

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
TARPON BAY**

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**SCHEDULE OF EXHIBITS**

<u>EXHIBIT A</u> .....	Legal Description of the Property
<u>EXHIBIT B</u> .....	Articles of Incorporation
<u>EXHIBIT C</u> .....	Bylaws

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TARPON BAY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TARPON BAY is made and entered into this 30<sup>th</sup> day of January 2020, by Feltrim Roe Road, LLC, a Florida limited liability company (“Developer”).

## RECITALS:

- A. Developer is the owner of certain real property located in Polk County, Florida, described on Exhibit A attached hereto and made a part hereof (the “Property”).
- B. Developer intends to develop the Property into a community to be known as **Tarpon Bay**.
- C. The Property shall be held, sold, conveyed, leased, mortgaged, and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration.

**NOW THEREFORE**, Developer hereby declares that all of the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the Property 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 thereof.

## ARTICLE I DEFINITIONS

- 1.1 “Annual Assessment(s)” shall mean assessments or charges levied against all Lots to fund Common Expenses in accordance with this Declaration.
- 1.2 “Assessment(s)” shall mean Annual Assessments, Commencement Assessments, Transfer Assessments, Special Assessments, Specific Assessments, Utility Assessments and any other assessments or charges levied against Lots in accordance with this Declaration.
- 1.3 “Architectural Review Board” and/or “ARB” shall mean the committee established and described in ARTICLE IX hereof.
- 1.4 “Articles” shall mean the Articles of Incorporation of the Association which have been filed in the office of the Secretary of the State of Florida, as same may be amended from time to time, a copy of which is attached hereto as **Exhibit B**.



1.5 “Association” shall mean Tarpon Bay Homeowners Association, Inc., a Florida corporation not-for-profit, its successors and assigns.

1.6 “Authorized Builder” shall mean any Builder (as hereinafter defined) which is also designated as an Authorized Builder by Developer. Developer shall provide record notice that an Authorized Builder has been so designated (or the revocation of such designation) by an instrument recorded among the Public Records of the County. At no time shall Developer designate more than one Builder to be an Authorized Builder in any phase of Tarpon Bay without the written consent of any then existing designated Authorized Builder(s) in that certain phase of Tarpon Bay, which consent shall not be unreasonably withheld. Developer hereby provides record notice that once the Park Square Authorized Builder (as hereinafter defined) acquires title to any Lot, it shall automatically be designated to be an Authorized Builder without the requirement of any additional record notice and once the Park Square Authorized Builder no longer has title to any Lot, its designation as an Authorized Builder shall automatically be revoked without the requirement of any additional record notice.

1.7 “Board” shall mean the board of directors of the Association.

1.8 “Builder” shall mean any entity or Person (as hereinafter defined) that has acquired title to one or more Lots for the purpose of constructing Residences on such Lots for later sale to a third-party purchasers in the ordinary course of such Person’s business.

1.9 “Bylaws” shall mean the bylaws of the Association, as same may be amended from time to time, a copy of which is attached hereto as **Exhibit C**.

1.10 “City” shall mean and be defined as the City of Haines City, Florida, a municipal corporation of the State of Florida, specifically including each and all of its departments and agencies.

1.11 “Common Area” shall mean Tracts A through R, inclusive, S-1, S-2, and T through V, inclusive, set forth on the Plat (as hereinafter defined) and all real property (including the improvements thereon) owned by the Association or easement areas in favor of the Association, for the common use and enjoyment of the Owners. The Common Area includes the Conservation Areas, Streets and Surface Water Management System (each as hereinafter defined), excluding Lots.

1.12 “Common Expenses” shall mean the actual and estimated expenses incurred by the Association for the operation, maintenance, monitoring and repair of the Common Area (and all improvements thereon), the Surface Water Management System, wetland mitigation areas, and the Common Maintenance Area, or for the general benefit of all Owners, including, if so determined by the Board, any reasonable reserves, all as may be found to be necessary or appropriate by the Board pursuant to the Governing Documents.

1.13 “Common Maintenance Area” shall mean all real property from time to time designated by Developer or the Board as a maintenance responsibility of the Association for the common use and enjoyment of the Owners, together with all improvements, fixtures, and tangible personal property now or hereafter situated thereon.



1.14 “Conservation Areas” shall mean all conservation areas and/or conservation easement areas, if any, designated by Developer or its successors and assigns upon the Plat (as hereinafter defined), or in any easements, dedications, or restrictions made or imposed pursuant to conservation ordinances, laws, rules, or regulations of governmental authorities.

1.15 “County” shall mean and be defined as Polk County, Florida, a political subdivision of the State of Florida, specifically including each and all of its departments and agencies.

1.16 “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions of Tarpon Bay.

1.17 “Developer” shall mean Feltrim Roe Road, LLC, a Florida limited liability company, and its successors and assigns. Developer may assign all or a portion of its rights hereunder. In the event of a partial assignment, the assignee shall not be deemed Developer but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

1.18 “Developer Rights Assignment Option” shall have the meaning ascribed to it in Section 16.1 of this Declaration.

1.19 “Development Easement Right” shall have the meaning ascribed to it in Section 2.11 of this Declaration.

1.20 “District” shall mean the Southwest Florida Water Management District.

1.21 “Governing Documents” shall mean and collectively refer to this Declaration, the Articles, the Bylaws and any rules or regulations adopted by the Board.

1.22 “Lot” shall mean any plot of land intended for use as a site for a Residence and which is shown as a lot upon the Plat(s).

1.23 “Member” shall mean every Person who is an Owner and, in being such, the Owners comprise the membership of the Association.

1.24 “Owner” shall mean the record owner, whether one or more Persons or entities, including, without limitation, Developer, Builder(s) and Authorized Builder(s), of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.25 “Park Square Authorized Builder” shall mean Park Square Enterprises, LLC, a Delaware limited liability company, and its successors and assigns, but only to the extent that such entity is controlled by or under common control with Park Square Enterprises, LLC, a Delaware limited liability company (a **“Park Square Affiliate”**), or to an entity which succeeds to Park Square Enterprises, LLC, a Delaware limited liability company in any merger or acquisition. Park Square

Enterprises, LLC, a Delaware limited liability company shall notify Developer in advance of such assignment to a Park Square Affiliate and provide a copy of the assignment document to Developer upon such assignment.

1.26 “Park Square Authorized Builder Leaseback” shall have the meaning ascribed to it in Section 8.4 of this Declaration.

1.27 “Permit” shall mean and refer to Environmental Resource Permit No. 43043130.002 for the Property issued by the District, as may be modified from time to time.

1.28 “Person” shall mean an individual, corporation, governmental agency, estate, trust, partnership, association, sole proprietorship, joint venture, two or more persons having a joint or common interest, or any other legal entity.

1.29 “Plat” shall mean the plat or plats subdividing the Property, as recorded from time to time in the public records of the County.

1.30 “Property” shall mean the real property described in **Exhibit A** attached hereto, and, when added in accordance with the terms and conditions hereof, shall also include such real property as is in the future subjected to this Declaration.

1.31 “Residence” shall mean any residential dwelling unit constructed or to be constructed on or within any Lot together with any appurtenant improvements.

1.32 “Street(s)” shall mean the right(s)-of-way and all streets, roads, drives, courts, ways and cul de sacs within the Property as the same are described in and depicted on the Plats, together with all paving, curbing, gutters, sidewalks and other improvements, facilities and appurtenances from time to time located therein, including street lights and utility lines conveyed by Developer to the Association as Common Area pursuant to the provisions of this Declaration; but, specifically excluding, however, such utility lines, facilities and appurtenances as are located within such right(s)-of-way as may be owned by private or public utility companies or governmental agencies from time to time providing utility services to the Property.

