Without limiting the generality of the foregoing, no speakers, horns, sirens or other sound devices, except security devices used exclusively for security purposes, shall be located or used on a Lot. The provisions of this Section shall not apply to any activity of Declarant or any Designated Builder or their respective employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property.

Section 5.6 Parking. Parking of Vehicles (as defined in Section 5.7) is prohibited in the front yard of Lots except on a driveway. Parking of Vehicles on any street within the Property is prohibited except that (i) Vehicles that are too large to fit on a driveway may, if permitted by

applicable law, park on the portion of the street directly adjacent to the Owner's Lot during daylight hours only and must either be put into the garage or removed from the Property during nighttime hours, (ii) Vehicles belonging to visitors and guests of any Lot Owner may be parked on the portion of the street directly adjacent to the Owner's Lot, if permitted by applicable law, for a maximum period of 24 hours (or, if insufficient space exists on the street directly adjacent to the Owner's Lot, such Vehicles may be parked elsewhere on the street so long as they do not obstruct access to the street, driveways, or mailboxes) and (iii) parking shall be permitted on streets where parking spaces have been approved by applicable governmental authorities and identified by striping on the pavement. Parking of any inoperable Vehicle anywhere on a Lot (other than in an enclosed garage) or on a street within the Property is prohibited. No part of any Vehicle may be parked over any part of a sidewalk because such parking may impede use of the sidewalks, particularly by pedestrians with disabilities. The provisions of this Section shall not apply to (a) Vehicles that are exempt from this Section under applicable law, (b) Vehicles of Declarant or any Designated Builder or their respective employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property, or (c) Vehicles used by the Association in repairing, maintaining and replacing the Common Areas and all Improvements thereon, or in performing all other rights, duties and obligations of the Association under this Declaration.

Section 5.7 Motor Vehicles.

(A) No automobile, truck, motorcycle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, all-terrain vehicle, boat trailer, golf cart or other similar equipment or motor vehicle of any kind (collectively, "**Vehicles**" and individually a "**Vehicle**") shall be parked, kept, or maintained on the Common Area. Vehicles with a gross vehicle weight rating exceeding 14,500 pounds and designated in a Class 5 or above, and commercial Vehicles are prohibited on the Property unless (i) parked in the rear or side yard of a Lot in a manner that such Vehicles are not Visible from Neighboring Property or (ii) owned by any guest or invitee of any Owner or tenant and parked on a Lot only during such time as the guest or invitee is visiting the Owner or tenant, but in no event shall such a motor Vehicle be parked on a Lot for more than seven (7) days during any six (6) month period of time. Any Vehicle, regardless of size, that is parked in the rear or side yard of any Lot must be parked so as not to be Visible from Neighboring Property.

(B) Except for emergency Vehicle repairs on a Lot, no Vehicle of any kind shall be constructed, reconstructed, or repaired on any Lot (other than in an enclosed garage) or the Common Area. No inoperable Vehicle or Vehicle which because of missing fenders, bumpers, hoods or other parts or because of lack of proper maintenance is, in the sole opinion of the Architectural Committee, unsightly or detracts from the appearance of the Project shall be stored, parked, or kept on any Lot except in an enclosed garage.

(C) No Vehicle with a gross vehicle weight rating exceeding 14,500 pounds and designated in a Class 5 or above, and no commercial Vehicle may be parked on any area in the Project so as to be Visible from Neighboring Property; provided, however, this provision shall not apply to Vehicles that do not exceed 14,500 pounds and are a Class 4 or less which are parked as provided in Section 5.6 and are used on a regular and recurring basis for transportation. For purposes of this Section, commercial Vehicles shall mean any Vehicle that (i) displays the name,

trade name, telephone number or other identifying information of any business or governmental entity or (ii) otherwise bears the appearance of a commercial Vehicle by reason of its normal contents (e.g. trade goods, extensive tools, ladders), as reasonably determined by the Architectural Committee.

(D) The provisions of this Section 5.7 shall not apply to (a) Vehicles that are exempt from this Section under applicable law, (b) Vehicles operated by delivery, pickup and fire protection services, trash collection and recycling services, ambulance services, police and other authorities of the law, United States Mail carriers, representatives of electrical, telephone, water, cable television and other utilities, persons or companies providing business or commercial services to residents of the Property and the like, while such services are being performed, (c) Vehicles of Declarant or any Designated Builder or their respective employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property, or (d) Vehicles used by the Association in repairing, maintaining and replacing the Common Areas and all Improvements thereon, and in performing all other rights, duties and obligations of the Association under this Declaration.

Section 5.8 Towing of Vehicles. The Association shall have the right to have any Vehicle parked, kept, maintained, constructed, reconstructed, or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the Vehicle or equipment. Any expense incurred by the Association in connection with the towing of any Vehicle shall be paid to the Association by the owner of the Vehicle by the Association. If the Vehicle towed is owned by an Owner, then the cost incurred by the Association in towing the Vehicle or equipment shall be assessed against the Owner and his Lot and be payable on demand, and such cost shall be secured by the Assessment Lien.

Section 5.9 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use or maintenance of Improvements constructed by the Declarant or approved by the New Construction Committee or Architectural Committee, as applicable. The provisions of this Section shall not apply to any activity of Declarant or any Designated Builder or their respective employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property.

Section 5.10 Restrictions and Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all or an undivided interest in all of any Lot shall be conveyed or transferred by any Owner other than the Declarant. Notwithstanding the foregoing and subject to compliance with any applicable ordinances, a vacant Lot may be split between the Owners of the Lots adjacent to such Lot so that each portion of such Lot would be held in common ownership with another Lot adjacent to that portion.

Section 5.11 Windows. Within thirty (30) days of occupancy of a Residential Unit each Owner shall install permanent suitable window treatments on all windows facing the street. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any

windows, except that professional window tinting shall be allowed subject to prior written approval of the New Construction Committee or Architectural Committee, as applicable.

Section 5.12 HVAC and Solar Panels. Except as initially installed by the Declarant or a Designated Builder, no heating, air conditioning, or evaporative cooling unit shall be placed, constructed or maintained upon any Lot without the prior written approval of the New Construction Committee or Architectural Committee, as applicable. Solar energy collecting units or panels may be placed, constructed or installed upon a Lot only at such locations as are determined by the New Construction Committee or Architectural Committee, as applicable, to minimize objectionable aesthetics, subject to the requirements of Section 163.04, Florida Statutes, as amended from time to time.

Section 5.13 Garages and Driveways. The interior of all garages situated on any lot shall be maintained in a neat and clean condition. Garages shall be used only for the parking of Vehicles and the storage of normal household supplies and materials and shall not be used for or converted to living quarters or recreational activities after the initial construction thereof without the prior written approval of the Architectural Committee. Garage doors shall be left open only as needed for ingress, egress, and ventilation while work is conducted inside the garage.

Section 5.14 Installation of Landscaping.

(A) If not already installed at the time an Owner acquires his Lot, within one hundred twenty (120) days after becoming the Owner of a Lot, the Owner shall install landscaping and irrigation Improvements in compliance with the Architectural Committee Rules and other applicable requirements set forth in the applicable zoning ordinances in that portion of his Lot which is between the street(s) adjacent to his Lot and the exterior wall of his Residential Unit or any wall separating the side or back yard of the Lot from the front yard of the Lot. Any Lot that has non-solid fencing (e.g. PVC, wrought iron or aluminum rail rather than a solid wall) on any boundary of its rear yard shall be completely landscaped and irrigated (front, rear, and side yards) by the Owner of such Lot in compliance with Architectural Committee Rules and other applicable requirements set forth in the applicable zoning ordinances within one hundred twenty (120) days of becoming the Owner of the Lot. The landscaping and irrigation Improvements shall be installed in accordance with plans approved in writing by the New Construction Committee or Architectural Committee, as applicable. Prior to installation of such landscaping, the Owner shall maintain the portions of such Lot required to be landscaped in a weed-free condition. Notwithstanding the foregoing, no hedges or landscaping that is opaque in nature and has a uniform height of more than four feet (4') above the sod level shall be installed in the portion of a Water Feature Lot or Conservation Lot (both as defined in Section 5.25(E)(v) hereof) that is beyond the rear wall of the Residential Unit.

(B) If any Owner fails to landscape any portion of his Lot within the time provided for in this Section, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to install such landscaping Improvements as the Association deems appropriate, and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce

provisions of this Section 5.16 shall not apply to any Declarant's or any Designated Builder's use of Lots owned by (or leased to) a Declarant or a Designated Builder, as applicable, as a model home or for marketing purposes.

Section 5.16.1 Management of Non-Owner Occupied Residential Units. In the event that any Owner hires any person or company to act as a property manager, leasing agent, management company or perform similar functions with respect to such Owner's Residential Unit (a "**Manager**"), or in the event that any Owner's Manager changes, such Owner shall deliver written notice thereof to the Association, specifying the following information:

- (A) The complete name and mailing address of the Manager;
- (B) The telephone number, fax number and e-mail address of the Manager, to the extent applicable;
- (C) If the Manager is a company, the name of an individual at the company who is responsible for the account; and
- (D) The name and telephone number of a contact person at the Manager who should be notified in the event of an emergency involving the Residential Unit, if different than set forth above.

Upon receipt of the foregoing information, the Association shall have the right (but not the obligation) to notify the Manager in writing of the existence of this Declaration and to deliver copies of any Project Documents to the Manager together with copies of any other rules and regulations hereunder which are applicable to the Residential Unit. Upon request, the Manager shall be required to acknowledge receipt of such documents and to acknowledge its obligation to comply with such documents in connection with its management or leasing of the Residential Unit.

Section 5.16.2 Rental of Residential Units. In the event that any Owner rents or leases such Owner's Residential Unit to a tenant or lessee (a "**Tenant**"), whether or not using the services of a Manager, such Owner shall deliver written notice thereof to the Association, specifying the following information:

- (A) The complete name and mailing address of the Tenant; and
- (B) The telephone number, fax number, and e-mail address for the Tenant, to the extent applicable.

Upon receipt of the foregoing information, the Association shall have the right (but not the obligation) to notify the Tenant in writing of the existence of this Declaration and deliver copies of any Project Documents to the Tenant together with copies of any other rules and regulations hereunder which are applicable to the Residential Unit. Upon request, the Tenant shall be required to acknowledge receipt of such documents and to acknowledge its obligation to comply with such documents in connection with its rental of the Residential Unit.

Section 5.17 Animals. No animals, insects, livestock, or poultry of any kind shall be raised, bred, or kept on or within any lot or structure thereon except that dogs, cats or other

collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

(C) Notwithstanding the foregoing, but subject to the other requirements of this Article V and the reasonable approval of the New Construction Committee or Architectural Committee, as applicable, no Owner shall be prohibited from implementing Florida-friendly landscaping, as such is defined in Section 373.185, Florida Statutes.

(D) This Section 5.14 shall not apply to Declarant or any Builder with respect to any Lot or any other property that has not been conveyed to an Owner with a residence already constructed thereon, except that this Section 5.14 shall apply upon commencement of residential occupancy of any Lot containing a residence.

Section 5.15 Declarant's and Designated Builder Exemption. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by a Declarant (or its designated agents and contractors) or a Designated Builder (subject to approval by Declarant) during the period of development, construction, performance of warranty work, sales and marketing on the Property, or any production homes, model homes and sales offices and parking incidental thereto, construction trailers, landscaping or signs deemed necessary or convenient by a Declarant or a Designated Builder (subject to the approval of Declarant), in their sole discretion, to the development, construction, sale and marketing of property within the Property. Any actions taken by a Designated Builder pursuant to this Section shall require the prior approval of Declarant, which shall not be unreasonably withheld. The Association shall take no action that would interfere with access to or use of model homes; without limitation of the foregoing, the Association shall have no right to close private streets to access by members of the public desiring access to model homes.

Residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, traffic, and other construction-related "nuisances." Each Owner acknowledges and agrees that it may be purchasing a Residential Unit which is within a residential subdivision currently being developed, and that the Owner may experience and accepts a substantial level of construction-related "nuisances" until the subdivision (and other neighboring portions of land being developed) have been completed and sold out.

Section 5.16 Leasing Restrictions. All tenants shall be subject to the terms and conditions of this Declaration and the Project Documents. Each Owner shall deliver copies of the Project Documents to any tenant leasing such Owner's Residential Unit, and to any management company engaged by such Owner to lease the Residential Unit on the Owner's behalf. Each Owner shall cause his, her or its tenants or other occupants to comply with this Declaration and the Project Documents and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or occupants, notwithstanding the fact that such tenants or occupants are also fully liable for any violation of each and all of those documents. No sign that is Visible from Neighboring Property may be placed on a Lot or any other area within the Project indicating that a Lot is available for lease at any time during the twenty-four (24) months after the initial conveyance of a Lot with a Residential Unit constructed thereon to an Owner from a Declarant or a Designated Builder (or by a trustee for the benefit of a Declarant or a Designated Builder). No Lot may be leased for a period of less than thirty (30) days. The

common household pets (types and breeds limited to those determined to be acceptable by the Board) may be kept on or within the lots, provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers as determined by the Architectural Committee. Notwithstanding the foregoing, no animals or fowl may be kept on any Lot which results in a nuisance to, which is an annoyance to, or which are obnoxious to other Owners or tenants in the vicinity. All pets, required by any law, must be kept within a fenced yard or on a leash under the control of the Owner at all times. No structure for the care, housing or confinement of any animal or fowl shall be maintained so as to be Visible from Neighboring Property. All dogs must be on leashes when they are not in a Residential Unit. In addition, any person walking a pet within the Property shall not allow any such pet to trespass on any other Owner's Lot and shall remove and properly dispose of any pet waste deposited on any portion of the Property by such Owner's pet.

Section 5.18 Drilling and Mining. No drilling, refining, quarrying, or mining operations of any kind, shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for or removing water, oil, natural gas, or other minerals shall be erected, maintained, or permitted upon any Lot.

Section 5.19 No Use of Irrigation Wells. No Owner shall use and/or install any individual irrigation well or similar improvements.

Section 5.20 Refuse. All refuse, including, without limitation, all animal wastes, shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Until removal from the Lots, refuse shall be placed in closed refuse containers with operable lids so that such containers are not open to the air. Refuse containers shall be kept clean, sanitary, and free of noxious odors. Refuse containers shall be maintained so as to not be Visible from Neighboring Property, except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection.

Section 5.21 Antennas and Satellite Dishes.

(A) This Section applies to antennas, satellite television dishes, and other devices ("**Receivers**"), including any poles or masts ("**Masts**") for such Receivers, for the transmission or reception of television or radio signals or any other form of electromagnetic radiation.

(B) As of the date of recordation of this Declaration, Receivers one meter or less in diameter are subject to the provisions of Title 47, Section 1.4000 of the Code of Federal Regulations ("**Federal Regulations**"). "**Regulated Receivers**" shall mean Receivers subject to Federal Regulations as such regulations may be amended or modified in the future or subject to any other applicable federal, state or local law, ordinance or regulation ("**Other Laws**") that would render the restrictions in this Section on Unregulated Receivers (hereinafter defined) invalid or unenforceable as to a particular Receiver. "**Unregulated Receiver**" shall mean all Receivers that are not Regulated Receivers. Notwithstanding the foregoing, a Regulated Receiver having a Mast in excess of the size permitted under Federal Regulations or Other Laws for Regulated Receivers shall be treated as an Unregulated Receiver under this Section.

(C) No Unregulated Receivers shall be permitted outdoors on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, with such screening and fencing as such Committee may require. Unregulated Receivers must be ground mounted and not Visible from Neighboring Property.