1.33 “Surface Water Management System” shall mean the surface water management and drainage system for the Property which is designed, constructed, implemented and operated to collect, store, retain, detain, inhibit, absorb, treat, convey, drain, use or reuse water to prevent or reduce flooding, overdrainage, water pollution or other environmental degradation or otherwise affect the quality, quantity and/or rate of flow of surface storm water drainage on and discharges from the Property in accordance with and pursuant to the Permit and as reflected on the construction plans approved by the City and/or County, as applicable, and includes all land, easements, inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas and wetland mitigation areas, improvements, facilities, and appurtenances which together constitute and comprise the surface water management and drainage

system for the Property. The Surface Water Management System facilities shall be located on land that is designated Common Area on the Plat or located on other land that is owned by the Association or land that is subject to an easement in favor of the Association and its successors.

1.34 “Turnover” shall mean that date following conversion of Class B Membership to Class A Membership upon which Developer transfers majority control of the Board as provided in this Declaration.

## **ARTICLE II** **PROPERTY RIGHTS**

2.1 Owners’ Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of every Lot, subject to the right of the Association, pursuant to Florida Statute 720.305, to suspend the right to use Common Area facilities for a reasonable period of time for the failure of the Owner or its occupant, licensee or invitee to comply with the terms of this Declaration.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the Governing Documents, such Owner’s right or enjoyment to the Common Area and facilities to family members or tenants who reside on such Owner’s Lot, but not otherwise.

2.3 Utility Easements. There are hereby created, declared, granted to and reserved for the benefit of Developer, the City, the County, the Association, all Owners, all Lots, and all public or private providers of utility services to the Property and their respective successors and assigns a non-exclusive perpetual easement for utility purposes over, under, upon and within the Property for the purposes of constructing, installing, inspecting, operating, maintaining, repairing, and replacing, from time to time, any and all utility and service lines, mains, systems, meters, equipment, and facilities from time to time located therein or thereon, as may be necessary or desirable for providing services to Owners and the various portions of the Property. The utilities contemplated to be served by such utility easements may include, without limitation, those providing reuse and potable water, sewer, drainage, irrigation systems, telephone, security systems, electricity, gas, cable television or other communication lines and services. All such easements shall be of a size, width, and location as Developer, in its discretion, deems best but selected in a location so as to not unreasonably interfere with the use of any Residence which is now, or will be, located upon the Property.

2.4 Emergency Drainage Easement. There is hereby created, declared and granted to and for the benefit of the City, the County and District, a non-exclusive perpetual easement over, under, upon and within the Streets and all drainage easements and drainage easement areas comprising and appurtenant to the Surface Water Management System for the purpose of undertaking emergency maintenance and repairs to the Surface Water Management System in the event that inadequate maintenance or repair of the Surface Water Management System by the Association shall create a hazard to the public health, safety or general welfare. To the extent that the City, the County and/or the District shall, in fact, undertake any such emergency maintenance and repairs to the Surface Water Management System because of the inadequate maintenance and repair thereof by the Association,

the City, the County and/or the District as the case may be, shall have a lien upon the portion of the Common Area comprising the Surface Water Management System, but only as to such portion which is owned in fee by the Association, as security for the payment by the Association of those costs and expenses reasonably so incurred by the City, the County and/or the District in connection therewith. It is expressly provided, however, that the creation, declaration, grant and reservation of such Emergency Drainage Easement shall not be deemed to impose upon the City, the County and/or the District any obligation, burden, responsibility or liability to enter upon the Property or any portion thereof to take any action to maintain or to repair the Surface Water Management System or any portion or portions thereof for any reason or reasons whatsoever.

2.5 Easement for Access and Drainage. The Association shall have a perpetual non-exclusive easement over all areas of the Surface Water Management System for access to operate, maintain or repair the Surface Water Management System. By this easement, the Association shall have the right to enter upon any portion of any Lot which is a part of the Surface Water Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water Management System as required by the Permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water Management System. 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 District.

2.6 Swale Maintenance. Developer may construct a drainage swale upon the Lots for the purpose of managing and containing the flow of excess surface water, if any, found upon such Lot(s) from time to time. Each Owner, shall be responsible for the maintenance, operation and repair of the swales on their Lot. 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 swales 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 of the Lot upon which the drainage swale is located.

2.7 Construction and Sales Easement. There is hereby created, declared, granted and reserved for the benefit of Developer and Builder and each of their affiliates, successors, nominees and assigns (together with the right to grant, assign, and transfer the same to their respective sales agents and/or sales representatives as well as to builders or building contractors approved by Developer or Builder for the construction of Residences within the Property) an easement for construction activities upon Lots owned by Developer or Builder and an easement for sales, marketing and promotional activities, including the installation and maintenance of signs on Lots owned by Developer or Builder and for the construction and maintenance on Lots owned by Developer or Builder from time to time of a sales and administrative center in which and from which Developer and Builder and each of their respective affiliates, successors, nominees, assigns, sales agents, sales representatives and approved builders and building contractors, may engage in marketing, sales and promotional activities and related or supportive administrative activities of a commercial nature.



There is further hereby created, declared, granted and reserved for the benefit of the Park Square Authorized Builder (together with the right to grant, assign, and transfer the same to their respective sales agents and/or sales representatives as well as to builders or building contractors approved by the Park Square Authorized Builder for the construction of Residences within the Property) rights, and, to the extent required, easements for the exercise of such rights, as are reasonably necessary to allow the Park Square Authorized Builder to build, market and sell Residences. Such rights include the right to place marketing and directional signage at the entrances to the Property and elsewhere within the Property that the Park Square Authorized Builder reasonably requires to build, market and sell such Residences, subject, however, to Developer's prior written permission or approval as to the size and location of said signage, which permission or approval shall not be unreasonably withheld by Developer or, in the event the Developer no longer owns any portion of the Property, the Association.

2.8 Public Easements. Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Property for the purpose of providing public services to the Owners.

2.9 Association's Access Easement. The Association's duly authorized representatives or agents shall, at all reasonable times have and possess a reasonable right of entry and inspection upon the Property for the purpose of fully and faithfully discharging the duties of the Association. Non-exclusive easements are hereby granted in favor of the Association throughout the Property as may reasonably be necessary for the Association to perform its services required and authorized hereunder, so long as none shall unreasonably interfere with the use of any Lot. Furthermore, a non-exclusive easement is hereby created over all utility easements and drainage easements located on any Lot, whether now existing or hereafter created, including, but not limited to, all utility easements and drainage easements contained on the Plat, which easement is in favor of the Association, including its agents and designees, in perpetuity, to utilize for all proper purposes of the Association, as determined by the Board.

2.10 Access. Developer reserves unto itself, including its designees from time to time, and hereby grants to the Association and all Owners, including their respective tenants, guests and invitees, perpetual, non-exclusive easements of ingress and egress over and across those portions of the Common Area lying adjacent to and between the boundary line(s) of their Lot(s) to and from dedicated rights of way which are located within the Property.

2.11 Future Easements. There is hereby reserved to Developer and its successors and assigns, together with the right to grant and transfer the same, the right, power and privilege to, at any time hereafter, grant to itself, the Association, the City, the County, the District or any other parties such other further and additional easements as may be reasonably necessary or desirable, in the sole opinion and within the sole and absolute discretion of Developer, for the future orderly development of the Property in accordance with the objectives and purposes set forth in this Declaration (the "**Development Easement Right**"). It is expressly provided, however, that no such further or additional easements shall be granted or created over and upon the Lots pursuant to the provisions of this Section if any such easement shall unreasonably interfere with the presently contemplated or

future use and development of a particular Lot as a residential home site. The easements contemplated by this Section 2.11 may include, without limitation, such easements as may be required for utility, drainage, road right-of-way or other purposes reasonably related to the orderly development of the Property in accordance with the objectives and purposes specified in this Declaration. Such further or additional easements may be hereafter created, granted, or reserved by Developer without the necessity for the consent or joinder of the owner of the particular portion of the Property over which any such further or additional easement is granted or required, except that consent or joinder of any Authorized Builder owning such portion of the Property shall be required but not unreasonably withheld. The Association shall execute and deliver any documentation required by Developer to exercise the Development Easement Right at no cost to Developer. Once Developer no longer owns any portion of the Property the Association shall succeed to the Development Easement Right and, as evidenced by the Joinder of Association which is attached to this Declaration, acknowledges and agrees that it shall be obligated to grant, modify, amend and terminate any such easements as deemed necessary by Developer, in its sole discretion, upon Developer's written demand for same and at no cost to Developer. To the extent legally required, each Owner, shall be deemed to have granted to Developer and, thereafter, Association an irrevocable power of attorney, coupled with an interest, for the purposes of granting easements over such Owner's Lot pursuant to Development Easement Right. Subject only to the rights of Developer to amend this Declaration, including, without limitation, Developer's right to unilaterally amend the Declaration in accordance with the provisions of Section 15.4 herein, subject, however, to the provisions of Section 15.1, this Section 2.11 shall not be amended until the last to occur of (i) the date which is five (5) years after Turnover or (ii) the date Developer no longer owns any portion of the Property.

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

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

3.1 Membership Appurtenant. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

3.2 Voting Rights. The Association shall have two classes of voting membership:

3.2.1 Class A. The "**Class A Members**" shall be all Owners, with the exception of Developer, and shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised by a majority of all such Members as they determine, but in no event shall more than one (1) vote be cast with respect to such a Lot.

3.2.2 Class B. The "**Class B Member**" shall be Developer. The Class B Member shall be entitled to the total number of votes of all Class A Members from time to time plus one

(1) vote; provided, however, that the Class B membership shall cease and convert to Class A membership on the happening of any of the following events, whichever shall first occur:

3.2.2.1 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 Class A Members other than a Builder or an Authorized Builder; or

3.2.2.2 Developer, in its sole and absolute discretion, elects to terminate its Class B membership by written notice of such election delivered to the Association (whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association).

Notwithstanding that there shall be two (2) classes of voting membership in the Association, voting shall be based upon the votes cast by the membership as a whole; not on votes cast by or within each class of voting membership.

3.3 Turnover of Control of Association. Within ninety (90) days following the cessation and termination of Class B membership in the Association as hereinabove provided, Developer shall deliver to the Class A Members, at Developer's expense, those documents and other materials described in Section 720.307(4) Florida Statutes and relinquish control and turnover the management and operation of the Association to the Class A Members as provided in Section 720.307 Florida Statutes.

3.4 Exercise of Developer Rights Assignment Option at Turnover. Prior to Turnover, the Developer shall give the Park Square Authorized Builder notice of any Developer Rights Assignment Option as to all of Developer's rights which are created or reserved by this Declaration. Notice and acceptance of the Developer Rights Assignment Option in the Association shall be in accordance with the provisions of Section 16.1 of this Declaration.

**ARTICLE IV**  
**PROPERTY SUBJECT TO THIS DECLARATION**  
**AND ADDITIONS TO THE PROPERTY**

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

4.2 Additions to the Property. Developer and the Association each reserve the right to add, or cause to be added, other real property not now included within the Property to the Property, without the consent or joinder of any party, except for the consent or joinder of any party as may be required in accordance with the provisions of Section 4.3 hereinbelow, upon the recording of an amendment or supplement to this Declaration in the public records of the County. Thereafter, such real property described therein shall be committed to the covenants contained in this Declaration and shall be considered "Property" as fully as though originally designated herein as Property.



4.3 Annexation of Property. Real property may be annexed to the Property upon the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than a majority of the total votes of the Association. Such annexation shall become effective upon the recording of an amendment or supplement to this Declaration in the public records of the County. Thereafter, such real property described therein shall be committed to the covenants contained in this Declaration and shall be considered "Property" as fully as though originally designated herein as Property. Notwithstanding anything herein to the contrary, as long as the Class B Membership exists the annexation of property must first be approved in writing by the Developer.

4.4 Development Approvals. Prior to Turnover, Developer reserves the right to seek and obtain approval from the City, the County or any other governmental authority to modify or amend the preliminary subdivision plans, development plans or orders for the Property approved by the City, the County or other governmental authority from time to time, without the joinder, ratification or approval of the Association, any Owner or any lienholder.

4.5 Platting. As long as there is a Class B Membership, Developer shall be entitled at any time and from time to time, to plat and/or replat all or any part of the Property and to file subdivision restrictions and amendments thereto with respect to any undeveloped portion or portions of the Property without the consent or approval of any Owner.

4.6 Merger. Nothing in this Declaration is intended to limit or restrict in any way the Association's rights or ability to merge or consolidate with any other association as the Board may feel is in the best interests of the Association and its Members. A merger or consolidation of the Association must be approved by the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than a majority of the total votes of the Association. Upon a merger or consolidation of the Association with another association, all Common Area, rights, and obligations shall, by operation of law, be transferred to the surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association, by operation of law, may be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants established by this Declaration within the Property together with the covenants and restrictions established by any supplement upon any other properties as one scheme. Notwithstanding anything herein to the contrary, (i) as long as the Class B Membership exists any merger or consolidation must first be approved in writing by the Developer and (ii) as long as any Authorized Builder owns any portion of the Property any merger or consolidation must first be approved in writing by such Authorized Builder.

4.7 Withdrawal of Property. Developer shall have the right to withdraw portions of the Property from the terms and conditions of this Declaration, if consented to by the owner of said portion of the Property, without the joinder, ratification or approval of the Association, any lienholder or any Owner, except for any Owner who is also an Authorized Builder and who shall not unreasonably withhold such required joinder, ratification or approval (the "Withdrawn Property"). In order to withdraw the Withdrawn Property from the terms and conditions of this Declaration, Developer shall record in the public records of the County an instrument signed by Developer and the owner of the Withdrawn

Property which shall make reference to this Declaration, state that the purpose of the instrument is to withdraw the Withdrawn Property from the terms and conditions of this Declaration, and contain a legal description of the Withdrawn Property. Upon the withdrawal of the Withdrawn Property from the terms and conditions of this Declaration, the Withdrawn Property shall no longer be subject to the terms of this Declaration. Developer shall have the right to later convey previously Withdrawn Property to the Association as Common Area.

4.8 Minor Adjustments in Use Classifications/Conveyances. Notwithstanding any other provisions of this Declaration or the Plat(s) to the contrary, in order to carry out the overall objectives and purposes of this Declaration, Developer hereby reserves the right, subject to and with the written consent and approval of the Board, to make (as determined by Developer in its reasonable discretion) minor or de minimus adjustments in the use classifications of the Property between residential property (i.e., Lots) and Common Area and to thereafter transfer and convey to the Association or to any Owner or third party, and/or cause the Association to transfer and convey to Developer or to any Owner or third party, those relatively small or de minimus portions of the Property to which such adjustments in use classification are so made. For example, Developer, with the written consent and approval of the Board, may declare that a portion of a particular Common Area tract shall be reclassified as a Lot or Lots, or a portion of an existing Lot, and transferred and conveyed by whichever one of Developer or the Association shall then be the Owner thereof. Also, Developer may reclassify a Lot as a portion of the Common Area and convey such Lot or portion of a Lot to the Association as Common Area. Any adjustment to the Common Area pursuant to this Section shall not interfere with the ability of the Owners to use the recreational facilities within the Common Area.