(D) Regulated Receivers shall be subject to the following requirements:

(i) If permitted by applicable Federal Regulations or Other Laws, no Regulated Receiver shall be permitted outdoors on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, with such screening and fencing as such Committee may require. If such restriction is not so permitted, the provisions of subsections (ii) and (iii) below shall apply.

(ii) A Regulated Receiver and any required Mast shall be placed so as not to be Visible from Neighboring Property if such placement will not (a) unreasonably delay or prevent installation, maintenance or use of the Regulated Receiver, (b) unreasonably increase the cost of installation, maintenance or use of the Regulated Receiver, or (c) preclude the reception of an acceptable quality signal.

(iii) Regulated Receivers and any required Masts shall be placed on Lots only in accordance with the following descending order of locations, with Owners required to use the first available location that does not violate the requirements of parts (a) through (c) in subsection (ii) above: (1) a location in the rear yard of the Lot where the Receiver will be screened from view by landscaping or other Improvements; (2) an unscreened location in the rear yard of the Lot; (3) on the roof, but completely below the highest point on the roofline; (4) a location in the side yard of the Lot where the Receiver and any pole or mast will be screened from view by landscaping or other Improvements; (5) on the roof above the roofline; (6) an unscreened location in the side yard; and (7) a location in the front yard of the Lot where the Receiver will be screened from view by landscaping or other Improvements.

Notwithstanding the foregoing order of locations, if a location stated in the above list allows a Receiver to be placed so as not to be Visible from Neighboring Property, such location shall be used for the Receiver rather than any higher-listed location at which a Receiver will be Visible from Neighboring Property, provided that placement in such non-visible location will not violate the requirements of parts (a) through (c) in subsection (ii) above.

(iv) Owners shall install and maintain landscaping or other Improvements (“**Screening**”) around Receivers and Masts to screen items that would otherwise be Visible from Neighboring Property unless such requirement would violate the requirements of parts (a) through (c) in subsection (ii) above, if an Owner is not required to install and maintain Screening due to an unreasonable delay in installation of the Receiver that such Screening would cause, the Owner shall install such screening within thirty (30) days following installation of the Receiver and shall thereafter maintain such Screening, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection (ii) above. If an Owner is not required to install Screening due to an unreasonable increase in the cost of installing the Receiver caused by the cost of such Screening, the Association shall have the right, at the option of the Association, to enter onto the Lot and install such Screening and, in such event, the



Owner shall maintain the Screening following installation, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection (ii) above.

The provisions of this Section are severable from each other; the invalidity or unenforceability of any provision or portion of this Section shall not invalidate or render unenforceable any other provisions or portions of this Section, and all such other provisions or portions shall remain valid and enforceable. The invalidity or unenforceability of any provisions or portions of this Section to a particular type of Receiver or Mast or to a particular Receiver or Mast on a particular Lot shall not invalidate or render unenforceable such provisions or portions regarding other Receivers or Masts on other Lots.

Section 5.22 Utility Services. To the extent reasonably practicable, all lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures, as approved by the New Construction Committee or Architectural Committee, as applicable. Temporary power or telephone structures incident to construction activities approved by the New Construction Committee or Architectural Committee, as applicable are permitted.

Section 5.23 Diseases and Insects. No Owner or resident shall permit any thing or condition to exist upon a Lot which shall induce, breed, or harbor infectious plant diseases or noxious insects, including but not limited to swimming pools which are not kept operable and in clean condition.

Section 5.24 Construction Control. No excavation, grading work or construction activity for the purpose of New Construction shall be performed on any Lot by any Owner other than Declarant without the prior written approval of the New Construction Committee.

Section 5.25 Architectural Control. The following provisions shall govern architectural control of all Improvements with the exception of New Construction (which must be approved by the New Construction Committee rather than the Architectural Committee):

(A) No excavating or grading work shall be performed on any Lot for the purpose of constructing Improvements by any Owner other than Declarant without the prior approval of the Architectural Committee. Each Owner altering any grading or drainage on a Lot shall ensure that such alterations comply with all requirements of any grading or drainage plan approved by any governmental entity having jurisdiction over the Property and that such alterations do not alter or impede the flow of storm water from the manner existing prior to such alterations; approval of plans or proposed Improvements by the Architectural Committee shall not constitute a waiver of this requirement or a warranty that such plans or Improvements are consistent with this requirement or any other requirement of this Declaration, the Association Rules, any governmental requirement or construction industry standard.

(B) No Improvements shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

(C) No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or

the Improvements located thereon, shall be made or done without the prior written approval of the Architectural Committee.

(D) Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of the Improvement, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or replacement of any Improvement which the Owner desires to perform, including, but not limited to, the shape, height, materials, floor plans, color scheme and location of such proposed Improvement. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans.

(E) Without curtailing the right of the Architectural Committee to reject certain requests or employ judgment in evaluating requests, the following guidelines shall be considered when evaluating requests regarding fences. Even in the event of strict compliance with the following guidelines, prior written approval from the Architectural Committee shall be required for each and every fence installation.

(i) Any fence installed on a Lot within the Property must have a uniform maximum height of no more than six feet (6') above the sod level.

(ii) Any fence must be made entirely of one of the following materials: (a) PVC; (b) wrought iron; or (c) aluminum rail.

(iii) All fences comprised of PVC shall be beige in color, or painted beige in color within thirty (30) days of installation. All fences comprised of wrought iron or aluminum rail shall be black in color or painted black in color within thirty (30) days of installation.

(iv) No fence shall be approved or installed which encroaches into Common Area or other Lots.

(v) No fence shall be approved or installed which extends in front of the front wall of the Residential Unit or beyond the rear wall of the Residential Unit without the prior approval of the Architectural Committee. Notwithstanding the foregoing, no fence shall be approved or installed beyond the rear wall of a Residential Unit on either (A) a Lot upon which a Water Feature, as defined in Section 3.1.1 hereof, is located or that shares a boundary line with a tract or parcel upon which a Water Feature is located (a "**Water Feature Lot**") or (B) a Lot upon which a conservation easement is located or that shares a boundary line with a tract or parcel on which a conservation easement is located (a "**Conservation Lot**"), unless such fence is comprised of wrought iron or open aluminum rail, black in color or painted to be black in color within thirty

(30) days of installation, and has a uniform maximum height of no more than five feet (5') above the sod level.

(F) The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change, or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, or other work subsequently submitted for approval.

(G) Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change, or other work, the Owner who obtained such approval shall proceed to perform, construct or make the construction, installation, addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practical and within such time as may be prescribed by the Architectural Committee.

(H) The approval of the Architectural Committee required by this Section shall be in addition to, and not in lieu of, the requirements of and any approvals, consents, or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the Property.

(I) The provisions of this Section shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change, or replacement of any Improvements made by, or on behalf of, the Declarant.

(J) In no event shall the Association, the Board, the Declarant, the Architectural Committee, any member of the Architectural Committee, or any director, officer, manager, member, employee or agent thereof have any liability for any action or inaction by the Architectural Committee or its members, including without limitation any approval or disapproval of plans by the Architectural Committee. The sole remedy for an Owner asserting that the Architectural Committee has improperly withheld approval or has improperly granted approval shall be an action to compel the Architectural Committee to take appropriate action. In no event shall any damages of any nature be awarded against the Association, the Architectural Committee or any member of the Architectural Committee arising from any action or inaction described in this Section 5.23. Every person who submits plans for approval, by submission of such plans and specifications, agrees that it will not bring any action or suit for damages against the Association, Board, Declarant, Architectural Committee, any member of the Architectural Committee, or any director, officer, employee, manager, member or agent thereof.

(K) Each Owner is strongly advised to consult with independent architects and engineers to ensure that all Improvements or alterations made by such Owner are safe and in compliance with applicable governmental requirements. No approval by the Architectural Committee shall constitute a guaranty or warranty by the Association, the Architectural Committee or any member of the Architectural Committee that the matters approved will comply with this Declaration, any Association Rules or architectural guidelines, or any applicable governmental requirements or that any plans or Improvements are safe or properly designed. The Owner

constructing or altering any Improvements shall indemnify, defend and hold the Association harmless from (i) any claims or damages of any nature arising from such Improvements or alterations or any approval thereof by the Architectural Committee and (ii) any claim that the Association, the Architectural Committee or any member of the Architectural Committee breached any duty to other Owners in issuing approval of such Owner's Improvements or alterations.

Section 5.26 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed, or maintained on any Lot so as to be Visible from Neighboring Property.

Section 5.27 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Architectural Committee.

Section 5.28 Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with the Surface Water Management System or change the direction or flow of water in accordance with the Surface Water Management System for the Project, for any part thereof, or for any Lot as shown on the approved drainage plans on file with the municipality, County, Water Management District or other governing body in which the Project is located. In addition, no Owner or other Person shall change the grade or elevation of a Lot in any manner that would obstruct, interfere with, or change the direction or flow of water in accordance with the approved drainage plans.

Section 5.29 Basketball Goals and Backboards. No basketball backboard, hoop or similar structure or device shall be permitted except in accordance with the Architectural Committee Rules.

Section 5.30 Playground Equipment. No jungle gyms, swing sets, or similar playground equipment which would be Visible from Neighboring Property shall be erected or installed on any Lot without the prior written approval of the New Construction Committee or Architectural Committee, as applicable.

Section 5.31 Lights. Except as initially installed by the Declarant, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property except as approved by the New Construction Committee or Architectural Committee, as applicable.

Section 5.32 Flags. The official flag of the United States and/or the State of Florida may be displayed on any Lot provided: (i) such flag is displayed in the manner required under the Federal Flag Code (4 U.S.C. §§ 4-10); (ii) if detached from a Residential Unit, the pole is no higher than twenty feet (20') high; (iii) if attached to a Residential Unit, the pole is no longer than ten feet (10') in length and does not extend more than ten feet (10') from the edge of the Residential Unit; (iv) the flag and pole do not obstruct sightlines at intersections and are not erected within or upon an easement; (v) the flag is no larger than 4½ feet by 6 feet in size, (vi) any flag lighting does not

violate Section 5.30 of this Declaration; and (vii) the flag is maintained in good condition. Any Owner may additionally display one official flag of the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag on any Lot; provided that such flag is equal in size to or smaller than the United States flag. The flag of another nation may be displayed in lieu of the United States flag on national holidays of such nation provided such display complies with the requirements for displaying the United States flag.

Section 5.33 Yard Sales. Owners may hold “yard sales” to sell personal property of such Owners only in compliance with the following requirements: (i) yard sales shall be limited to two (2) days per year on any Lot, (ii) no yard sale shall commence prior to 6:00 AM EST or continue after 5:00 PM EST, (iii) no Owner shall post any signs advertising any yard sale anywhere on the Property except that a temporary sign may be posted on such Owner’s Lot on the day that a yard sale is being held, (iv) if the Association ever adopts standard yard sale dates for the Property, yard sales shall be held only on such dates, and (v) no yard sale may be conducted without all applicable governmental permits and approvals having been obtained. The Association shall give reasonable notice to all Owners if it adopts standard yard sale dates for yard sales on the Property.

Section 5.34 Holiday Displays. Owners may display holiday decorations which are Visible from Neighboring Property only if the decorations are of the kinds normally displayed in single family residential neighborhoods, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed between November 1 and January 31 of each year and, during other times of year, from one week before to one week after any nationally recognized holiday.

Section 5.35 Screen Enclosures. The following guidelines shall be considered when evaluating requests regarding screen enclosures. Note that, even in the event of strict compliance with the following guidelines, prior written approval from the Architectural Committee shall be required for each and every screen enclosure installation:

- (A) Approval for screen enclosures shall be limited to aluminum frame structures that are either bronze or black.
- (B) Approval for screen enclosures shall be limited to screen meshes on the enclosure that are a standard dark color (e.g. charcoal, bronze or black).
- (C) Kick plates may be approved which are no taller than 24” above the patio deck.
- (D) Opaque screen materials shall be prohibited.
- (E) No enclosures shall be permitted at the front entries if the proposed structure extends beyond the face of the covered entry.

Section 5.36 Firearms. The use or discharge of firearms or other weapons within the Property is prohibited. The carrying of firearms or other weapons in the Common Areas without a permit is also prohibited. The term “firearms or other weapons” includes, but is not limited to,

“B-B” guns, pellet guns, knives, swords, cross-bows and other firearms or other weapons of all types, regardless of size.

## ARTICLE VI RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Land Owner hereby reserves and grants to the Declarant, its successors and assigns, the right at any time, without the consent of other Owners or First Mortgagees, to re-subdivide and re-plot any Tract or Tracts, Lot or Lots which the Land Owner then owns and has not sold and Declarant hereby reserves the right at any time, without the consent of other Owners or First Mortgagees, to re-subdivide and re-plot any Tract or Tracts, Lot or Lots which the Declarant then owns and has not sold.

## ARTICLE VII PARTY WALLS

Section 7.1 General Rules of Law to Apply. Each wall, any part of which is placed on a boundary line between separate Lots or between any Lot and any portion of the Common Area (a “**Boundary Wall**”), or traverses more than one Lot or a Lot and a portion of the Common Area (a “**Traversing Wall**”) shall constitute a “**Party Wall**”. Each Owner’s obligation with respect to Party Walls shall be determined by this Declaration, except as otherwise required by Florida law.

Section 7.2 Sharing Repair and Maintenance. Each Owner shall maintain the portion of the Party Wall situated upon his Lot, including the exterior surface of a Boundary Wall facing his Lot. Except as provided in this Article VII, the cost of reasonable repair of a Boundary Wall shall be shared equally by adjoining Lot Owners.

Section 7.3 Damage by One Owner. If a Party Wall is damaged or destroyed by the act of any Owner, or his guests, tenants, licensees, agents or family members (whether or not such act is negligent or otherwise culpable), then that Owner shall immediately rebuild or repair the Party Wall to its prior condition without cost to any other Owner or the Association and shall indemnify any adjoining Owners and the Association from any consequential damages, loss or liabilities. No Owner shall violate any of the following restrictions and any damage (whether cosmetic or structural) resulting from violation of any of the following restrictions shall be considered caused by the Owner causing such action or allowing such action to occur on such Owner’s Lot:

(i) No Owner shall allow sprinklers to spray or other water sources to deliver water onto the surface of any Boundary Wall, excluding rainfall that falls directly on such Boundary Wall (e.g., an Owner shall not collect rainfall from other portions of the Lot and spray or deposit it on any Boundary Wall);

(ii) No Owner shall allow any tree to grow within six feet (6’) of any Party Wall (with such distance measured from the above-ground part of the tree that is nearest to the wall within five feet (5’) of the ground level of the tree, including any portion of the root system that is not completely covered by soil); and

(iii) No Owner shall allow attachment of anything, including but not limited to any climbing plant or vine, to any Party Wall.

Section 7.4 Other Damage. If a Party Wall is damaged or destroyed by any cause other than the act of any Owner, his agents, tenants, licensees, guests or family members (including ordinary wear and tear and deterioration from lapse of time), then the following shall apply:

(i) If the Party Wall is a Boundary Wall, then the adjoining Owners shall rebuild or repair the Boundary Wall to its prior condition, equally sharing the expense;

(ii) If the Party Wall is a Traversing Wall, then the Owner on whose Lot the portion of the Traversing Wall that requires rebuilding or repair is located shall rebuild or repair that portion of the Traversing Wall to its prior condition, at its sole expense; and

(iii) Notwithstanding the foregoing, and irrespective of whether the Party Wall is a Boundary Wall or a Traversing Wall, if the Party Wall is damaged or destroyed as a result of an accident or circumstances that originate or occur on a particular Lot (whether or not such accident or circumstance is caused by the action or inaction of the Owner of that Lot, or his agents, tenants, licensees, guests or family members), then in such event, the Owner of that particular Lot shall be solely responsible for the cost of rebuilding or repairing the Party Wall and shall immediately repair the Party Wall to its prior condition.