4.9 Special Taxing Districts. In the event that a special taxing district or community development district (hereinafter "**Taxing District**") is established to provide any services currently rendered by or which are the responsibility of the Association, these covenants and conditions shall no longer be of any force and effect as to any such services provided by the Taxing District, provided however the covenants and conditions set forth herein shall continue to bind and run with the land as to all of the Property for services not provided by the Taxing District. The Association shall have the right to convey or transfer all or portions of the Common Area to the Taxing District so long as the Members shall have the right to use and enjoy the Common Area. If the Taxing District is terminated for any reason, these covenants and conditions shall thereupon apply in full force and effect as if the Taxing District had never been created. Notwithstanding the above, any transfer of the operation and maintenance permit for the Surface Water Management System must be approved in writing by the District.

## ARTICLE V FUNCTIONS OF THE ASSOCIATION

5.1 Through Board Action. The affairs and decisions of the Association shall be conducted and made by the Board. The Members shall only have such power or rights of approval or consent as is expressly specified herein, or in the Articles or Bylaws. In the absence of a specific requirement of approval by Members, the Board may act on its own through its proper officers.

5.2 Required Services. In addition to those other responsibilities specified in the Governing Documents, the Association or its management company, if applicable, shall be required to provide the following services as and when deemed necessary or appropriate by the Board and shall have easement rights necessary to perform same:

5.2.1 All maintenance of the Common Area and repair and replacement of all improvements thereon as and when deemed appropriate by the Board.

5.2.2 Payment of ad valorem taxes, non-ad valorem assessments and personal property taxes, if applicable, with respect to the Common Area.

5.2.3 Operation of the Common Area in accordance with the rules and other standards adopted by the Board from time to time.

5.2.4 Taking any and all actions necessary to enforce all covenants, restrictions and easements affecting the Property and performing any of the functions or services delegated to the Association in the Governing Documents.

5.2.5 Conducting business of the Association, including arranging for administrative services such as management services, legal, accounting, financial and communication services such as informing Owners of activities, meetings, and other important events.

5.2.6 Purchasing insurance to the extent necessary to insure Association property, liability of the Association, its officers and the Board, and any other insurance to the extent deemed necessary or desirable by the Board.

5.2.7 Acceptance of any instrument of conveyance with respect to the Common Area delivered to the Association.

5.2.8 Operation, maintenance, monitoring and repair of the Surface Water Management System in accordance with the Permit. Maintenance of the Surface Water Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the District, the City or the County. Any repair or reconstruction of the Surface Water Management System shall be as permitted or, if modified, as approved in writing by the District, the City or the County, if applicable.

5.2.9 The Association shall maintain any lakes, drainage areas, drainage easements, and control structures, and shall preserve and protect all designated Conservation Areas and littoral zones located within, adjacent, or in near proximity to the Property, in accordance with all permit requirements and conditions contained in applicable dredge fill, consumptive use, surface water permits, or any other applicable permits issued by the District, the City and the County and all statutes, rules, regulations and requirements pertaining to surface water management, drainage and water quality promulgated by the District and all other local, state

and federal authorities having jurisdiction. The Association shall maintain those portions of the Common Area designated by applicable permit as conservation tracts, storm water management tracts, vegetated natural buffers or similar designations, in accordance with all permit requirements, rules and regulations promulgated by all local, state and federal authorities having jurisdiction.

5.2.10 Monitoring and maintenance of wetland mitigation areas, if any, described in the Permit shall be the responsibility of the Association. The Association must successfully complete the mitigation and satisfy Permit conditions.

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

5.3.1 Such other services as are authorized in the Governing Documents.

5.3.2 Cleanup, landscaping, maintenance, dredging, water treatment or other care of lakes, ponds, canals, roads, or other property (public or private), adjacent to or near the Property, or other property designated Common Maintenance Area by Developer or the Association to the extent such care would be beneficial to the Property and to the extent that the Association has been granted the right to so care for the affected property by the owner thereof or other Person authorized to grant such right, including, but not limited to, any appropriate governmental authority.

## **ARTICLE VI** **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

6.1 Common Area. On or before Turnover, Developer shall convey its interest, if any, in the Common Area to the Association. The Association shall accept title to any interest in real or personal property transferred to it by Developer. Property interests transferred to the Association by Developer may include fee simple title, easements, leasehold interest and licenses to use. Any fee simple interest in property transferred to the Association by Developer shall be transferred to the Association by quit-claim deed, free and clear of all liens (other than the lien for property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration and any and all easements, rights-of-way, reservations, covenants, conditions, restrictions, equitable servitudes and other encumbrances of record or reserved by Developer in the instrument of conveyance. The property or interest in property transferred to the Association by Developer may impose special restrictions governing the uses of such property and special obligations on the Association with respect to the maintenance of such property. No title insurance or title opinion shall be provided to the Association by Developer.

THE ASSOCIATION SHALL ACCEPT "AS IS" THE CONVEYANCE OF SUCH PROPERTY WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT THERETO, OR WITH RESPECT TO THE IMPROVEMENTS AND REPAIRS TO BE COMPLETED AFTER THE CONVEYANCE, INCLUDING,



WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR THE ORDINARY OR ANY PARTICULAR PURPOSE, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES REGARDING FUTURE REPAIRS OR REGARDING THE CONDITION, CONSTRUCTION, ACCURACY, COMPLETENESS, DESIGN, ADEQUACY OF THE SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS OR FURNITURE WHICH HAS BEEN OR WILL BE USED IN SUCH PROPERTY OR REPAIRS. BY ACCEPTANCE OF AN INTEREST IN ANY SUCH PROPERTY OR THE DEED TO ANY LOT, THE ASSOCIATION AND ALL OWNERS RELEASE DEVELOPER FROM ANY CLAIMS AND WARRANT THAT NO CLAIM SHALL BE MADE BY THE ASSOCIATION OR ANY OWNER RELATING TO THE CONDITION, OR COMPLETENESS OF SUCH PROPERTY OR REPAIRS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM.

## ARTICLE VII COMMUNITY WALLS

7.1 Community Walls. Developer or the Association may construct walls or fences (the “**Community Wall(s)**”) in the Common Area, easements, or elsewhere on the Property as a visual barrier, decorative, architectural or safety feature, or retaining wall, or for any other reason at the sole discretion of Developer or the Association, or as a requirement of any municipality or governing authority for the benefit of the Association. Such walls or fences cannot alter the drainage flow of the Surface Water Management System unless prior written approval is received from the District.

7.2 Maintenance of Community Walls. Community Wall maintenance and repair shall be performed by the Association, as determined by the Board. Should the Board determine that maintenance and/or repair is a result of negligence or abuse by an Owner, charges for said maintenance and/or repair will be assessed to such Owner. Owners shall not remove, alter, improve, paint, repair, maintain or otherwise modify Community Walls without the express written permission of the Board.