Section 7.5 Right of Entry. Each Owner shall permit the Owners of adjoining Lots, or their representatives, to enter his Lot for the purpose of installations, alteration, or repairs to a Party Wall on the Property of such adjoining Owners, provided that other than for emergencies, requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner of the adjoining Lot. An adjoining Owner making entry pursuant to this Section shall not be deemed guilty of trespassing by reason of such entry. Such entering Owner shall indemnify the adjoining Owner from any consequential damages sustained by reason of such entry.

Section 7.6 Right of Contribution. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7.7 Consent of Adjoining Owner. In addition to meeting the requirements of this Declaration and of any applicable building code and similar regulations or ordinances, any Owner proposing to modify, alter, make additions to or rebuild (other than rebuilding in a manner materially consistent with the previously existing wall) a Boundary Wall shall first obtain the written consent of the adjoining Owner, which shall not be unreasonably withheld or conditioned.

Section 7.8 Walls Adjacent to Streets or Common Area. A Party Wall that is adjacent to streets or Common Area shall be treated as though it is a Boundary Wall with the street or common area constituting a Lot owned by the Association, except that any portion of such wall consisting of decorative metal-work that was originally on such Boundary Wall (or any replacement thereof) shall be the sole responsibility of the Association (subject to an Owner's liability for repairs that would be such Owner's sole responsibility under Section 7.3 or Section 7.4). Notwithstanding the foregoing, (a) the provisions in Section 7.3 and Section 7.4 regarding an Owner's sole liability for repair of damage caused by such Owner's guests or licensees shall

not apply to damage resulting from guests or licensees of the Association and such damage shall be considered caused by unrelated third parties and (b) the rule in Section 7.4 regarding damage arising from events occurring on a particular Owner's Lot shall not apply to damage arising from events occurring on streets or Common Areas. Notwithstanding the foregoing, any damage to a Party Wall that is covered by the Association's casualty insurance shall, to the extent of proceeds actually received from such insurance, be paid for by the Association.

Section 7.9 Walls Forming Part of Residence. If a Lot contains a Party Wall that is (i) an exterior wall of a residence (including any garage associated with a residence) and (ii) located on or immediately adjacent to the Lot boundary line, the provisions of this Article shall apply and if allowed by the Land Development Regulations, will be subject to the following:

(A) The Party Wall shall have a perpetual easement for encroachments onto any adjoining Lot or Common Area of up to one foot, provided, however, that such easement shall only apply to initial construction of the wall and any replacements of the wall that do not encroach further than the original wall.

(B) Any roof Improvements (including gutters and similar related Improvements) above such Party Wall shall have a perpetual easement for encroachments onto any adjoining Lot or Common Area of up to four feet (4'), provided, however, that such easement shall only apply to initial construction of the roof Improvements and any replacements of the roof Improvements that do not encroach further than the original roof Improvements.

(C) The Owner of the Lot adjacent to such Party Wall shall not, without the written approval of the Owner of the Lot on which the residence is located, do any of the following:

- (i) use the wall for recreational purposes (e.g. bouncing balls);
- (ii) use the wall as part of an enclosure for pets; or
- (iii) otherwise take any action regarding the wall that a reasonable person would conclude has a substantial likelihood of disturbing the peaceful and undisturbed use of the interior of the residence of which the wall forms a part.

(D) Notwithstanding Section 7.7, no Owner shall be required to obtain permission from the adjoining Lot Owner to rebuild a wall in the same manner as originally constructed.

Section 7.10 Construction and Installation of a Party Wall.

(A) Right to Construct. Each Builder hereby agrees and acknowledges that certain portions of each Builder's Lots may share a Party Wall with the Lots of another Builder. Any Builder (the "**Constructing Builder**") that first commences construction on a portion of the Builder's Lots requiring the construction and installation of a Party Wall (commencement of construction being the commencement of grading) shall be responsible for causing the construction and installation of the Party Wall. The Constructing Builder shall cooperate and coordinate with any adjacent property owner(s) (the "**Non-Constructing Builder**") in order to avoid any interference with any of the Non-Constructing Builder's construction and installation of



Improvements upon its Lots. The Constructing Builder shall complete the construction and installation of any Party Wall in a timely manner. If the Constructing Builder fails to timely construct and install the Party Wall in accordance with the terms of this subsection (A), including, but not limited to, receipt of the lien waivers required by subsection (C) below, then the Non-Constructing Builder shall have the right to complete such construction and pay any outstanding costs to release any liens. The Non-Constructing Builder hereby grants to the Constructing Builder a temporary nonexclusive easement over, across, in, under, and through those portions of the Non-Constructing Builder's Lots that are not planned or utilized for the construction of buildings, structures, or other Improvements for the purpose of constructing the Party Wall. The easement may not be exercised or used in any fashion that would unreasonably interfere with or impact the Non-Constructing Builder's development of its Lots. The easement with respect to any Lot shall automatically expire upon the sale of such Lot, together with a Residential Unit thereon, to a Purchaser.

(B) Payments. The cost of any Party Wall shall be divided equally between the Builder(s) sharing the Party Wall. Subject to receipt of the lien releases described in subsection (C) below, within ten (10) days after the Constructing Builder submits an invoice to the Non-Constructing Builder in connection with the cost of the construction and installation of a Party Wall (the "**Wall Payment Due Date**"), the Non-Constructing Builder shall pay to the Constructing Builder, in cash, by cashier's check or by wire transfer of immediately available funds, the Non-Constructing Builder's share of the cost.

(C) Lien Waivers. The Constructing Builder shall not permit any contractors, subcontractors or material suppliers to file any liens or claims including, but not limited to, stop notices, bonded stop notices, mechanics', materialmen's, professional service, contractors' or subcontractors' liens or claim for damage arising from the services performed by the Constructing Builder and its agents, employees, contractors and subcontractors, against any other Builder's Lots. It shall be a condition precedent to the Constructing Builder receiving payment that all mechanics and materialmen deliver statutory unconditional lien releases for the work constructed to date.

(D) Non-Payment. If a Non-Constructing Builder fails to pay the amounts incurred by the Constructing Builder for the construction and installation of the Party Wall on the Non-Constructing Builder's Lots on or before the Wall Payment Due Date, the amounts unpaid shall bear interest at the rate of eighteen percent (18%) per annum until paid in full, and shall be secured by a lien against the Lots of the Non-Constructing Builder, which lien may be foreclosed in the manner provided for in Florida law for the foreclosure of realty mortgages.

## ARTICLE VIII EASEMENTS

### Section 8.1 Owner's Easements of Enjoyment.

(A) Every Member, and any person residing with such Member, 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 to every Lot and Parcel, subject to the following provisions:

(i) The right of the Association to suspend the voting rights and right to the use of the Common Areas (except as hereinafter expressly provided) by any Member (and such Member's tenants, guests, or invitees) who is more than ninety (90) days delinquent in the payment of any Assessment against his Lot for any period during which such Member remains delinquent. Furthermore, the Association may suspend the right of an Owner (and such Owner's tenants, guests, or invitees) to use the recreational facilities, but not the Owner's voting rights, for a period not to exceed sixty (60) days for any other infraction of the Project Documents and for successive sixty-day (60) periods thereafter if any such infraction is not corrected during any prior sixty-day (60) period. The Association may levy reasonable fines of up to \$1,000 per single violation hereof against any member so suspended or any tenant, guest, or invitee thereof. A fine may be levied in the amount of up to \$100 per day for each day of a continuing violation, with a single fourteen (14) day notice and opportunity for a hearing before a committee of at least three uninterested Members appointed by the board. A fine of \$1,000 or more shall be secured by a lien on the affected parcel in favor of the Association, but a fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the non-prevailing party as determined by the court. The provisions regarding the suspension-of-use rights do not apply to the portion of Common Areas to the extent the same must be used to provide access or utility services to the Lot.

(ii) The right of the Association to dedicate, transfer or encumber all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board, provided, however, that any such action taken at any time that Declarant owns any Lot shall be subject to the approval of Declarant. If ingress or egress to any Lot is through the Common Area, any dedication, transfer, or encumbrance of the Common Area shall be subject to the Lot Owner's easement of ingress and egress.

(iii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit or limit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners or other lawful occupants of a Residential Unit.

(B) If a Lot is leased or rented by the Owner thereof, the tenant and the members of his family residing with such tenant pursuant to the lease shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease, except for the portion of Common Areas that must be used to provide access or utility services to the Lot.

(C) The guest and invitees (other than tenants) of any Member or other person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area provided they are accompanied by a Member or other person entitled to use the recreational facilities pursuant to this Declaration. The Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

Section 8.2 Drainage Easements. Drainage flow shall not be obstructed or diverted from the drainage easements. Land Owner hereby reserves for itself, its successors and assigns, and hereby grants to the Declarant, its successors and assigns, and the Association, easements for and may, but shall not be required to, cut swales and drainways for surface water wherever within the Property and whenever such action may appear to the Land Owner, the Declarant or the Association, as the case may be, to be necessary to maintain reasonable standards of health, safety and/or appearance provided that any such action is in compliance with any permit from time to time issued by the Water Management District, as such permits may be amended or supplemented from time to time. These easements include the right to cut or remove any trees, bushes or shrubbery, make any gradings of the soil, or take any other action reasonably necessary to install drainage facilities and maintain reasonable standards of health, safety and/or appearance, but shall not include the right to disturb any Improvements erected within the Property which are not located within the specific easement areas designated on the Plat or in this Declaration. Neither these easements nor their intended uses may be changed, amended, modified or terminated by subsequent owners or others (with the exception of the holders of such easements). Except as provided herein, existing drainage and drainage channels (or areas reserved for such purposes) shall not be altered so as to divert the flow of water onto adjacent parcels or into sanitary sewer lines. Notwithstanding anything provided herein to the contrary, the Surface Water Management System makes use of certain portions of the Property, including, but not limited to, portions of the Common Areas dedicated for water management purposes. The Land Owner hereby reserves unto itself, its successors and assigns, and hereby grants to the Declarant, its successors and assigns, and the Association, a perpetual non-exclusive easement over, under and upon all Lots and other portions of the Property which may be utilized for the Surface Water Management System to make use of such Surface Water Management System for the surface water drainage, retention, detention and maintenance necessary to develop the Property as the Declarant deems to be appropriate. In addition to the foregoing, the Land Owner, its successors and assigns, the Declarant, its successors and assigns, and the Association, shall have the right to utilize all drainage easements provided for herein or on the Plat of the Property for purposes of accessing any and all drainage facilities on the Property and for access to any Common Areas and/or any Improvement from time to time located thereon.

Section 8.3 Mailbox Easements. Mailbox structures shall be installed at such locations within the Property as Declarant and the U.S. Postal Service determine to be appropriate. If mailbox structures benefiting more than a single Residential Unit are constructed or installed on Lots, an easement shall be deemed to exist over such portion of the Lot(s) on which such structures are constructed or installed so as to facilitate the use of such mailbox structure by the U.S. Postal Service, the Owners of the Residential Units to be served by such structures, and the Association. All such common mailbox structures shall be Common Areas.

Section 8.4 Utility Easements. Except as installed by the Declarant or approved by the New Construction Committee or Architectural Committee, as applicable, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, cable and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, to the extent reasonably practicable. No structure, landscaping, or other Improvements shall be placed, erected, or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the installation and maintenance of utilities. Such public utility easement areas, and all Improvements thereon, shall be maintained by the Owner of the Lot on which the easement area is located unless the utility company or a county, municipality or other public authority maintains said easement area. There is hereby created a blanket easement upon, across, over and under the Property for ingress to, egress from and the installation, replacing, repairing, altering, operating and maintaining of all utility and service lines and systems including, but not limited to, water, sewer, gas, telephone, electricity, cable or communication lines and systems, as such utilities are installed in connection with the initial development of each Lot. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Lots and Common Areas and affix and maintain wires, circuits, and conduits on, in, and under the roofs and exterior walls of buildings thereon. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility or sewer lines may be installed or relocated within the Property except as initially created or approved by Declarant without the prior written approval of, in the case of a Common Area, the Association and the New Construction Committee or Architectural Committee, as applicable or, in the case of a Lot, the Owner of such Lot and the New Construction Committee or Architectural Committee, as applicable. Nothing contained herein shall entitle Declarant or any utility in exercising the rights granted herein to disturb any Residential Unit constructed in accordance with the requirements hereof. Land Owner further reserves to itself, its successors and assigns, and grants to Declarant, its successors and assigns, temporary construction easements for utility lines, maintenance of storage tanks and facilities and access to and from such facilities.

Section 8.5 Encroachments. All Lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent Lots as constructed by the original builder or as reconstructed or repaired in accordance with the original plans and specifications or as a result of the reasonable repair, shifting, settlement or movement of any such structure.

Section 8.6 Declarant's Easement; Plat Easements. The Land Owner hereby reserves to itself, its successors and assigns, and grants to the Declarant, its successors and assigns, and to such other persons as the Declarant may from time to time designate in writing, a perpetual non-exclusive easement, privilege and right in and to, over, under, on and across the Common Area, including but not limited to all easements for access, drainage, parking, walls, fences, landscaping, open areas, common areas, preservation areas, private drainage areas, wetland preservation areas, signs, conservation, environmental swales, utilities and other purposes shown on the Plat and for ingress and egress; provided, however, that such access and use does not (i) unreasonably interfere with the reasonable use and enjoyment of the Common Area and facilities located thereon by the Owners, nor (ii) unreasonably interfere with the easement rights of any other parties; nor (iii) violate any recorded covenants or restrictions affecting same. The Land Owner hereby reserves

to itself, its successors and assigns, and grants to the Declarant, its successors and assigns, and to such other persons as the Declarant may from time to time designate in writing, a non-exclusive perpetual easement, privilege and right in and to, over, under, on and across the Property, to construct, install, locate, maintain, repair, replace and operate any lines, cables, conduits, pipes, landscaping, signs, parking areas, walls, fences and other such Improvements related to the infrastructure and development thereof in connection with the Declarant's development of the Property or any portion thereof; provided, however, that the Declarant shall be obligated to restore any disturbed area to as close to the original condition of the area as is reasonably practicable. The Land Owner hereby reserves to itself, its successors and assigns, and grants to the Declarant, its successors and assigns, a non-exclusive easement for the construction, installation, maintenance, repair, replacement and operation of security, television and communication cables and facilities within the rights-of-way and easement areas referred to herein. In addition to the foregoing, the Land Owner reserves for itself, its successors, and assigns, and/or grants to Declarant, its successors and assigns, as applicable, all easement rights reserved by or to the Declarant or Land Owner as set forth on any Plat.

Section 8.7 Easements to Facilitate Development. Land Owner hereby reserves to itself, its successors and assigns, and grants to the Declarant, its successors and assigns, and all Designated Builders, and their successors and assigns the right to: (a) use any Lots owned or leased by such party, or any other Lot with written consent of the Owner thereof or, with the approval of a majority of Declarant and the Designated Builders (based on the number of Lots owned by each such party), any portion of the Common Area, as models, management offices, sales offices, a visitors' center, construction, construction offices, customer service offices or sales office parking areas; and (b) with the approval of a majority of Declarant and the Designated Builders (based on the number of Lots owned by each such party), install and maintain on the Common Area, any Lot owned or leased by such party, or any other Lot with the consent of the Owner thereof; such marketing, promotional or other signs which the Declarant or a Designated Builder deem necessary for the development, sale or lease of the Property.

Section 8.8 Service Easements; Dedications and Easements Required by Governmental Authority. Land Owner hereby grants to persons and entities affiliated with delivery, pickup and fire protection services, garbage services, ambulance services, police and other authorities of the law, United States Mail carriers, representatives of electrical, telephone, water, wastewater, irrigation, cable television and other utilities authorized by the Declarant or the Association, and to such other persons as the Declarant or the Association from time to time may designate, a nonexclusive, perpetual easement for ingress and egress over and across the Common Area for the purposes of performing their authorized services, to service all or any portion of the Property and to perform any investigation related thereto. Land Owner hereby reserves to itself, its successors and assigns, and grants to the Declarant, its successors and assigns, and the Association, the right to make any dedications and to grant any easements, rights-of-way, and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

Section 8.9 Easement to Inspect and Right to Correct.

(A) Easement. Land Owner hereby reserves to itself, its successors and assigns, and grants to the Declarant, its successors and assigns, and such other persons as Declarant may

designate, perpetual, non-exclusive easements throughout the Property, to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, correcting, or improving any portion of the Property, including Residential Units and the Common Area. Land Owner and Declarant shall have the right to redesign, correct, or improve any part of the Property, including Residential Units and the Common Area.

(B) Right of Entry. In addition to the above easement, Land Owner hereby reserves to itself, its successors and assigns, and grants to the Declarant, its successors and assigns, a right of entry onto each Lot (but not into the interior of a Residential Unit) upon reasonable notice to the Owner; provided, in an emergency, no such notice need be given. Other than in an emergency, entry onto a Lot shall be only after Land Owner or Declarant notifies the Owner (or occupant) and agrees with the Owner regarding a reasonable time to enter the Lot to perform such activities. Each Owner agrees to cooperate in a reasonable manner with Land Owner or Declarant in such exercise of the rights provided to it by this Section. Entry onto the Common Areas and into any improvements and structures thereon may be made by Land Owner or Declarant at any time, provided advance notice is given to the Association; provided, in an emergency, no notice need be given. The exercise of these easements shall not unreasonably interfere with the use of any Residential Unit.

(C) Damage. Any damage to a Residential Unit or the Common Areas resulting from the exercise of the easement and right of entry described in subsections (A) and (B) of this Section shall promptly be repaired by, and at the expense of, Land Owner or Declarant, as may be applicable. The Land Owner or Declarant shall otherwise have no liability for any loss or damage incurred by an Owner or the Association as a result of the Land Owner's or Declarant's exercise of its rights hereunder except to the extent such loss or damage is proximately caused by the gross negligence, willful misconduct or unlawful conduct of the Land Owner or Declarant or their respective agents.

Section 8.10 Easement for Maintenance and Enforcement. The Association and its directors, officers, agents, contractors and employees, the Architectural Review Committee and any other persons and entities authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Residential Unit), for (i) the exercise and discharge of their respective powers and responsibilities under the Project Documents; (ii) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the New Construction Committee or Architectural Committee, as applicable and that all Improvements are being properly maintained as required by the Project Documents; (iii) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area; (iv) performing installations or maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for maintenance; or (v) correcting any condition which violates the Project Documents. The Association shall have no liability for any loss or damage incurred by an Owner as a result of the Association's exercise of its rights hereunder except to the extent such loss or damage is proximately caused by the gross negligence, willful misconduct or unlawful conduct of the Association or its agents.

Section 8.11 Easements for Additional Property. Easements over, upon, under, through and across the Common Area are reserved to the Land Owner, its successors and assigns,

Declarant, its successors and assigns, and the Association, and may be declared or granted from time to time by the Land Owner or Declarant for such further utility, egress, ingress or drainage easements over and across the Property as may be required from time to time to serve any other or additional lands during the course of development of the same, whether or not such additional lands become subject to the jurisdiction of the Association and a part of the Property or Additional Property.

Section 8.12 Rights of Declarant and Designated Builders. Notwithstanding any other provision of this Declaration to the contrary, the Declarant and each Designated Builder has the right to maintain construction trailers, model homes and sales offices on Lots owned or leased by such party and to construct and maintain parking areas for the purpose of accommodating persons visiting such construction trailers, model homes and sales offices and employees and contractors of such party. Any home constructed as a model home shall cease to be used as a model home and any sales office shall cease to be used as a sales office at any time the Declarant or such Designated Builder is not actually engaged in the sale of Lots.

Model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant or Designated Builder to deliver the Residential Unit in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded carpet, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale by the Declarant to a Purchaser unless an authorized officer of Declarant has specifically agreed in a written addendum to the purchase agreement to make specific items a part of the purchase agreement.

Section 8.13 Duration of Development Rights; Joinder; Assignment. The rights and easements reserved by or granted to the Land Owner or Declarant pursuant to this Article VIII shall continue so long as any Declarant owns one or more Lots or holds an option to purchase one or more Lots. The joinder of the Association or any Owner or mortgagee of any Owner shall not be required for any easement that may be granted or declared by Land Owner or Declarant hereunder. Land Owner or Declarant may make limited temporary assignments of its easement rights under this Declaration to any person or entity performing construction, installation, or maintenance on any portion of the Property.

Section 8.14 Miscellaneous. If any easement created or intended to be created by this Declaration would be found ineffective as a matter of law on account of the fact that it is purported to be created at a time when both the burdened and benefited properties are owned by the same party, such easement shall be instead be deemed a contractual obligation and license having the same terms for the duration of the period that the burdened and benefited properties are owned by the same party, which shall automatically be converted to an easement on such future date as the burdened and benefited properties become owned by different parties, without requiring the execution or recordation of any further instruments, so as to preserve the intent and purpose of this Declaration.

## ARTICLE IX MAINTENANCE

Section 9.1 Maintenance by Owner. Each Owner shall maintain his Lot and Residential Unit in good repair. The yards and landscaping on all improved Lots shall be neatly and attractively maintained, and shall be cultivated and planted to the extent required to maintain an appearance in harmony with other improved Lots in the Property. If any sidewalk is partially or completely located on an Owner's Lot and third parties have an easement to use such sidewalk, or if any sidewalk is located between a boundary line of the Owner's Lot and the curb of any adjacent street, then the Association (and not the Owner) shall be responsible for the maintenance and repair of such sidewalk (other than pressure-washing the sidewalk to keep the same free from unreasonable accumulations of mold and mildew, which shall be the responsibility of the Owner from time to time, as needed). During prolonged absence, an Owner shall arrange for the continued care and upkeep of his Lot. Except for areas owned by the Association or that the Association has elected in writing to maintain, which election may be terminated by the Association at any time, each Owner shall also maintain in good condition and repair any landscaping within the portion of any adjacent right of way that is located between such Owner's Lot and the curb of the adjacent street. In the event a Lot Owner fails to fulfill his maintenance and repair obligations under this Article or in the event an Owner fails to landscape his Lot as required by Section 5.14 of Article V, the Architectural Committee may have said Lot and residence landscaped, cleaned and repaired and may charge the Lot Owner for said work in accordance with the provisions of said Section. An Owner shall not allow a condition to exist on his Lot which will adversely affect any other Lots or Residential Units of other Owners. Any repainting or redecorating of the exterior surfaces of a Residential Unit which alters the original appearance will require the prior approval of the Architectural Committee.

Section 9.2 Maintenance by the Association. The Association shall be responsible for the maintenance, repair, and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

- (A) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);
- (B) Construct, reconstruct, repair, replace, or refinish any portion of the Common Area used as a road, street, walk, driveway, and parking area;
- (C) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (D) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (E) Construct, maintain, repair and replace landscaped areas on any portion of the Common Area;



(F) Maintain any and all easement areas granted to the Association herein or on the Plat or in any other document, including but not limited to easements for access, open space, recreation, utilities, and drainage.

(G) Maintain the Surface Water Management System and any other portion of the Common Area used for drainage and retention;

(H) If applicable, maintain any multiple residence mailboxes used for delivery of personal mail within the Property, provided, however, that each Owner shall be responsible for repair or replacement of locks and/or keys for each Owner's mailbox; and

(I) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration.

Neither Declarant nor any Builder within the Property shall be responsible for maintenance, repair or replacement of Common Areas or Improvements thereon previously transferred to the Association, except that any express or implied warranties provided by any provider of labor or materials in connection with Improvements shall be deemed assigned to the Association concurrently with such transfer. This paragraph shall not be subject to amendment without the written approval of the Declarant.

Section 9.3 Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefore under Florida law, and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

Section 9.4 Payment of Utility Charges. Each Lot shall be separately metered for water, sewer, and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of such Lot. The cost of water, sewer, and electrical service to the Common Area shall be a Common Expense of the Association and shall be included in the budget of the Association.

Section 9.5 Landscaping Replacement. Landscaping originally planted on the Common Areas may exceed the landscaping that is ultimately planned for Common Areas due to over-planting in anticipation of normal plant losses. The Board is hereby granted the authority to remove and not replace dead or damaged landscaping if, in the reasonable discretion of the Board, (a) the remaining landscaping is acceptable to the Board and (b) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with governmental entities in connection with Property, even if the location or types of specific plants are different than those shown on such approved landscaping plans. Declarant reserves the right to substitute plants and trees planted on the Property or shown on approved landscaping plans with equivalent or better landscaping materials. The Declarant shall not be responsible for replacement of landscaping installed in the Common Areas that dies more than

ninety days following installation or that requires replacement due to vandalism, lack of proper watering or maintenance by Association, or damage due to negligence; the Association shall be solely responsible for such replacement (subject to potential recovery by the Association from any vandal or negligent person).

Section 9.6 Alteration of Maintenance Procedures. Following Turnover and so long as Declarant owns any Lot, the Association shall not, without the written approval of Declarant, alter or fail to follow the maintenance and repair procedures in place immediately prior to Turnover unless such alteration will provide for a higher level of maintenance and repair. Declarant shall have the right, but not the obligation, to perform any required maintenance or repair not performed by the Association within ten (10) business days following notice from Declarant that such maintenance or repair is required under this Section; if Declarant performs such maintenance or repair, the costs incurred by Declarant shall be reimbursed by the Association within thirty (30) days following written demand for reimbursement accompanied by copies of invoices for such costs. This Section shall not be subject to amendment without the written approval of the Declarant.

## **ARTICLE X INSURANCE; CONDEMNATION**

Section 10.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(A) Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured Property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

(B) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000.00. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

(C) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Florida;

(D) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners, specifically including, but not limited to directors' and officers' liability insurance for the directors and officers of the Association, as well as similar liability insurance covering other functionaries of the Association (such as but not

limited to members of Committees) in form and amounts as may be deemed advisable by the Board of Directors;

(E) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) There shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) The Association shall be named as the Insured; and

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

(F) If any building or other vertical Improvement in the Common Area is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy of flood insurance on such portion of the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the building or Improvement and any other property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended; and

(G) "Agreed Amount" and "Inflation Guard" endorsements.

Section 10.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner or its mortgagee. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee to whom certificates of insurance have been issued.

### Section 10.3 Fidelity Bonds.

(A) The Association shall maintain blanket fidelity bonds or insurance for all officers, directors, trustees and employees of the Association and all other persons handling or

responsible for funds of or administered by the Association, including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of such fidelity bond or policy of insurance maintained by the Association shall be based upon the best business judgment of the Board, and shall not be less than the maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond or policy of insurance.

Fidelity bonds obtained by the Association must also meet the following requirements:

- (i) The fidelity bonds shall name the Association as an obligee;
- (ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees” or similar terms or expressions; and
- (iii) The bonds shall provide that they may not be canceled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association.

Policies of insurance obtained by the Association must also meet the following requirements:

- (i) The policies of insurance shall name the Association as the insured;
- (ii) The policies of insurance shall contain waivers by the issuers of the policies of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees” or similar terms or expressions; and
- (iii) The policies of insurance shall provide that they may not be canceled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association.

(B) The Association shall require any management agent of the Association to maintain its own fidelity bond or policy of insurance in an amount equal to or greater than the amount of the fidelity bond or policy of insurance to be maintained by the Association pursuant to Section 10.3(A) of this Section. The fidelity bond or policy of insurance maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee, but the management agent shall deliver to the Association upon request, from time to time, a copy of its fidelity bond or policy of insurance then in effect.

Section 10.4 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article shall be a Common Expense included in the budget of the Association and shall be paid by the Association.

Section 10.5 Insurance Obtained by Owners. Each Owner shall be responsible for obtaining property insurance for his own benefit and at his own expense covering his Lot, and all

Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury, or property damage arising out of the use, ownership, or maintenance of his Lot.

Section 10.6 Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee. Subject to the provisions of Section 10.7 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area.

Section 10.7 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or replaced. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be added to the Association's reserve fund or used for such other purposes as the Board shall determine.

Section 10.8 Condemnation. Any conveyance in lieu of and under threat of condemnation must be approved by (i) at least two-thirds (2/3) of the Board and (ii) the Declarant so long as the Declarant owns any property subject to this Declaration or which may become subject to this Declaration. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant (so long as the Declarant owns any property which is or may become subject to this Declaration) and at least two-thirds (2/3) of the Board shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board and applicable governmental authorities. If such Improvements are to be repaired or restored, the above provisions of this Article regarding the disbursement of insurance proceeds shall apply. If the taking does not involve any Improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

## **ARTICLE XI TERM AND ENFORCEMENT**

Section 11.1 Enforcement. Subject to the provisions of Section 11.4 and of Article XII, the Declarant, the Association, the Architectural Committee, or any Owner shall have the right

(but not the obligation) to enforce the terms of this Declaration and any amendment thereto. Failure by the Association, the Architectural Committee, or any Owner to enforce the same shall in no event be deemed a waiver of the right to do so thereafter. Deeds of conveyance of the Property may reference this Declaration, but whether or not such reference is made, each and all of the terms of this Declaration shall be valid and binding upon the respective grantees. Violators of any one or more of the terms hereof may be restrained by any court of competent jurisdiction and damages awarded against such violators, provided, however, that a violation shall not affect the lien of any First Mortgage. If the Architectural Committee enforces any provision of the Project Documents, the cost of the enforcement shall be paid by the Association. In addition to any enforcement rights otherwise available to the Association, the Association shall have the right to enforce any provision of this Declaration by directly taking action necessary to cure or remove a breach of this Declaration, including without limitation, removal, repair or replacement of any sign, landscaping or other Improvement on any portion of the Property; in such event, the Association shall be entitled to recover the costs incurred by the Association in connection with such cure. Pursuant to such cure/removal right of the Association, the Association or its authorized agents may, upon reasonable written notice (or immediately, for willful and recurrent violations, when written notice has previously been given), enter any Lot in which a violation exists and may correct such violation at the expense of the Owner of such Lot, and the Association and its agents are hereby granted an easement for such purpose. Such expenses, and such fines as may be imposed pursuant to this Declaration, the Bylaws, or Association Rules, shall be a special Assessment secured by an Assessment Lien upon such Lot enforceable in accordance with the provisions of this Declaration. All remedies available at law or equity shall be available in the event of any breach of any provision of this Section by any Owner, tenant or other person. In addition, the Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration that relate to the maintenance, operation and repair of the Surface Water Management System for the Property. This shall include, without limitation, the right to bring a civil action for an injunction and penalties against the Association to compel it to correct any outstanding violations of the District Permit or the provisions of this Declaration pertaining to the Surface Water Management System or in mitigation or conservation areas under the responsibility of control of the Association.

Section 11.2 Term. The terms of this Declaration shall run with and bind the land for thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years for so long as the Lots shall continue to be used for residential purposes. Provided, however, no termination shall void the duty of the Association to maintain the Surface Water Management System, unless specifically allowed by the Water Management District. Further, no such termination shall have the effect of terminating any easements herein provided or reserved.