7.3 Access Easement for Community Walls. An access easement is hereby created in favor of Developer and the Association for access for the purpose of construction, management, inspection, painting, maintenance and repair of Community Walls. The access easement shall extend five (5) feet into each affected Lot from the Community Wall. Entry upon a Lot by Developer, the Association or their agents, as provided herein, shall not be deemed a trespass.

## ARTICLE VIII COVENANT FOR ASSESSMENTS

8.1 Creation of the Lien and Personal Obligation of Assessments. Developer, for each Lot owned, hereby covenants and each Owner, subject to the qualifications which are more particularly described in Sections 8.4 and 8.5 hereof, by acceptance of a deed to their Lot, is deemed to covenant and agree

to pay to the Association: Commencement Assessments, Transfer Assessments, Annual Assessments, Special Assessments, Specific Assessments, Utility Assessments and Assessments for the costs of maintenance and operation of the Surface Water Management System and wetland mitigation areas.

All Assessments, together with late fees, interest, costs and reasonable attorneys' fees for collection thereof shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each assessment, together with interest, costs and reasonable attorneys' fees for collection thereof, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due until paid.

8.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement, maintenance and repair of the Common Area, Common Maintenance Area, and Surface Water Management System including but not limited to: work within retention areas, drainage structures and drainage easements, easement areas benefiting the Property, right-of-way areas adjacent to the Property which the Association chooses to maintain, or for any other purpose set forth in this Declaration that the Board deems appropriate.

8.3 Annual Assessments. The Association shall be and is hereby authorized, empowered and directed to establish, levy, make, impose, enforce and collect during each calendar year an Annual Assessment in order to provide funds required for the payment of Common Expenses to be incurred by the Association during such calendar year in the performance of its duties and obligations pursuant to this Declaration. Such Annual Assessments shall be established, made, levied, imposed, enforced, collected and otherwise governed by the provisions contained in this Declaration.

8.4 Maximum Annual Assessment. Until January 1 of the year immediately following the date of the conveyance of the first Lot by Developer to an Owner, the maximum Annual Assessment shall be ONE THOUSAND TWO HUNDRED SIXTY AND NO/100 DOLLARS (\$1,260.00) per Lot. The actual amount of the Annual Assessment shall be determined by the Board on an annual basis subject to the following:

8.4.1 From and after January 1 of the year immediately following the conveyance of the first Lot by the Developer to an Owner, the maximum Annual Assessment may be increased each year, unilaterally by the Board without the affirmative vote of or confirmation by the Members, by an amount not more than fifteen percent (15%) over the maximum Annual Assessment for the preceding year.

8.4.2 From and after January 1 of the year immediately following the conveyance of the first Lot by the Developer to an Owner, any increase in the maximum Annual Assessment more than fifteen percent (15%) of the preceding year's maximum Annual Assessment, requires the affirmative vote, in person or by proxy, or written consent, or any combination thereof, of two-thirds (2/3) of the Members present at a meeting duly called for such purpose.

8.4.3 The Board may fix the Annual Assessment at an amount not in excess of the maximum amount set forth herein.

Notwithstanding anything to the contrary in this Section 8.4, the Park Square Authorized Builder shall be exempt from paying Annual Assessments, and Annual Assessments shall not accrue, on any Lot it owns, for a period of up two (2) years from the date it acquires title to such Lot. Such exemption shall terminate and payment of Annual Assessments shall commence as of the date the Park Square Authorized Builder conveys title to such Lot to a different Owner. Notwithstanding the preceding sentence, in the event such Lot conveyed is improved with a "model home" and such improved Lot is leased back by the Park Square Authorized Builder (a "**Park Square Authorized Builder Leaseback**"), the Owner of such improved Lot shall be exempt from paying Annual Assessments, and Annual Assessments shall not accrue, for the term of such lease provided it continues to be used as a model home and provided the Association is not responsible for any of the maintenance of the Lot or model home.

8.5 Commencement Assessment. The Association shall levy and impose on each Lot a commencement assessment of TWO HUNDRED NINETY FIVE AND NO/100 DOLLARS (\$295.00) per Lot (the "**Commencement Assessment**"). The Commencement Assessment shall be paid directly to the Association by the initial Owner of the Lot (other than Developer and Builder) at the closing of the initial sale, transfer and conveyance of such Lot from Developer to such initial Owner. The Association may use the Commencement Assessment for any of the purposes and services set forth in this Declaration.

Notwithstanding anything to the contrary in this Section 8.5, the Park Square Authorized Builder shall pay a Commencement Assessment of Three Hundred and No/100 Dollars directly to the Association at the closing of each Lot it acquires.

8.6 Transfer Assessments. The Association shall levy and impose on each Lot a transfer assessment of Fifty Dollars (\$50.00) per Lot (the "**Transfer Assessment**"). The Transfer Assessment shall be paid directly to the Association by the purchaser of the Lot (excluding Builder) at the closing of each sale, transfer and conveyance of such Lot. The Association may use the Transfer Assessment for any of the purposes and services set forth in this Declaration.

8.7 Special Assessments. The Association shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect from time to time special Assessments for any purpose directly related to the discharge of its duties and obligations pursuant to this Declaration ("**Special Assessments**"); provided, however, that any such Special Assessment shall have the prior approval of no less than two-thirds (2/3) of the Members voting in person or by proxy at a meeting of the Association of which written notice specifying the nature and amount of the proposed Special Assessment is sent to all Members at least thirty (30) days in advance of such meeting. All sums collected as Special Assessments shall be used only for the purpose for which such Special Assessment is established, made, levied, imposed, enforced and collected and shall be deposited in a separate interest bearing bank account, certificate(s) of deposit or in United States Treasury Bonds of



appropriate maturities, not commingled with any other funds of the Association, and held in trust by the Association until used for such purpose.

8.8 Specific Assessments. The Association may levy Assessments or charges against a specific Lot (“**Specific Assessments**”) to recover any indebtedness of the Owner of that Lot to the Association arising under any provision of the Governing Documents, including any indemnity, or by contract, express or implied, or because of any act or omission of the Owner or any occupant of such Lot, or arising by reason of Owner’s failure to properly maintain their Lot and Residence as herein provided.

8.9 Uniform Rate of Assessment. All Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots.

8.10 Reserves. The Annual Assessments may include reasonable amounts to be collected and held in reserve accounts for the future maintenance, repair or replacement of all or any portion of the Common Area, including, without limitation, the Surface Water Management System. The reserve accounts shall comply with the requirements of Chapter 720, Florida Statutes, as amended from time to time.

8.11 Date of Commencement of Annual Assessments; Due Dates. The Annual Assessments shall commence as to all Lots on the date (which shall be the first day of the month) fixed by the Board to be the date of commencement. Each subsequent Annual Assessment shall be imposed for the year beginning January 1 and ending December 31. The Annual Assessments shall be payable in advance in annual, semi-annual, or quarter-annual installments if so determined by the Board. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Assessments shall be sent to every Owner subject thereto. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

8.12 Developer’s Obligation for Assessments. Notwithstanding anything herein to the contrary, as long as the Class B Membership exists, Developer may elect not to pay Assessments on unoccupied Lots owned by Developer. Should Developer elect not to pay the Assessments, Developer shall pay all costs incurred by the Association in accomplishment of the purposes set forth in Section 8.2 of this Article, in excess of the total amount collected by the Association through all Assessments (“**Deficit Funding**”); provided, however, Developer shall not be obligated to contribute to or pay for funding any reserves for capital expenditures or deferred maintenance, capital improvement fund or Special Assessment. Irrespective of any election on the part of Developer, any Residence located on any Lot owned by Developer which is occupied as a residence shall be subject to one hundred percent (100%) of any and all applicable Assessments. Developer may at any time revoke its Deficit Funding election and place itself in the position of being obligated to pay the full impact of all Assessments for each Lot owned by Developer, at the time said revocation is presented to the Association. Prior to Turnover, Builder, in Builder’s sole discretion, may elect to participate in the payment of Deficit Funding on a prorata basis (i.e., Deficit Funding shall be allocated between

Developer and Builder based on the number of Lots owned by each of them at the time Deficit Funding is required).