Section 11.3 Amendment. So long as the Class B membership exists, the Declaration may be amended at any time and from time to time by the Declarant, without the consent or joinder of the Association, any Owner or mortgagee, if such amendment (a) clarifies ambiguities or corrects scrivener's errors, (b) is required in order to cause this Declaration to comply with applicable requirements of FHA, VA, FNMA, FHLMC, or any governmental or quasi-governmental agency or authority, or (c) are otherwise desirable in the sole discretion of Declarant. Following Turnover, the Declaration may be amended at any time, and from time to time, by (i) an instrument signed by the Owner(s) of at least a majority of the Lots or (ii) a certification by the

President of the Association that the Owners of at least a majority of the Lots have voted in favor of the amendment at a duly called election; provided, however, any amendment made at a time when Declarant owns any Lots shall require the approval of the Declarant, which may be withheld in Declarant's sole and absolute discretion. Notwithstanding the foregoing, any amendment to the Declaration which alters any provision relating to the Surface Water Management System beyond maintenance in its original condition must have the prior approval of the Water Management District, and must be submitted to the Water Management District for a determination whether the amendment necessitates a modification to the District Permit (with respect to which the Water Management District is to advise the permittee and the permittee shall act accordingly). Any such amendment, after approval by the Water Management District (if required), shall be recorded with the County Recorder and shall take effect immediately upon recordation regardless of the status of the then current term of the Declaration under Section 11.2 above. A properly executed and recorded amendment may alter the restrictions in whole or in part applicable to all or any portion of the Property and need not be uniform in application to the Property.

Section 11.4 Approval of Litigation. Except for any legal proceedings initiated by the Association to (i) enforce the terms of this Declaration; (ii) enforce the Association Rules; (iii) enforce the Architectural Committee Rules; (iv) collect any unpaid Assessments levied pursuant to this Declaration; or (v) enforce a contract entered into by the Association with vendors providing services to the Association, the Association shall not incur litigation expenses, including without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of a majority of the Members of the Association entitled to cast a vote who are voting in person or by proxy at a meeting duly called for such purpose, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by special Assessment and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations. Each Owner shall notify prospective Purchasers of such legal proceedings initiated by the Board and not included in the above exceptions and must provide such prospective Purchasers with a copy of the notice received from the Association in accordance with Section 12.3 of this Declaration. Nothing in this Section shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (i) enforce the Project Documents; (ii) comply with the statutes or regulations related to the operation of the Association; (iii) amend the Project Documents as provided in this Declaration; (iv) grant easements or convey Common Area as provided in this Declaration; (v) perform the obligations of the Association as provided in this Declaration; or (vi) defend (including but not limited to the filing of counterclaims and cross-claims in) any lawsuit filed against the Association. Subject to the exceptions in the first sentence of this Section, with respect to matters involving property or Improvements to property, the Association additionally shall not initiate legal proceedings or join as a plaintiff in legal proceedings unless (1) such property or Improvement is owned either by the Association or jointly by all Members of the Association, (2) the Association has the maintenance responsibility for such property or Improvements pursuant to this Declaration, or (3) the Owner who owns such property or Improvements consents in writing to the Association initiating or joining such legal proceeding.

**ARTICLE XII**  
**CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS**

It is intended that the Common Area, each Lot, and all Improvements constructed on the Property by persons (for the purposes of this Section, “**Developers**”) in the business of constructing improvements will be constructed in compliance with all applicable building codes and ordinances and that all Improvements will be of a quality that is consistent with good construction and development practices in the area where the Project is located for production housing similar to that constructed within the Project. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all disputes and claims regarding alleged defects (“**Alleged Defects**”) in any Improvements on any Lot or Common Area will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, all Developers (including Declarant), the Association, the Board, and all Owners shall be bound by the following claim resolution procedures.

Section 12.1 Right to Cure Alleged Defect. If a person or entity (“**Claimant**”) claims, contends, or alleges an Alleged Defect, each Developer shall have the right to inspect, repair, and/or replace such Alleged Defect as set forth herein.

Section 12.1.1 Notice of Alleged Defect. If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof, Claimant shall give written notice of the Alleged Defect (“**Notice of Alleged Defect**”) to the Developer constructing the Improvement with respect to which the Alleged Defect relates.

Section 12.1.2 Right to Enter, Inspect, Repair, and/or Replace. Within a reasonable time after the receipt by a Developer of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Developer, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, areas of Association responsibility, any Lot or Residential Unit, and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Developer at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs, and/or replacement, Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Section 12.2 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article shall be construed to impose any obligation on a Developer to inspect, test, repair, or replace any item or Alleged Defect for which such Developer is not otherwise obligated under applicable law or any warranty provided by such Developer in connection with the sale of the Lots and Residential Units and/or the Improvements constructed thereon. The right reserved to Developer to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to a Developer except by a written document executed by such Developer and recorded in the records of the County.

Section 12.3 Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to Section 11.4 and Section 12.4 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or



arbitration against a Developer alleging (1) damages for costs of repairing Alleged Defect (“**Alleged Defect Costs**”), (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from a Developer (or any other person or entity) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid in to the Association’s reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer(s) which notice shall include at a minimum (1) a description of the Alleged Defect; (2) a description of the attempts of the Developer(s) to correct such Alleged Defect and the opportunities provided to the Developer(s) to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Florida that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer(s) and a description of the relationship between such attorney and member(s) of the Board or the Association’s management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys’ fees and expert fees and costs necessary to pursue the claim against the Developer(s) and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the action against the Developer(s); and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

Section 12.4 Alternative Dispute Resolution. Any dispute or claim between or among (a) a Developer (or its brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner(s) or the Association on the other hand; or (b) any Owner and another Owner; or (c) the Association and any Owner, regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration; (ii) the design or construction of any portion of the Project; (iii) or an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment (collectively a “**Dispute**”), shall be subject first to negotiation, then mediation, and then arbitration as set forth in this Section 12.4 prior to any party to the Dispute instituting litigation with regard to the Dispute.

Section 12.4.1 Negotiation. Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the Community. Each party to the Dispute shall bear their own attorneys’ fees and costs in connection with such negotiation.

Section 12.4.2 Mediation. If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 12.4.1 above within such time period as may be agreed

upon by such parties (the “**Termination of Negotiations**”), the party instituting the Dispute (the “**Disputing Party**”) shall have thirty (30) days after the termination of negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No person shall serve as a mediator in any Dispute in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to persons or entities not a party to the foregoing proceedings.

Section 12.4.2.1 Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in the County where the property is located or such other place as is mutually acceptable by the parties to the Dispute.

Section 12.4.2.2 Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in Subsection 12.4.2.5 below. The mediator does not have the authority to impose a settlement on any party to the Dispute.

Section 12.4.2.3 Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

Section 12.4.2.4 Parties Permitted at Sessions. Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be kept confidential. There shall be no stenographic, videographic, or audio record of the mediation process.

Section 12.4.2.5 Expenses of Mediation. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the

mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such mediation.

Section 12.4.3 Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 12.4.2 above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 12.4. If the Disputing Party does not submit the Dispute to arbitration within thirty days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to a person or entity not a party to the foregoing proceedings.

The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Developer shall be required to participate in the arbitration proceeding if all parties against whom a Developer would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 12.4, the arbitrator shall have the authority to try all issues, whether of fact or law.

Section 12.4.3.1 Place. The arbitration proceedings shall be heard in the County where the Property is located.

Section 12.4.3.2 Arbitration. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the American Arbitration Association with experience in relevant matters which are the subject of the Dispute. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

Section 12.4.3.3 Commencement and Timing of Proceeding. The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

Section 12.4.3.4 Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

Section 12.4.3.5 Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The Developer shall also be entitled to conduct

further tests and inspections as provided in Section 12.1 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

Section 12.4.3.6 Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the Florida Arbitration Code, Chapter 682, Florida Statutes, or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

Section 12.4.3.7 Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

Section 12.4.3.8 Expenses of Arbitration. Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

Section 12.5 Statute of Limitations. Nothing in this Article shall be considered to toll, stay, or extend any applicable statute of limitations.

Section 12.6 Enforcement of Resolution. If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Section 12.4.1 or Section 12.4.2 above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an arbitration award is made in accordance with Section 12.4.3 and any party to the Dispute thereafter fails to comply with such resolution or award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or award without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation, mediation or award including, without limitation, attorneys' and paralegals' fees and court costs.

## ARTICLE XIII GENERAL PROVISIONS

Section 13.1 Severability. Judicial invalidation of any part of this Declaration shall not affect the validity of any other provisions.

Section 13.2 Construction. The Article and Section headings 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 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. In the event of any conflict or inconsistency between this Declaration, the Articles, and/or the Bylaws, the provisions of this Declaration shall control over the provision of the Articles and the Bylaws and the provisions of the Articles shall prevail over the provisions of the Bylaws.

Section 13.3 Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally, via overnight courier delivery service or by mail, postage prepaid; if to an Owner, addressed to that Owner at the address of the Owner's Lot or if to the Architectural Committee, addressed to that Committee at the normal business address of the Association. If notice is sent by mail or overnight courier delivery service, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage pre-paid. If personally delivered, notice shall be effective on receipt. Notwithstanding the foregoing, if application for approval, plans, specifications and any other communication or documents shall not be deemed to have been submitted to the Architectural Committee, unless actually received by said Committee. Any vote, election, consent or approval of any nature by the Owners or the Board, whether hereunder or for any other purpose, may, in the discretion of the Board and in lieu of a meeting of the Board or the Owners, as applicable, be held by a mail-in ballot process pursuant to such reasonable rules as the Board may specify.

Section 13.4 Tract Declaration. Any Owner of a Tract containing more than one Lot shall have the right to impose on any portion of the Tract owned by such Owner a Tract Declaration ("**Tract Declaration**") in such form as may be approved in writing by Declarant. A Tract Declaration may modify the provisions of Section 11.4 or Article XII of this Declaration and, to the extent that any Tract Declaration is inconsistent with such provisions of this Declaration, the provisions of such Tract Declaration shall take priority over and control over such provisions of this Declaration. A Tract Declaration may also impose other covenants, conditions, restrictions, easements, or other matters to the extent not inconsistent with the provisions of this Declaration.

Section 13.5 Prices. Each of Declarant and the Designated Builder(s) shall have the right, from time to time, in its sole discretion, to establish and/or adjust sales prices or price levels for new Residential Units and/or Lots owned by it.

Section 13.6 Restriction of Traffic. Land Owner hereby grants to Declarant, its successors and assigns, the right, so long as Declarant owns (or has the option to own) any portion of the Property, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Property, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities (as well as those of any Designated Builder approved by Declarant); provided that no Residential Unit shall be deprived of access to a dedicated street adjacent thereto.

Section 13.7 Communication. All communication from Owners to Declarant, its successors or assigns, the Board, or any officer of the Association shall be in writing in order to be deemed effective.

Section 13.8 Interpretation. The Board shall have the right, except as limited by any other provisions of this Declaration or the Bylaws, to determine all questions arising in connection with this 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 Declaration shall be given that interpretation or construction that will best consummate the general plan of development for the Project.

Section 13.9 Declarant's Consent or Approval. Notwithstanding anything in this Declaration to the contrary, to the extent that any action hereunder requires Declarant's consent or approval, such consent or approval shall only be required so long as Declarant owns any portion of the Property. At such time as Declarant no longer owns any portion of the Property, any action which is subject to Declarant's consent or approval shall no longer require such consent or approval.

Section 13.10 Laws of Florida. The provisions of this Declaration shall be construed under and subject to the laws of the State of Florida and the municipality and County, as applicable, in which the Project is located.

Section 13.11 Other Rights. All other rights, powers, and authority of Declarant set forth in this Declaration are hereby reserved unto Declarant, and, to the extent not expressly prohibited by Applicable Florida law, all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under applicable Florida law are further hereby granted and reserved by Land Owner unto Declarant.

#### **ARTICLE XIV WATER MANAGEMENT DISTRICT REQUIREMENTS**

Section 14.1 Purpose. The provisions of this Article XIV are included for purposes of complying with various requirements of the Water Management District. The provisions of this Article XIV are intended to supplement and not replace the remaining provisions of this Declaration. However, in the event of any conflict between any provision of this Article XIV and any other provision of this Declaration, and assuming no reasonable interpretation of such provisions reconciles such conflict, then the provisions of this Article XIV will prevail. Furthermore, if so required by the Water Management District, the Declarant may amend this Article as may be necessary or desirable to comply with such requirement, without the joinder or consent of any other party, including any Owner, mortgagee, or the Association.

Section 14.2 Surface Water Management System. The Association shall own and be responsible for the maintenance, operation, and repair of the Surface Water Management System. Maintenance of the Surface Water Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, retention ponds, conveyance, or other surface water or stormwater management capabilities as permitted by the Water Management District. Any repair or reconstruction of the Surface Water Management System shall be as permitted, or if modified, as approved by the Water Management District.

Section 14.3 Association Existence. The Association shall exist in perpetuity; however, if the Association is dissolved, the property rights comprising the portions of the

Common Area consisting of the Surface Water Management System will be conveyed to an appropriate agency of local government. If this is not accepted, then the Surface Water Management System will be dedicated to a similar non-profit corporation; provided, however if no other not-for-profit corporation or agency will accept such property, then any affected governmental instrumentality or agency, including the Water Management District, may petition the Circuit Court of the County in which the Property is located to appoint a receiver or trustee to conduct the affairs and fulfill the obligations of the Association with respect to such applicable portions of the Common Area, or otherwise dispose of the Common Area or portions thereof as the Circuit Court may deem appropriate. If a receiver or trustee is appointed, the Association shall be responsible for court costs, attorney's fees, and all other expenses of the receivership or trust, which shall constitute Common Expenses of the Association and shall be assessed against its Members. If the Association has been dissolved, or if the Association shall not have a sufficient number of directors, the receiver or trustee shall have all powers and duties of a duly constituted board of directors. The receiver or trustee shall serve until such time as the Circuit Court may deem appropriate.

Section 14.4 Maintenance and Ownership of the Surface Water Management System. The Surface Water Management System, including any drainage, stormwater, or other easements of which such system may be comprised, constitutes Common Areas of the Association. The Association shall be responsible for the operation and maintenance of the Surface Water Management System and for assessing and collecting fees for the operation, maintenance, and if necessary, replacement of the system. Any repair or reconstruction of the Surface Water Management System shall be as provided in the District Permit or, if modified, as approved, in writing, by the Water Management District. Notwithstanding the foregoing, no person shall alter the drainage flow of the Surface Water Management System, including buffer areas or swales, without the prior written approval of the Water Management District.

The Declarant may have constructed drainage swales upon some or all of the Lots for the purpose of managing and containing the flow of excess surface water, if any, found upon such lot from time to time. Each Lot Owner, including Builders, shall be responsible for the maintenance, operation and repair of the swales on its Lot, as applicable. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the drainage swale shall be authorized and any damage to any drainage swale, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale returned to its former condition as soon as possible by the Owner(s) of the Lot(s) upon which the drainage swale is located.

Section 14.5 Surface Water Management Permit. The registered agent for the Association shall maintain copies of the District Permit and all other Stormwater Management System permitting documents for the benefit of the Association.

Section 14.6 County Provisions.

Section 14.6.1 Any revision or change to the Stormwater Management System or any Amendment to this Declaration that would adversely affect the Stormwater Management

System must have prior written approval from the County engineer and or his authorized designee and the County, respectively. In the event the Association, or any successor organization, shall fail to adequately maintain the Stormwater Management System in accordance with County standards, the County shall have the right, but not the obligation, to enter the Community for the purpose of maintaining the Stormwater Management System. All expenses incurred by the County in maintaining the Stormwater Management System shall be assessed prorata against the Lots and shall be payable by the Owners of the Lots within sixty (60) days after receipt of a statement therefore. If any Owner fails to pay such assessment within such 60-day period, the assessment shall become a lien on such Owner's Lot which may be foreclosed by the County. The rights of the County contained in this restriction shall be in addition to any other rights the County may have in regulating the operation and development of the Community.

Section 14.6.2 All native habitat preservation and conservation areas as shown on the Plat shall be maintained by the Association in existing or restored condition in accordance with the approved resource management plan and the County's Land Development Regulations.

Section 14.6.3 The ponds within the Community contain littoral areas which are required by State and County regulations to be vegetated with native plants and maintained in perpetuity. Littoral areas aid in shoreline stabilization and nutrient uptake, and provide habitat for native animal species. No Owner shall alter vegetation growing upon a littoral area without written authorization from Sarasota County's Environmental Protection Division office. Alteration shall include, but not be limited to, cutting, mowing, pulling, planting, and the introduction of grass carp.

## **ARTICLE XV SPECIAL PROVISIONS**

Section 15.1 Water Body Restrictions. The following restrictions shall be applicable to any pond, lake, wetland or other water body owned or maintained by the Association ("Water Body"):

(A) There shall be no swimming in the Water Body except in the case of an emergency or as may be provided by the Association Rules.

(B) Unless otherwise approved in writing by the Board, only boats and watercraft operated by the Association for maintenance, safety or other community purposes or by Declarant shall be allowed in the Water Body.

(C) The Association and Declarant shall have authority to restrict the usage of all or any portion of the Water Body by any persons, including an Owner or occupant, or their family, guests or invitees due to negligence or violation of any of the Association Rules or any other safety regulations, as well as for reasons set forth elsewhere in this Declaration. Any person whose use of the Water Body is restricted by Declarant may request review of such restriction by the Board, the decision of which shall be binding.

(D) If forces of nature or governmental restrictions prohibit or otherwise render maintenance of the Water Body in the size, level or formation as originally shown on any Plat for the Property not possible or unreasonable for environmental or other reasons, neither Declarant



nor the Association shall be obligated to maintain the Water Body in the size, level or formation as originally shown on any Plat.

(E) It is possible that effluent water, reclaimed water, or so called "gray water" may be used to fill Water Bodies and to maintain certain landscaping in the Common Areas. Owners acknowledge that the cost of such water may fluctuate and shall be a Common Expense.

Section 15.2 Additional Disclosures And Disclaimers Regarding Water Bodies and Common Turf Areas. By acceptance of a deed to a Residential Unit, each Owner shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following disclosures and disclaimers:

(A) Portions of the Property are located adjacent to or nearby Water Bodies, and adjacent Common Areas ("**Water Bodies/Turf Areas**"). In connection therewith: (a) the water facilities, hazards, other installations located on the Water Bodies/Turf Areas may be an attractive nuisance; (b) operation, maintenance, and use, of the Water Bodies/Turf Areas may result in a certain loss of privacy, and will entail various operations and applications, including (but not necessarily limited to) all or any one or more of the following: (1) the right of the Association, and its employees, agents, suppliers, and contractors, to (i) enter upon and travel over the Property to and from and between any one or more of the Property entry areas, and portions of the Water Bodies/Turf Areas, and (ii) enter upon the Property to maintain, repair, and replace, water and irrigation lines and pipes used in connection with Water Bodies/Turf Areas landscaping; (2) operation and use of noisy electric, gasoline, and other power driven vehicles and equipment, on various days of the week, including weekends, and during various times of the day, including, without limitation, early morning and late evening hours; (3) operation of sprinkler and other irrigation systems during the day and night; (4) storage, transportation, and application of insecticides, pesticides, herbicides, fertilizers, and other supplies and chemical substances (all, collectively, "**chemical substances**"); (5) parking and/or storage of Vehicles, equipment, chemical substances, and other items; (6) irrigation of the Water Bodies/Turf Areas, and supply of water facilities thereon, with recycled or effluent water; (7) "overspray" of recycled or effluent water and chemicals onto the Property; and/or (8) recreational users from time to time may shout and use language (or bodily motions or gestures), which may be distinctly audible (or visible) to persons in the Property, and which language (or bodily motions or gestures) may be profane or otherwise offensive in tone and content; (c) play on the Water Bodies/Turf Areas may be allowed during all daylight and/or evening hours, up to and including seven days a week; (d) play on the Water Bodies/Turf Areas may result in damage to the Property, including, without limitation, damage to windows, doors, stucco, roof tiles, sky lights, and other areas of the Residential Unit and other portions of the Property, and damage to real and personal property of Owner or others, whether outdoors or within a residence or other building, and injury to person; and (e) although fencing and other features may (but need not necessarily) be incorporated into the Residential Unit or other portions of the Property in an effort to decrease the hazards associated with such play, the Owner acknowledges that such fencing and other features may protect against some, but certainly not all, damage which may occur.

(B) The Water Bodies/Turf Areas also may include one or more separate large maintenance and/or warehouse-type building(s), storage area(s) for Vehicles, equipment, and chemical substances (as defined above), fuel storage and above-ground fuel island(s), and related

facilities (all, collectively, “**Maintenance Facility**”), constructed and/or operated by the Association or owner(s) or operator(s) of the Maintenance Facility, at a location on or adjacent to the Property. The location of the Maintenance Facility will require frequent and recurring travel by Maintenance Facility and other Water Bodies/Turf Areas personnel, and Vehicles (and travel by and transportation of other personnel, equipment, chemicals, fuel, and other items) over Common Areas of the Property to and from the Maintenance Facility and other portions of the Water Bodies/Turf Areas and Property entry areas. In connection with the Maintenance Facility: (a) the facilities and related items located on the Maintenance Facility may be an attractive nuisance; (b) operation, maintenance, and use, of the Maintenance Facility may result in a certain loss of privacy, and will entail various operations and applications, including (but not necessarily limited to) all or any one or more of the following: (1) the right of owner(s) and operator(s) of the Maintenance Facility, and their employees, agents, suppliers, and contractors, to enter upon and travel over the Property to and from and between any one or more of the Property entry areas, the Maintenance Facility, and other portions of the Property; (2) operation, maintenance, and repair of noisy electric, gasoline, and other power driven Vehicles and equipment, on various days of the week, including weekends, and during various times of the day, including, without limitation, early morning and late evening hours; (3) storage, transportation, and application, of chemical substances; (4) parking and/or storage of Vehicles, equipment, chemical substances, fuel, and other items; and (5) fueling and related operations; and (c) although walls, fencing, and other features may be incorporated into the Maintenance Facility, the Owner acknowledges that such walls, fencing, and other features will certainly not eliminate all sight, noise, or other conditions, on or emanating from the Maintenance Facility.

(C) All and any one or more of the matters described above may cause inconvenience and disturbance to the Owner, and other occupants of and visitors to the Residential Unit and/or Common Areas, and possible injury to person and damage to property, and the Owner has carefully considered the foregoing matters, and the location of the Property (including the Common Areas and the Residential Unit) and their proximity to the Water Bodies/Turf Areas and to the Maintenance Facility, before making the decision to purchase a Residential Unit in the Property.

Section 15.3 Easements for Water Body Maintenance and Flood Water. Land Owner hereby reserves for itself, and grants to the Declarant, the Association, and their successors, assigns and designees, the nonexclusive right and easement, but not the obligation, to enter upon any Water Body located within the Common Areas to: (a) install, operate, maintain and replace pumps to supply irrigation water to the Common Areas; (b) construct, maintain, and repair structures and equipment used for retaining water; (c) maintain such areas in a manner consistent with the Association Rules; and (d) replace, remove and/or fill in the Water Bodies if and to the extent permitted by applicable governmental authorities. Land Owner, Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any of the Property abutting or containing Water Bodies to the extent reasonably necessary to exercise their rights under this Section.

Land Owner further reserves for itself, and grants to the Declarant, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Areas and Lots (but not the Residential Units thereon) adjacent to or within 100 feet of Water Bodies constituting a part of the Property, in order to (a)

temporarily flood and back water upon and maintain water over such portions of the Property; (b) alter in any manner and generally maintain the Water Bodies and other bodies of water within the Common Areas; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

Section 15.4 Disclaimers and Releases. By acceptance of a deed to a Residential Unit, each Purchaser or Owner, for itself and all persons claiming under such Purchaser or Owner, shall conclusively be deemed to have acknowledged and agreed: (a) that Declarant specifically disclaims any and all representations and warranties, express and implied, with regard to any of the disclosed or described matters (other than to the extent expressly set forth in the foregoing disclosures); and (b) to fully and unconditionally release Declarant and the Association, and their respective directors, officers, managers, members, agents, employees, suppliers and contractors, and their successors and assigns, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, occurrences described herein.

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IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first above written.

Signed, sealed and delivered in the presence of

MERITAGE HOMES OF FLORIDA, INC., a Florida corporation

WITNESSES:

*[Handwritten signature]*

Name: Amanda Cohen

*[Handwritten signature]*

Name: David S. Wilson

*[Handwritten signature]*

By: Name: Chris Ryan

Title: Division President

STATE OF FLORIDA  
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of October, 2017, by Chris Ryan as Division President of **MERITAGE HOMES OF FLORIDA, INC.**, a Florida corporation, on behalf of the corporation, and who is  personally known to me or  has produced a \_\_\_\_\_ driver's license as identification.

(NOTARY SEAL)



*[Handwritten signature]*

Notary Signature

Christy Garrow

Printed Notary Signature

## JOINDER AND CONSENT BY LAND OWNER

1. **Introduction.** Meritage Homes of Florida, Inc., a Florida corporation (“**Meritage**”) and Arroyo Cap I, LLC, a Delaware limited liability company (“**Land Owner**”) entered into that certain Option Agreement by and between Land Owner as optionor and Meritage as optionee (the “**Option Agreement**”) as evidenced by that certain Memorandum of Option Agreement recorded on August 2, 2016, as Instrument Number 2016095527 of the Public Records of Sarasota County, Florida (the “**Memorandum**”). Pursuant to the Option Agreement, Meritage has the right to purchase lots (the “**Lots**”) from Land Owner that are part of the project known as Waverly (the “**Project**”). Land Owner hereby grants its consent to and joins in the terms and provisions of the Declaration of Covenants, Conditions, Restrictions and Reservations for Heron Landing (the “**Declaration**”) to which this Joinder and Consent of Land Owner (this “**Consent**”) is attached, and to the recording of the Declaration in the Public Records of the County, subject to the following provisions and conditions, which are deemed to modify the Declaration. In the event of any conflict between this Consent and the Declaration, the terms of this Consent shall control. Any initially capitalized term used and not otherwise defined in this Consent has the meaning ascribed to such term in the Declaration.

2. **Declaration.** Meritage is the Declarant under the Declaration. Meritage hereby assigns all of the Declarant rights and obligations to Land Owner so that Land Owner shall be deemed the Declarant with the understanding and intent that such assignment shall become effective only if (a) the Option Agreement is terminated prior to the purchase by Meritage from Land Owner of all of the Lots (which may be conclusively evidenced by the recording of a Notice of Termination of Option by Land Owner stating that Meritage’s interest under the Option Agreement with respect to Lots then owned by Land Owner has been terminated other than in connection with the acquisition of such Lots by Meritage [a “**Termination Notice**”]), and (b) Land Owner elects to become the Declarant under the Declaration by delivering written notice to Meritage and recording a notice of such election in the Public Records of the County (an “**Election Notice**”). Upon the recordation of a Termination Notice and an Election Notice in the Public Records of the County, Land Owner shall be deemed a successor Declarant as to the Lots then owned by Land Owner and Meritage shall no longer be Declarant as to the Lots then owned by Land Owner. If Land Owner becomes a successor Declarant in accordance with this Section 2, Meritage shall nonetheless (i) remain responsible for all Declarant’s obligations and liabilities for all periods prior thereto (“**Accrued Meritage Declarant Obligations**”) and shall retain such Declarant rights as are reasonably necessary for the performance of such obligations and with respect to such liabilities and (ii) continue to be Declarant for the Lots then owned by Meritage, and shall retain such Declarant rights as are necessary for the construction of Residential Units (as such term is defined in the Declaration) on Lots owned by Meritage and sales of such Lots to Purchasers (including, without limitation, all rights with respect to any committee formed pursuant to the Declaration and whose approval of plans or structures is required, insofar as such approvals apply to Lots still owned by Meritage). Notwithstanding anything herein to the contrary, the assignment of Declarant rights provided for in this Section 2 shall terminate and be of no further force or effect on the date that Land Owner no longer owns any of the Lots.

3. **No Representations/Warranties.** Land Owner makes no warranties or representations whatsoever regarding the following: (a) that the plans presently envisioned or approved for the development of the Project can or will actually be constructed on the Property; (b) that the Property subject to the Declaration or any adjacent real property is or will be committed to, or developed for, a particular (or any) use; (c) that if any portion of the Property is once used for a particular use, such use will continue in effect; and (d) the present or future validity or enforceability of any restrictive covenant contained in the Declaration.

4. **Land Owner's Joinder and Consent.** Notwithstanding anything contained in the Declaration, as long as the Option Agreement is in full force and effect the following shall apply:

(a) Any amendment to the plat or any replat of any portion of the Property that includes the Lots owned by Land Owner shall require the prior written consent of Land Owner.

(b) Meritage shall obtain Land Owner's written consent prior to appointing any person other than an employee of Meritage to the Board, or to removing any member of the Board and replacing such member with any person other than an employee of Meritage.

(c) Meritage shall obtain the written consent of Land Owner prior to electing to terminate the Class "B" Membership or to convert the Class "B" membership to Class "A" membership to the extent before the time required under the terms of the Declaration and/or applicable law.

(d) So long as Land Owner owns any Lot, any amendment to the Declaration must be approved in writing by Land Owner.

(e) Meritage shall obtain Land Owner's written consent prior to causing the Association to merge or consolidate with another corporation or association.

(f) Meritage shall obtain Land Owner's written consent before assigning any of the Declarant rights to any other party.

(g) Meritage shall obtain Land Owner's written consent prior to causing any portion of the Lots then owned by Land Owner to be de-annexed from the Declaration.

5. **No Liability.**

(a) Except during any period in which Land Owner is exercising Declarant rights (and other than Accrued Meritage Declarant Obligations), Land Owner, its affiliates, officers, directors, members, employees, managers, shareholders and agents shall not have any liability to the Association, any Owner, Member, or third party arising out of or related in any way to the Project or the Declaration or Land Owner's involvement therewith including, without limitation, any decisions, approvals, disapprovals, actions, or omissions of the Board, any director of the Board, Declarant, any member of any committee established pursuant to the Declaration, or any other third party.

(b) In addition to the foregoing, Land Owner shall be entitled to the benefit of (as though made directly to Land Owner) any and all releases, indemnifications, and limitations of liability that are provided to Meritage or the Declarant under the Declaration.

6. **Membership.** Subject to the terms and conditions of this Consent and the Option Agreement, Land Owner hereby assigns its voting rights in the Association by virtue of its ownership of the Lots to Meritage until Land Owner becomes the Declarant or the Option Agreement is terminated or unless Land Owner still owns Lots at the time the Class "B" Membership shall cease to exist, in which event Land Owner may exercise its Class "A" voting rights (or Class "B" voting rights, as applicable). As between Meritage and Land Owner, Meritage shall be liable for, and Land Owner shall not be liable for, any Assessments, contributions to working capital, deficiencies or any transfer fees that may arise during the term of the Option Agreement with respect to the Lots.

IN WITNESS WHEREOF, the Land Owner has executed this Joinder and Consent of Land Owner as of the 10th day of October, 2017.

Signed, sealed and delivered in our presence:

[Signature]  
Print Name: Daniel McLann

[Signature]  
Print Name: Alex Dunivan

ARROYO CAP I, LLC,  
a Delaware limited liability company

By: Arroyo Capital, LLC,  
a Delaware limited liability company,  
sole member

[Signature]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Leigh Austin  
Executive Vice President

STATE OF California  
COUNTY OF Los Angeles

The foregoing instrument was acknowledged before me this 10th day of October, 2017, by Leigh Austin, as Executive VP of Arroyo GAP Holdco, LLC, a Delaware limited liability company, as Manager of Arroyo Capital, LLC, a Delaware limited liability company, as sole member of ARROYO CAP I, LLC, a Delaware limited liability company, for and on behalf thereof. He/She  is personally known to me, or  produced \_\_\_\_\_ as identification.