8.13 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall bear a late fee of Twenty-Five Dollars (\$25) and interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of their Lot.

8.14 Assumption of Delinquent Assessments by Successors. The personal component of the obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. Irrespective of the assumption of the personal component of the obligation by any successor in title, the lien for delinquent Assessments shall continue to be a lien upon the Lot until such time as it is fully paid.

8.15 Subordination of the Lien to Mortgages. The lien of and for all Assessments on a Lot provided for in this Declaration shall be subordinate to the lien of any bona fide first mortgage held by a mortgagee encumbering such Lot if the mortgage is recorded in the Public Records prior to the claim of lien. The lien for Assessments shall not be affected by any sale or transfer of a Lot except in the event of a sale or transfer pursuant to judicial foreclosure action (or deed in lieu of foreclosure), in which event the Person acquiring title to the Lot pursuant to the foreclosure action (or deed in lieu of foreclosure) and its successors and assigns shall be liable for unpaid Assessments that became due and payable prior to such foreclosure (or deed in lieu of foreclosure) only to the extent allowed under Florida Statute Section 720.3085(2)(c), as amended from time to time. Notwithstanding anything to the contrary set forth herein, if any unpaid Assessments cannot be collected as a lien against a Lot by reason of the provisions of this Section, such unpaid Assessments shall be deemed a Common Expense divided equally among, payable by and a lien against all Lots subject to assessment by the Association, including the Lot as to which the foreclosure (or deed in lieu of foreclosure) took place.

Sale, transfer or conveyance of title to a Lot pursuant to foreclosure action (or deed in lieu of foreclosure) shall not extinguish the personal liability of the Owner of the Lot prior to the foreclosure action (or deed in lieu of foreclosure) as to unpaid Assessments which became due and payable prior to the foreclosure action (or deed in lieu of foreclosure). Nothing herein contained shall be construed as releasing the party liable for any delinquent Assessments from the payment thereof or the enforcement of collection by means other than foreclosure.

8.16 Developer Advances. Developer may, in its sole discretion, advance and loan monies or other property in lieu of monies to the Association for any purpose including providing working capital. Such advances shall be considered a loan by Developer to the Association and may be evidenced by a promissory note executed by the Association in favor of Developer. The Association, by and through its officers, as authorized by action of its directors, shall be empowered to, and shall have the authority to, execute such promissory notes in favor of, and on behalf of, the Association and obligate the Association to repay all funds, monies or property so advanced. Even if the advances are not

evidenced by promissory notes, the amounts so advanced shall be considered loans which may be due upon demand before or after Turnover.

8.17 Exempt Property. The following Property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein:

8.17.1 All Property deeded to and accepted by the Association, a Taxing District, or a public authority devoted to public use.

8.17.2 All Common Area.

8.17.3 Any Property not designated as a Lot.

8.18 Utility Assessments. The Association may choose to have the subdivision metered for water utilities as a whole. If so, the Association shall purchase water for the Property from a public utility, and the public utility will determine water usage for the Lots and Common Areas by way of master meter. The costs for water utilities shall be a Common Expense, divided amongst the Owners on an equal fractional basis. The Lots will not be sub-metered, and the Owners will not receive an individual water bill or an itemized bill showing the water usage as a separate item, nor will there be any other method for prorating the costs of the water utilities for the Lots.

## **ARTICLE IX** **ARCHITECTURAL CONTROL**

9.1 Establishment of Architectural Review Board. There is hereby established an Architectural Review Board. Notwithstanding anything herein to the contrary, in no event shall the terms of this Article in any way apply to the Developer or the Park Square Authorized Builder.

9.2 Duties and Functions of ARB. The duties, powers and responsibilities of the ARB shall be as follows:

9.2.1 The ARB shall consist of three (3) or more persons designated by Developer. At such time as Developer no longer owns any real property within the Property (or earlier at Developer's option), Developer shall assign to the Park Square Authorized Builder the rights, powers, duties and obligations of the ARB, whereupon the Park Square Authorized Builder shall appoint the members of the ARB and shall provide for the terms of the members of the ARB. If the Park Square Authorized Builder no longer owns any real property within the Property at the time the Developer assigns the rights, powers, duties and obligations of the ARB, the Developer shall assign such rights, powers, duties and obligations of the ARB to the Association, whereupon the Board shall appoint the members of the ARB and shall provide for the terms of the members of the ARB. Similarly, at such time as the Park Square Authorized Builder no longer owns any real property within the Property (or earlier at the Park Square Authorized Builder's option), the Park Square Authorized Builder shall assign to the Association the rights, powers, duties and obligations of the ARB which were assigned to

it by the Developer, whereupon the Association shall appoint the members of the ARB and shall provide for the terms of the members of the ARB. Members of the ARB need not be officers, directors or Members of the Association. A majority of the ARB may take any action of the ARB and may designate a representative to act for it. In the event of death, disability or resignation of any member of the ARB, a successor shall be designated as provided in this Section.

9.2.2 The ARB shall have the right of specific approval or veto of all architectural, engineering, platting, planning, drainage and landscaping aspects of the improvement or development of any individual Residence, Lot or subdivision, tract, or parcel of land within the Property.

9.2.3 No landscaping shall be installed or removed, nor shall any building, wall, fence, walk, dock, pool, enclosure or addition to a house or other structure, including without limitation, any garage, shed, fence, statue, yard ornament, mailbox, newspaper box or dock be constructed, erected, removed or maintained, nor shall any addition to nor any change or alteration therein be made, until the plans showing the nature, kind, shape, height, materials, floor plans, color scheme and the location of same shall have been submitted to and approved in writing by the ARB. In approving or disapproving plans, the ARB shall consider the suitability of the proposed building, improvements, structure or landscaping and materials, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property.

9.2.4 There is specifically reserved unto the ARB, the right of entry and inspection upon any Lot for the purpose of determination by the ARB as to whether there exists any construction of any improvement which violates the terms of any approval by the ARB or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference.

9.2.5 Each of the Developer or the Park Square Authorized Builder (as the case may be) and the ARB has the right, but not the obligation, to grant waivers for minor deviations and infractions of these covenants. The granting of any waiver for any portion of the Property may be given or withheld in the Developer, Park Square Authorized Builder or ARB's sole discretion and a prior grant of a similar waiver shall not impose upon the Developer, Park Square Authorized Builder or ARB the duty to grant new or additional requests for such waivers.

9.2.6 The Association, Developer, Park Square Authorized Builder, ARB or any officer, employee, director or member thereof shall not be liable in any way to any persons submitting plans for approval or any other person or entity by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans or the taking of any action described in this Article. Every person who submits plans for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit whatsoever against the Association, Developer, Park Square



Authorized Builder, ARB or any officer, employee, director, shareholder, partner or member thereof.

9.3 Design and Development Guidelines. In furtherance of the provisions of this Article, the Board may promulgate design and development guidelines, application and review procedures, and building criteria (collectively, the “**Guidelines**”). The Guidelines, if any, shall be promulgated on behalf of the Association and shall be binding upon all Owners, builders, developers and contractors, less and except the Developer or the Park Square Authorized Builder. The Board shall have sole and full authority to prepare and to amend, from time to time, the Guidelines.