[Signature]  
Print Name: Sean Joseph Reuter  
Notary Public-State of California  
Commission No.: 2139944  
My Commission Expires: 01/11/2020

[Affix Notary Seal]





**JOINDER OF MORTGAGEE**

The undersigned, WESTERN ALLIANCE BANK, an Arizona corporation, hereby consents to and subordinates to the foregoing Declaration of Covenants, Conditions, and Restrictions for Heron Landing and all of its covenants, conditions, easements, restrictions, terms and provisions, the lien created by that certain Mortgage recorded as Official Records Instrument #2016112878 of the Public Records of Sarasota County, Florida, as amended from time to time.

WESTERN ALLIANCE BANK  
an Arizona corporation

Witness 1: Jenna Smith  
Printed Name Jenna Smith

Witness 2: Holly Griesse  
Printed Name Holly GRIESSE

By: [Signature]  
Print Title: John Eldean, SVP

STATE OF Arizona

COUNTY OF Maricopa

The foregoing instrument was acknowledged before me this 10th day of October, 2017, by John Eldean, as the Sr. Vice President of Western Alliance Bank, an Arizona corporation.  He/She is [check one]  personally known to me or  has produced \_\_\_\_\_ as identification.

My Commission Expires:  
January 23, 2018  
Notary Public, State of Arizona



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

## EXHIBIT "A"

### LEGAL DESCRIPTION

Heron Landing, Phase 1

DESCRIPTION: Lots 29 and 30, and part of Lot 40, and a part of Tract "C" (Fox Fire Road - 80-foot Private Road), according to the plat of FOXFIRE SUBDIVISION, as recorded in Plat Book 23, Page 33, of the Public Records of Sarasota County, Florida, and; lands lying in Sections 8 and 17, Township 37 South, Range 19 East, Sarasota County, Florida, and being more particularly described as follows:

COMMENCE at the Northwest corner of said Section 8, run thence along the West boundary of said Section 8, S.00°07'32"W., a distance of 3742.45 feet to the Northwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 8; thence along the North boundary of the South 1/2 of said Southwest 1/4 of Section 8, N.89°56'31"E., a distance of 1020.15 feet to the POINT OF BEGINNING; thence N.40°13'58"E., a distance of 63.12 feet; thence N.11°25'47"E., a distance of 109.66 feet; thence N.28°23'08"E., a distance of 75.08 feet; thence N.08°38'26"E., a distance of 117.01 feet; thence N.23°37'53"E., a distance of 96.67 feet; thence N.42°52'00"E., a distance of 105.76 feet; thence N.67°58'43"E., a distance of 54.06 feet; thence N.59°13'58"E., a distance of 57.28 feet; thence N.85°30'27"E., a distance of 136.93 feet; thence N.40°42'05"E., a distance of 121.06 feet; thence N.67°22'53"E., a distance of 58.02 feet; thence N.04°21'42"E., a distance of 187.23 feet; thence N.23°27'08"W., a distance of 106.99 feet; thence N.23°09'59"E., a distance of 96.18 feet; thence N.23°00'43"W., a distance of 56.71 feet; thence N.71°07'23"W., a distance of 98.99 feet; thence N.76°16'48"W., a distance of 133.79 feet; thence S.87°03'47"W., a distance of 72.70 feet; thence N.78°49'08"W., a distance of 113.61 feet to a point on a curve on the Southerly boundary of Lot 17 of aforesaid plat of FOXFIRE SUBDIVISION; thence along the Southerly boundary of said Lot 17, and the Southerly boundary of Lots 18, 19, 20, and 21 of said plat of FOXFIRE SUBDIVISION, the following two (2) courses: 1) Easterly, 565.58 feet along the arc of a non-tangent curve to the left having a radius of 850.00 feet and a central angle of 38°07'25" (chord bearing N.74°37'54"E., 555.20 feet) to a point of tangency; 2) N.55°34'11"E., a distance of 279.18 feet to the Northwesterly corner of Parcel 2, recorded in Official Records Instrument Number 2016000765, of the Public Records of Sarasota, Florida; thence along the Westerly, Southerly, and Easterly boundaries of said Parcel 2, the following eight (8) courses: 1) S.34°25'46"E., a distance of 10.00 feet; 2) S.55°35'21"W., a distance of 30.03 feet; 3) S.34°24'29"E., a distance of 74.53 feet; 4) N.55°43'28"E., a distance of 5.03 feet; 5) N.34°43'38"W., a distance of 6.00 feet; 6) N.55°33'30"E., a distance of 126.00 feet; 7) N.26°38'46"E., a distance of 28.45 feet; 8) N.34°20'53"W., a distance of 64.75 feet to aforesaid Southerly boundary of Lot 21; thence along said Southerly boundary of Lot 21, N.55°34'11"E., a distance of 81.86 feet to the Westerly right of way line of PROCTOR ROAD; thence along said Westerly right of way line, S.34°25'49"E., a distance of 799.86 feet to a point of intersection with said West right of way line, and the Northeasterly extension of the Northwesterly boundary of Lot 31, of aforesaid Plat of FOXFIRE SUBDIVISION; thence said Northwesterly boundary of Lot 31, and the Northeasterly extension thereof, S.55°34'11"W., a distance of 439.98 feet to the Northwest corner of said Lot 31; thence along the Westerly boundary of Lots 31, 32, 34, and 35, and the Southerly boundary of Lots 36, 37, and 38, of aforesaid Plat of FOXFIRE SUBDIVISION, the following three (3) courses: 1) S.34°25'49"E., a distance of 505.11 feet; 2)

Southeasterly, 1334.31 feet along the arc of a non-tangent curve to the left having a radius of 465.00 feet and a central angle of  $164^{\circ}24'33''$  (chord bearing  $S.42^{\circ}13'33''E.$ , 921.41 feet) to a point of tangency; 3)  $N.55^{\circ}34'11''E.$ , a distance of 305.32 feet to the Westerly right of way line of PROCTOR ROAD, according to Road Plat Book 3, Page 48, of the Public Records of Sarasota County, Florida; thence along said Westerly right of way line the following six (6) courses: 1)  $S.33^{\circ}08'40''E.$ , a distance of 100.32 feet; 2)  $S.34^{\circ}52'02''E.$ , a distance of 100.17 feet; 3)  $S.28^{\circ}09'24''E.$ , a distance of 100.60 feet; 4)  $S.34^{\circ}26'02''E.$ , a distance of 100.00 feet; 5)  $S.67^{\circ}10'09''E.$ , a distance of 24.97 feet; 6)  $S.34^{\circ}26'02''E.$ , a distance of 141.18 feet to the Northerly boundary of Lot 39, of aforesaid Plat of FOXFIRE SUBDIVISION; thence along said Northerly boundary of Lot 39,  $S.50^{\circ}39'27''W.$ , a distance of 473.03 feet to the Northwest corner thereof; thence along the West boundary of said Lot 39,  $S.00^{\circ}31'47''W.$ , a distance of 140.00 feet to the Northeast corner of Lot 44, of aforesaid Plat of FOXFIRE SUBDIVISION; thence along the North boundary of Lots 40, 41, 42, 43, and 44,  $N.89^{\circ}28'13''W.$ , a distance of 994.15 feet to the Northeasterly corner of a less out parcel described in Official Records Book 2719, Page 2932, of the Public Records of Sarasota County, Florida; thence along said less out parcel the following three (3) courses: 1)  $S.40^{\circ}13'29''W.$ , a distance of 10.74 feet; 2)  $S.11^{\circ}52'46''W.$ , a distance of 14.49 feet; 3)  $S.37^{\circ}24'54''W.$ , a distance of 21.89 feet to the West boundary of aforesaid Lot 40; thence along said West boundary of Lot 40,  $S.00^{\circ}31'47''W.$ , a distance of 459.95 feet to the North right of way line of CLARK ROAD; thence along said North right of way line,  $N.89^{\circ}28'01''W.$ , a distance of 329.91 feet to the East boundary of the West 1/2 of the Northeast 1/4 of the Northwest 1/4 of aforesaid Section 17; thence along said East boundary of the West 1/2 of the Northeast 1/4 of the Northwest 1/4 of Section 17, and along the East boundary of the West 1/2 of the Southeast 1/4 of aforesaid Southwest 1/4 of Section 8,  $N.00^{\circ}38'56''E.$ , a distance of 1618.82 feet to the Northeast corner of said West 1/2 of the Southeast 1/4 of the Southwest 1/4 of Section 8; thence along aforesaid North boundary of the South 1/2 of the Southwest 1/4 of Section 8,  $S.89^{\circ}56'31''W.$ , a distance of 976.17 feet to the POINT OF BEGINNING.

Containing 66.127 acres, more or less.

**EXHIBIT "B"**

**ARTICLES OF INCORPORATION OF ASSOCIATION**

(See attached)

Division of Corporations

Page 1 of 1

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Florida Department of State  
Division of Corporations  
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Fax Number : (850)617-6381

From: Account Name : DEAN, MEAD, EGERTON, BLOODWORTH, CAPOUANO & BOZARTH, P.A.  
Account Number : [REDACTED]  
Phone : (407)841-1200  
Fax Number : (407)423-1931

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Email Address: cathy.borro@meritagehomes.com

**FLORIDA PROFIT/NON PROFIT CORPORATION  
HERON LANDING HOMEOWNERS ASSOCIATION, INC.**

Certificate of Status	0
Certified Copy	1
Page Count	08
Estimated Charge	\$78.75

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MAR 0 1 2017

T. SCOTT

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ARTICLES OF INCORPORATION  
FOR  
HERON LANDING HOMEOWNERS ASSOCIATION, INC.  
(a Florida not for profit corporation)

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APPROVED  
AND  
FILED

In compliance with the requirements of Florida Statutes, Chapter 617, the undersigned incorporator has executed, adopted, and caused to be delivered for filing these Articles of Incorporation for the purpose of forming a corporation not for profit, and does hereby certify:

**ARTICLE I**

**NAME; PRINCIPAL OFFICE**

1.1 Name: The name of the corporation shall be **HERON LANDING HOMEOWNERS ASSOCIATION, INC.** For convenience, the corporation shall be referred to in this instrument as the "Association," these Articles of Incorporation as the "Articles," and the Bylaws of the Association as the "Bylaws."

1.2 Principal Office. The principal office and mailing address of the Association shall be at 5337 Millenia Lakes Boulevard, Suite 410, Orlando, Florida 32839, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office or at such other place as may be permitted by Chapter 617, Florida Statutes, the Florida Not for Profit Corporation Act (the "Act").

**ARTICLE II**

**PURPOSE AND POWERS**

2.1 Purpose. The purpose of the Association shall be to serve as a homeowners' association under Section 720.301, *et seq.*, Florida Statutes, and more particularly authorized by the Declaration of Covenants, Conditions and Restrictions for Heron Landing, recorded (or to be recorded) in the Public Records of the County in which the Property is located, as hereafter amended and/or supplemented from time to time (the "Declaration"). All of the definitions set forth in the Declaration are hereby incorporated herein by this reference, and capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Declaration. The further objects and purposes of the Association are to preserve the values and amenities in the Property and to maintain the Common Areas thereof for the benefit of the Members of the Association.

2.2 No Individual Benefit. The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any Member or individual person, firm, or corporation.

2.3 Corporate Powers. The Association shall have all of the common law and statutory powers of a corporation not for profit under the Act which are not in conflict with the

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terms of these Articles and the Declaration above identified. The Association shall also have all of the powers necessary to implement the purposes of the Association as set forth in the Declaration and to provide for the general health and welfare of its membership.

2.4 Delegation. The Association shall have the power to contract for the management of the Association and to delegate to the party with whom such contract has been entered into (which may be an affiliate of the Declarant) the powers and duties of the Association, except those which require specific approval of the Board of Directors or Members.

2.5 Association Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the Members in accordance with the provisions of the Declaration, these Articles, and the Bylaws.

2.6 Perpetual Existence. The Association shall have perpetual existence.

2.7 Distribution of Income; Dissolution.

(a) The Association shall not pay a dividend to its Members and shall make no distribution of income to its Members, directors, or officers.

(b) Upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency or as otherwise authorized by the Act.

2.8 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the Bylaws, and applicable law, provided that in the event of conflict, the provisions of applicable law shall control over those of the Declaration, these Articles, and the Bylaws.

**ARTICLE III**

**MEMBERS**

3.1 Membership. The Members of the Association shall consist of all of the record title owners of Lots within the Property from time to time, including the Declarant (the "Owners").

3.2 Assignment. The membership in the Association shall be appurtenant to and run with ownership of each Lot in the Property. Upon acquisition of a Lot within the Property, the Lot owner shall automatically become a Member of the Association, and upon the sale of a Lot in the Property, the Membership appurtenant to said Lot shall automatically pass to the subsequent grantee of title to the Lot. ~~A Membership in the Association may not otherwise be transferred, assigned or hypothecated.~~

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

(a) Class A. The Class A Members shall be all Owners, with the exception of the Declarant and each Designated Builder until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned.

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(b) Class B. The Class B Members shall be the Declarant and each Designated Builder. Each Class B Member shall be entitled to nine (9) votes for each Lot owned by such Member. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (i) three (3) months after ninety percent (90%) of the Lots in all phases of the community that will ultimately be operated by the Association have been conveyed to Purchasers; or (ii) when the Declarant and each Designated Builder notifies the Association in writing that it relinquishes its Class B membership; or (iii) such earlier date as the Declarant may determine, in its sole and absolute discretion, whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association (the "Turnover").

All votes shall be exercised or cast in the manner provided by the Declaration and Bylaws.

3.4 Meetings. The Bylaws shall provide for an annual meeting of Members, and may make provision for regular and special meetings of Members other than the annual meeting.

**ARTICLE IV**

**DIRECTORS**

4.1 Number and Qualification. The property, business, and affairs of the Association shall be managed by a board consisting of the number of directors determined from time to time by the Board in the manner provided by the Bylaws, but which shall consist of not less than three (3) directors. All directors shall be Members of the Association or authorized representatives, officers, or employees of Members of the Association that are entities, or designees of the Declarant.

4.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles, and the Bylaws shall be exercised exclusively by the Board of Directors, its agents, contractors, or employees, subject only to approval by Members when such approval is specifically required.

4.3 Initial Directors. The names and addresses of the initial members of the Board of Directors who shall hold office until their successors are duly elected and qualified as provided in the Bylaws, are as follows:

NAME	ADDRESS
Martha Schiffer	5337 Millenia Lakes Blvd., Suite 410, Orlando, FL 32839
Thomas Griggs	5337 Millenia Lakes Blvd., Suite 410, Orlando, FL 32839
Christy Garow	5337 Millenia Lakes Blvd., Suite 410, Orlando, FL 32839

4.4 Election. Except as otherwise provided herein, and as except for the members of the Board of Directors appointed by Declarant, directors of the Association shall be elected at the annual meeting of the Members in the manner determined by and subject to the qualifications set

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forth in the Bylaws. Notwithstanding anything herein contained to the contrary, from and after the Turnover, Members other than the Declarant shall be entitled to elect at least a majority of the Board of Directors of the Association; provided, however, that the Declarant is entitled to elect at least one (1) member of the Board of Directors of the Association as long as the Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots.

4.5 Term: Removal. Directors elected by the Owners shall hold office until their successors are elected and qualified at the next succeeding annual meeting of Members. Directors may resign or be removed, and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

4.6 Vacancy. If a director elected by the general membership shall, for any reason, cease to be a director, the remaining directors so elected may elect a successor to fill the vacancy for the balance of the term.

4.7 Early Transition. The Declarant may transfer control of the Association to Owners other than the Declarant prior to the date required by law in its sole discretion by causing enough of its appointed directors to resign, whereupon it shall be the affirmative obligation of Owners other than the Declarant to elect directors and assume control of the Association. Provided the Owners other than Declarant receive at least fourteen (14) days' notice of Declarant's decision to cause its appointees to resign, neither the Declarant, nor such appointees, shall be liable in any manner in connection with such resignations even if the Owners other than the Declarant refuse or fail to assume control.

**ARTICLE V**

**OFFICERS**

5.1 Officers Provided For. The Association shall have a President, a Vice President, a Secretary, a Treasurer, and such other officers as the Board of Directors may from time to time elect. One person may be appointed to serve in multiple officer positions.

5.2 Election and Appointment of Officers. The officers of the Association, in accordance with any applicable provision of the Bylaws, shall be elected by the Board of Directors for terms of one (1) year and thereafter until qualified successors are duly appointed and have taken office. The Bylaws may provide for the method of voting in the appointment, for the removal from office of officers, for filling vacancies, and for the duties of the officers. The officers may or may not be directors of the Association. If the office of President shall become vacant for any reason, or if the President shall be unable or unavailable to act, the Vice President shall automatically succeed to the office or perform its duties and exercise its powers. If any office shall become vacant for any reason, the Board of Directors may elect or appoint an individual to fill such vacancy.

5.3 Initial Officers. The names and titles of the initial officers of the Association, who shall hold office until the first annual meeting of directors and thereafter until successors are duly elected and have taken office, shall be as follows:

President: Martha Schiffer

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Vice President: Thomas Griggs

Secretary and Treasurer: Christy Garrow

ARTICLE VI

INDEMNIFICATION PROVISIONS

6.1 Indemnification.

(a) The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he is or was a director, officer, employee, or agent (each, an "Indemnitee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, to the full extent permitted by law.

(b) The Association shall indemnify to the full extent permitted by law any person, who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof.

6.2 Indemnification for Expenses. To the extent that a director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in Section 6.1(a) or Section 6.1(b), or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith to the full extent permitted by law.

6.3 Determination of Applicability. Any indemnification under Section 6.1(a) or Section 6.1(b), unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in applicable law. Such determination shall be made:

(a) By the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding;

~~(b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a Committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;~~

(c) By independent legal counsel: (i) selected by the Board of Directors prescribed in paragraph (a) or the committee prescribed in paragraph (b); or (ii) if a quorum of the directors cannot be obtained for paragraph (a) and the Committee cannot be designated under

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paragraph (b), selected by majority vote of the full Board of Directors (in which directors who are parties may participate); or

(d) By a majority of the voting interests of the Members of the Association who were not parties to such proceeding,

6.4 Determination Regarding Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible.

6.5 Advancing Expenses. Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deems appropriate.

6.6 Exclusivity. The indemnification and advancement of expenses provided pursuant to this Article VI are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, or vote of disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office to the full extent permitted by law.

6.7 Continuing Effect. Indemnification and advancement of expenses as provided in this section 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, unless otherwise provided when authorized or ratified.

6.8 Definitions. For purposes of this Article VI, the term "expenses" shall be deemed to include attorneys' fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer; the term "serving at the request of the Association" shall be deemed to include any service as a director, officer, employee, or agent of the Association that imposes duties on such persons.

6.9 Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article VI shall be applicable as to any party eligible for indemnification hereunder who has not given his prior written consent to such amendment.

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**ARTICLE VII**

**BYLAWS**

The initial Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided in the Bylaws and the Declaration.

**ARTICLE VIII**

**AMENDMENTS**

8.1 Notice. Amendments to these Articles of Incorporation shall be proposed and approved by a simple majority of the Board of Directors unless the approval of the membership of the Association is required under the Declaration, in which case the Members must approve said amendment.

8.2 Proviso. No amendment to these Articles may be adopted which would eliminate, modify, prejudice, abridge, or otherwise adversely affect any rights, benefits, privileges, or priorities granted or reserved to the Declarant or mortgagees of Residential Units without the consent of said Declarant or mortgagees in each instance. No amendment shall be made that is in conflict with the Act or the Declaration.

8.3 Declarant Amendments. Notwithstanding anything herein contained to the contrary, to the extent lawful, the Declarant may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Declarant alone.

**ARTICLE IX**

**INCORPORATOR**

The name and address of the Incorporator of this Corporation is:

NAME	ADDRESS
Mel Faraoni	8800 E. Raintree Dr., Suite 300, Scottsdale, Arizona 85260

**ARTICLE X**

**INITIAL REGISTERED OFFICE;  
ADDRESS AND NAME OF REGISTERED AGENT**

The initial registered office of this corporation shall be at 5337 Millenia Lakes Blvd., Suite 410, Orlando, FL 32839 and the registered agent of this corporation at that address shall be Martha Schiffer.

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IN WITNESS WHEREOF, the Incorporator has affixed his/her signature below.

  
MEL FARAONI

**CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR  
THE SERVICE OF PROCESS WITHIN THIS STATE, NAMING AGENT  
UPON WHOM PROCESS MAY BE SERVED**

In compliance with the laws of Florida, the following is submitted:

That desiring to organize under the laws of the State of Florida with its principal office as indicated in the foregoing articles of incorporation, in the County of Orange, State of Florida, the Association named in the said articles has named Martha Schiffer, having an address of 5337 Millenia Lakes Blvd., Suite 410, Orlando, FL 32839, as its statutory registered agent.

Having been named the statutory agent of said Association at the place designated in this certificate, I am familiar with the obligations of that position, and hereby accept the same and agree to act in this capacity.

  
MARTHA SCHIFFER

DATED this 27<sup>th</sup> day of FEB, 2017

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**EXHIBIT "C"**

**BYLAWS OF ASSOCIATION**

**(See Attached)**

**BYLAWS  
OF  
HERON LANDING HOMEOWNERS' ASSOCIATION, INC.**

ARTICLE I  
NAME AND LOCATION

The name of the corporation is HERON LANDING HOMEOWNERS' ASSOCIATION, INC., hereinafter referred to as the "Association." The initial principal office of the Association shall be located at 10150 Highland Manor Drive, Suite 120, Tampa, Florida 33610, but meetings of Members and Directors may be held at such places within the State of Florida, County of Orange and Hillsborough , as may be designated by the Board of Directors.

ARTICLE II  
DEFINITIONS

Section 1. "Declaration" means and refers to the Declaration of Covenants, Conditions and Restrictions for Heron Landing as recorded or to be recorded in the Public Records of Sarasota County, Florida, and as the same may be amended from time to time.

Initially, capitalized terms used and not otherwise defined herein have the meanings given such terms of the Declaration.

ARTICLE III  
MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held during same month of each year thereafter, on the day and at the time determined by the Board of Directors.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors or upon written request of the Members who are entitled to vote ten percent (10%) of the total votes of the full membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fourteen (14) days before such meeting to each Member entitled to vote there at, addressed to the Member's address last appearing on the books of the Association. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Evidence of compliance with this notice requirement shall be made by affidavit executed by the person providing the notice and filed amongst the official records of the Association.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, thirty percent (30%) of the combined votes of both classes of



membership combined shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. Unless prohibited by the Declaration, Articles of Incorporation, these Bylaws, or Chapter 720, Florida Statutes, at all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, dated, signed, include the date, time and place of the meeting for which it was given and be filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of such Member's Lot.

#### ARTICLE IV BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number; Composition. Until Turnover of control by the Class B Members, such Turnover being pursuant to the requirements of Section 720.307, Florida Statutes, and Article III, Section 3.11 of the Declaration, the affairs of the Association shall be managed by a Board of three (3) directors appointed by the Declarant. Following Turnover, the Board shall be elected in accordance with the provisions set forth in Article V below, except that, for so long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots, the Declarant shall be entitled to appoint one member of the Board. At such time as Declarant no longer owns any Lots, the number of directors may be increased or decreased by amendment to these Bylaws provided there shall never be less than three (3) Directors. Directors elected after Turnover must be Members of the Association or authorized representatives, officers or employees of Members that are entities, except in the case of directors appointed by the Class B Member, pursuant to the discretion afforded herein for such appointments.

Section 2. Term of Office. Prior to Turnover, but subject to Subsection 720.307(2), Florida Statutes, the Declarant shall have complete discretion in appointing, removing, and replacing directors, whose term shall be determined by the Declarant in its discretion. Following Turnover, the term of each director's service shall be for one (1) year and thereafter until his successor is duly appointed and qualified at the next annual meeting, or until he is removed in the manner elsewhere provided. Following Turnover, pursuant to Article XII, Section 1 herein below, the Board of Directors may amend these Bylaws to permit staggered terms for directors; provided, however, that no such amendment shall serve to extend the then term of office of any existing director, but instead shall be effective as of and upon the election of the next Board of Directors.

Section 3. Removal. Prior to Turnover, the Declarant shall be entitled to remove directors with or without cause and appoint replacement directors. Following Turnover, any Director may be removed from the Board, with or without cause, by a majority vote of the Members, except that the Director selected by the Declarant pursuant to Article V, Section 2 herein below may be removed only by the Declarant in its sole discretion and, if so removed by the Declarant, such vacancy filled by the Declarant in its sole discretion. The Members may

recall and remove a Director by an agreement in writing or by written ballot without a membership meeting pursuant to the procedures set forth in Section 720.303(10)(b), Florida Statutes or any successor statute thereto, or by a vote taken at a meeting pursuant to Section 720.303(10)(c), Florida Statutes or any successor statute thereto. In the event of death, resignation or removal of a director, his successor shall be selected by the majority of the remaining directors or the sole remaining director, as the case may be, and shall serve for the unexpired term of his or her predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of their duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V NOMINATION AND ELECTION OF BOARD OF DIRECTORS

Section 1. Nomination. Following termination of the Class B membership, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. Subject to Article IV, Section 2 of these Bylaws, the Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 2. Election. Not later than the first annual meeting after the Turnover, an election shall be held at which the Class A Members shall elect: (a) in the event Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots, all but one (1) of the directors, with the remaining director to be appointed by the Declarant; or, (b) in the event Declarant holds for sale in the ordinary course of business less than five percent (5%) of the Lots, all of the directors pursuant to the provisions of these Bylaws. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at such place and time as may be determined by the Board.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days' notice to each director.

Section 3. Notice. Notice of all meetings of the Board of Directors shall be posted in a conspicuous place on the Property at least forty-eight (48) hours in advance of a meeting, except in the event of an emergency. If special Assessments or amendments to the rules regarding parcel use are to be considered at any meeting of the Board of Directors, notice of the meeting must be given to the extent and in such manner as may be required by Section 720.303(2)(c)(2), Florida Statutes, or any successor statute thereto.

Section 4. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. In addition to any powers granted by Chapters 617 or 720, Florida Statutes, the Board of Directors shall specifically have the power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) subject to the limitations specified in the Declaration and by applicable law, suspend the voting rights and right to use of the Common Area of a Member delinquent in the payment of any Assessment levied by the Association for a period exceeding ninety (90) days. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs, specifically including those items required by Section 720.303(4), Florida Statutes;

(b) supervise all officers, agents and employees of this Association, and see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period;

(2) send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of each annual Assessment period; and

(3) if deemed appropriate by the Board of Directors, foreclose the Assessment Lien against any property for which Assessments are not paid in accordance with the terms of the Declaration or to bring an action at law against the owner personally obligated to pay same; and

(4) approve settlements of unpaid Assessments;

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained.

#### ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a President, Vice President, Secretary and Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless such officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time, giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. Any two (2) or more offices may be held by the same person, except for the office of President.

Section 8. Duties. The duties of the officers are as follows:

(a) President. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments.

(b) Vice President. The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of the Vice President by the Board.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures when requested by the Board of Directors. All checks of the Association shall be co-signed by any two officers or agents of the Association approved and designated for check signing by the Board of Directors (except that the Board may designate a contract manager to sign checks).

## ARTICLE IX COMMITTEES

Section 1. New Construction Committee. So long as the Declarant owns any Lot, the Declarant shall have the right to appoint and remove all members of the New Construction Committee pursuant to the Declaration. The New Construction Committee shall not be a Committee of the Association, however, unless and until Declarant shall assign its rights and obligations with respect thereto in writing to the Association at Declarant's discretion; provided, however, that upon the sale of the last Lot owned by Declarant, if Declarant has not previously

assigned such rights and obligations to the Association, the New Construction Committee shall thereupon become a Committee of the Association whose members shall be appointed by the Board, and all rights and obligations of Declarant with respect to the New Construction Committee shall automatically pass to the Association. At such time as the Association acquires the rights and obligations of the New Construction Committee, the Association may, in its discretion, elect to merge the New Construction Committee into the Architectural Committee, in which event the Architectural Committee shall thereafter perform the functions of the New Construction Committee specified in the Declaration.

Section 2. Architectural Committee. Until Turnover of control by the Class B Members, Declarant shall have the right to appoint and remove all members of the Architectural Committee. Thereafter, the Board shall have the right to appoint and remove members of the Architectural Committee.

Section 3. Nominating Committee. So long as the Class B Membership exists, the Declarant shall have the right to appoint a Nominating Committee as provided in these Bylaws. Thereafter the Nominating Committee shall be appointed in accordance with the terms of Article V, Section 1 of these Bylaws.

Section 4. Other Committees. The Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

#### ARTICLE X BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

#### ARTICLE XI CORPORATE SEAL

The Association may have a seal in circular form having within its circumference the words: HERON LANDING HOMEOWNERS' ASSOCIATION, INC.

#### ARTICLE XII AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the Board of Directors, by a vote of a majority of Board members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

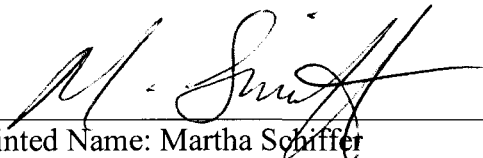
ARTICLE XIII  
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

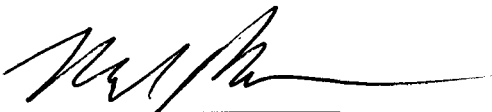
Neither Declarant nor the officers and directors of the Association shall be personally liable for any mistake or judgment or for any other acts or omissions of any nature whatsoever while acting in their official capacity, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The Owners shall indemnify and hold harmless each of the directors and officers and their respective heirs, executors, administrators, successors, and assigns against any personal liability for any such acts or omissions while acting in their official capacity, except for such acts or omissions found by a court to constitute gross negligence or actual fraud.

In the event of any dispute or disagreement between any Owners relating to the Property, or any questions or interpretation or application of the provisions of the Declaration or these Bylaws, the determination thereof by the Board of Directors shall be final and binding on each and all such Owners.

**IN WITNESS WHEREOF**, we, being all of the directors of the Heron Landing Homeowners' Association, Inc., have hereunto set our hands this 16 day of October, 2017.

  
\_\_\_\_\_  
Printed Name: Martha Schiffer  
Title: Director

  
\_\_\_\_\_  
Printed Name: Larry Franks  
Title: Director

  
\_\_\_\_\_  
Printed Name: Mark Roscoe  
Title: Director



**CERTIFICATION**

I, the undersigned, do hereby certify:

**THAT** I am the duly elected and acting Secretary of the HERON LANDING HOMEOWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation, and,

**THAT** the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 16 day of October, 2017. *MR*

**IN WITNESS WHEREOF**, I have hereunto subscribed my name and affixed the seal of said Association this 16 day of October, 2017.



Printed Name: Mark Roscoe

Title: Secretary