## **ARTICLE X** **USE RESTRICTIONS**

The Property shall be subject to the following restrictions, reservations and conditions, which may be amended, modified or added to from time to time as provided in the Governing Documents and which shall be binding upon Developer and upon each Owner who shall acquire hereafter a Lot or any portion of the Property, and shall be binding upon their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, or anything in this Declaration to the contrary, Developer and the Park Square Authorized Builder shall be exempt from any ARB consent or approval required pursuant to this Article or anywhere else in this Declaration.

10.1 Residential Lots. Except as specifically provided in this Declaration, no use shall be made of Lots other than for residential purposes.

10.2 Mining or Drilling. There shall be no mining, quarrying, or drilling for minerals, oil, gas, or otherwise undertaken within any portion of the Property. Excepted from the foregoing shall be activities of Developer or the Association, or any assignee of Developer or the Association, in dredging lakes, ponds or other water areas, creating land areas from lakes, ponds or other water areas, or creating, excavating, or maintaining drainage or other facilities or easements, or the installation of wells or pumps in compliance with applicable governmental requirements, or for irrigation systems for any portions of the Property.

10.3 Antennas, Aerials, Satellite Dishes and Flagpoles. No Owner shall install or permit to be installed any antenna aerial or satellite dish (“**Antenna**”) on a Lot if the size of the Antenna is one meter (39.37 inches) or greater in diameter. Any Owner installing an Antenna less than one meter in diameter shall install such Antenna in a place where it is not visible from the street, giving primary consideration to installation on the rear of the house or the back yard of the Lot. Under no circumstances may an Antenna be mounted on a mast such that the mast height exceeds the top of the roof line of the house on the Lot by more than twelve (12) feet. In the event that any applicable law currently enacted or enacted in the future precludes the enforcement of the provisions of this Section 10.3, this provision shall be preempted only to the minimum extent required to comply with such applicable law. The American flag, together with such other flags specified by Florida Statutes Section 720.304(2)(a), as amended from time to time, and a flagpole for display of such flag shall be permitted if displayed in a respectful way.

10.4 Rooftop Structures. Subject to the provisions of all applicable Florida Statutes, to the extent applicable, no discs, dishes, appliances, equipment (including air conditioning equipment), skylights, hot water flues or other rooftop installation or structure of any type shall be placed, located, erected, constructed, installed or maintained upon the exterior roof of any Residence without prior written approval of the ARB.

10.5 Shutters and Window and Door Coverings. No exterior windows or doors of any building or other improvements on a Lot shall be covered by any shutters (including hurricane or storm shutters), boards, or similar type window coverings; except such as may be required for protection from severe storms and only then during the actual period of any such severe storm and the period within seventy-two (72) hours before and seventy-two (72) hours after an anticipated severe tropical storm or hurricane; nor shall any such windows or doors be covered by or coated with any foil or other reflecting or mirrored materials. The foregoing restriction shall not be construed as a prohibition against decorative exterior shutters located to the side of or over window or door openings; provided the same have been approved in writing by the ARB.

10.6 Holiday and Outside Lighting. Holiday lighting and decorations shall be permitted to be placed upon the exterior portions of Residences and upon Lots in the manner permitted hereunder, commencing on November 15th and shall be removed not later than January 15th of the following year. With regard to those portions of a Lot maintained by the Association (if any), no lighting or any facilities or electrical cords related thereto or any decorations shall be permitted to be placed upon or across any grass area maintained by the Association, and the Association and its agents shall be permitted, but shall not be required, to remove any such items which serve as impediments to the mowing of the grass, and the Owner, by placement of any lighting or decorations, hereby assumes the risk that such lighting and decorations may be inadvertently damaged or destroyed. An Owner shall be permitted to place holiday lighting and decorations on and within the shrubs located in the front yard of the Lot, provided that (i) the Association shall not be required to maintain such shrubs for such period of time as the decorations, lighting and cords are contained within the shrubs, and (ii) such placement shall not otherwise interfere with the mowing of the grass on the Lot by the Association (if any).

Except for the foregoing seasonal holiday lights, and any exterior lighting initially installed by Developer, a Builder or the Association, no spotlights, flood lights or similar high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or Residence or upon the Common Area or any part thereof.

10.7 Landscaping. Subject to the provisions of all applicable Florida Statutes, to the extent applicable, no Owner shall construct or install improvements, landscaping, artificial vegetation, exterior sculptures, fountains, rocks, or similar items upon any portion of a Lot, nor shall any Owner alter or make additions to improvements or landscaping installed by Developer, a Builder or the Association, without the prior written approval of the ARB. All Lots shall be landscaped with grass approved by the ARB. All landscaped and grassed open areas on the front, rear and side yards of a Lot shall be irrigated by means of an automatic underground irrigation or sprinkling system capable

of regularly and sufficiently irrigating all lawns and plantings within such areas, including open areas, if any, existing between the platted street or road right-of-way contiguous to the Lot. Such irrigation or sprinkling system shall be installed prior to or simultaneously with the installation of landscaping on the Lot.

10.8 Trees. Trees shall not be cut or removed without prior written approval by the ARB.

10.9 Walls and Fences. Except for walls or fences constructed by Developer, a Builder or the Association, no walls, fences, hedge, or similar structures, dog runs or animal pens of any kind shall be placed or erected on the Property without prior written approval of the ARB.

10.10 Subdivision or Partition. No portion of the Property shall be subdivided except with the prior written consent of the Board and, to the extent they own any portion of the Property, the Developer.

10.11 Casualty Destruction to Improvements. In the event an improvement is damaged or destroyed by casualty, hazard, or other loss, then, within a reasonable period of time after such incident, as determined by the Board, the Owner thereof shall either commence to rebuild or repair the damaged improvement and diligently continue such rebuilding or repairing activities to completion or clear the damaged improvement and grass over and landscape such Lot. A destroyed improvement shall only be replaced with an improvement of a similar size, type, construction, and elevation as that destroyed unless the prior written consent of the ARB is obtained.

10.12 Insurance. Nothing shall be done or kept on the Common Area or the Property which shall increase the insurance rates of the Association without the prior written consent of the Board.

10.13 Surface Water Management System.

10.13.1 No construction activities may be conducted relative to any portion of the Surface Water Management System facilities. Prohibited construction activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the Surface Water Management System facilities. If the Surface Water Management System includes a wetland mitigation area, or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the District. Construction and maintenance activities that are consistent with the design and permit conditions approved by the District in the Permit may be conducted without specific written approval from the District.

10.13.2 No Owner may construct or maintain any building, Residence or structure of any kind, or undertake or perform any activity in the Surface Water Management System, wetlands, wetland mitigation areas, buffer areas, upland conservation areas and drainage easements described in the Permit and Plat unless prior approval is received from the Board, the ARB and the District.



10.13.3 No Owner shall in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of any drainage areas or the Surface Water Management System, nor shall any grading, alteration, or other modifications to these areas be made without the prior written permission of the Board, the ARB and the District.

10.13.4 No Owner shall remove native vegetation that becomes established within the Surface Water Management System without prior written approval from the District, the ARB and the Board. Removal includes dredging, the application of herbicide, cutting and the introduction of grass carp. Owners should address any questions regarding authorized activities within the Surface Water Management System to the District Permitting Department.

10.13.5 No Owner shall in any way deny or prevent ingress and egress by Developer, the Association, the City, the County, or the District to any drainage areas or the Surface Water Management System for maintenance or landscape or enforcement purposes. The right of ingress and egress, and easements therefor are hereby specifically reserved and created in favor of Developer, the Association, the District, the City, the County, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

10.13.6 No Lot shall be increased in size by filling in any drainage areas or other portion of the Surface Water Management System. No Owner shall dig, excavate, fill, dike, rip-rap, block, divert, or change the established drainage areas or the Surface Water Management System without the prior written consent of the Board, the ARB and the District.

10.13.7 No sidewalk, driveway, impervious surface, paving, patio, deck, pool, air-conditioner, structure, utility shed, pole, fence, wall, irrigation system, tree, shrub, hedge, planting, landscaping plants other than grass, or other improvement shall be placed by an Owner within a drainage area, drainage easement, or the Surface Water Management System, except for landscaping of storm water detention and retention ponds as required by governmental land development code.

10.13.8 In addition to the Association, the District, the City, and the County shall each have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water Management System and the enforcement of the restrictions stated in this Section 10.13.

10.13.9 Developer shall convey its interest in the Surface Water Management System to the Association (excluding that portion of the Surface Water Management System located on Lots). After said conveyance, the Association shall, subject to the terms and provisions of this Declaration, have sole and exclusive jurisdiction over and responsibility for the administration, monitoring, management, regulation, care, maintenance, repair, restoration, replacement, improvement, preservation and protection of the Surface Water Management System and all costs incurred by the Association towards the fulfillment of such responsibility shall be Common Expenses. Accordingly, each Owner, by acceptance of a deed to their Lot, shall be

deemed to have agreed that neither Developer, after conveyance of its interest in the Surface Water Management System to the Association, the City, the County, nor any other governmental agency shall have any liability or responsibility whatsoever (whether financial or otherwise) with respect to the Surface Water Management System and each Owner shall be deemed to have agreed to look solely and exclusively to the Association with respect to any such liability or responsibility.

10.13.10 Copies of the Permit and any future Permit actions of the District shall be maintained by the Association's Registered Agent for benefit of the Association at the office of the Association. The Permit shall be owned by the Association and the Association has the obligation to assure that all terms and conditions thereof are enforced. If the Permit is issued in Developer's name, then on or before Turnover, Developer shall transfer to the Association and the Association shall accept and assume all rights and obligations of Developer under the Permit.

10.13.11 Each Owner shall use and maintain the portion of their Lot located in the Surface Water Management System or within drainage easements, if any, in compliance with the Permit, City and/or County approvals, and all other applicable rules and regulations. Owner, at its sole expense, shall immediately correct or abate all violations of or non-compliance with the Permit, City and/or County approvals, and all other applicable rules and regulations.

10.13.12 Each Owner, at the time of construction of a Residence, building or structure, shall comply with the construction plans for the Surface Water Management System approved by and on file with the District.

10.13.13 If the Association ceases to exist, all Owners shall be jointly and severally responsible for operation and maintenance of the Surface Water Management System in accordance with the requirements of the Permit, unless and until an alternate entity assumes responsibility pursuant to the Articles.

10.14 Pets, Livestock and Poultry. No livestock (including, without limitation, horses, ponies, cattle, goats, pigs and the like), poultry, reptiles or animals of any kind, nature or description shall be kept, bred or raised upon a Lot, except for dogs, cats, birds and other usual and customary types of household pets, which may be reasonably kept, raised and maintained upon a Lot; provided, however, that the same are not kept, raised, or maintained thereon for breeding or other business or commercial purposes, or in numbers deemed unreasonable by Developer or the Association, in the exercise of their sole reasonable discretion. No animal deemed to be a non-native species or deemed to be dangerous, vicious, or of a similar nature (all as more particularly described in Florida Statutes, Florida Administrative Code or any local government ordinances, rules or regulations), no breed of animal which is prohibited by local government ordinances, rules or regulations, and no animal deemed by the Board (in its sole and absolute discretion) to be a nuisance, is permitted to be kept, raised or maintained on any Lot and/or within any Residence. Notwithstanding the foregoing provisions of this Section permitting dogs, cats, birds and other usual and customary types of household pets, no animals, birds or other pets may be kept, raised or maintained on a Lot under circumstances which,

in the good faith judgment of Developer or the Association, shall constitute an unreasonable annoyance, nuisance or safety hazard to Owners and their respective guests and invitees, or an unreasonable interference with the comfortable and quiet use, occupancy and enjoyment of other Lots or Common Area. In furtherance of the foregoing, no household pet shall be permitted to make an unreasonable amount of noise, disturb the peace or otherwise become an annoyance or nuisance. No animals shall be allowed outside a Lot except on a leash and permitted animals shall be kept or housed within a Residence and shall not be kept or housed within a fenced yard. All owners of animals are responsible for timely clean up of animal waste and the Board may elect to promulgate rules and regulations to enforce the same. All animals kept, raised or maintained must be registered, licensed, and inoculated as required by law.

10.15 Signs. No sign of any kind shall be displayed to the public view from any Lot or improvement thereon, except any sign used by Developer or Builder to advertise Developer's or Builder's company, project, sales or other matters, including, those matters set forth in Section 2.7 of this Declaration, during the Developer's or Builder's construction and sales of Residences on the Property. No sign of any kind shall be permitted to be placed inside a Residence or on the outside walls of a Residence so as to be visible from the exterior of such Residence, nor on any Common Area, Street, or within any vehicles within the Property, except such as are placed by Developer or Builder. Notwithstanding the foregoing, an Owner may display upon the Owner's Lot a sign of reasonable size, as determined by the ARB in its sole discretion, provided by a contractor for security services provided that said sign is located within ten (10) feet of any entrance to the Residence located on such Lot. Developer or the Association may enter upon any Lot and remove and destroy any sign which violates this Section.

10.16 Mailboxes. The size, design and color of all mailboxes and the supporting structures must be approved by Developer until Turnover and, thereafter, the ARB and must comply with U.S. Postal Service regulations.

10.17 Garbage Containers, Oil and Gas Tanks, Outdoor Equipment. All garbage and trash containers must be placed inside the garage portion of each Residence or in landscaped areas so that they are not visible from any adjoining Lot or any Street. Trash containers may be brought to the curb after 8:00 p.m., on the evening prior to a garbage collection day designated by the agency responsible for collecting garbage and trash for the Property. Trash containers must be removed from the curb within twelve (12) hours of garbage pick-up. Other than one (1) portable propane tank for use with an outdoor barbecue grill, no oil tanks or bottled gas tanks shall be allowed on any Lot without the express written consent of the ARB and such tanks shall be located so they cannot be seen from other Lots, Common Area or Streets. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or other waste. There shall be no burning of trash or other waste material. Trash or other waste shall be kept only in closed containers and all equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All Trash containers shall conform to such specifications as the Association may from time to time adopt or mandate, including, without limitation, Bear Resistant Trash Containers as are more particularly described in Section 16.7 of this Declaration.

10.18 Garbage Collection Service. Developer until Turnover and, thereafter, the Association may coordinate and establish exclusive agreements with one or more garbage collection service companies for the provision of garbage collection services to the Association and all Lots. If such agreement is established, Developer may deem the fees for the garbage collection service payable to the service company to be a Common Expense payable by the Association, and Developer shall include the fees within the annual budget for which the Assessments are levied each year, or Developer may direct a garbage collection service company to bill the fees for the garbage collection services directly to Owners. If Developer determines the fees for the garbage collection service shall be a Common Expense, no Owner may avoid or escape liability for any portion of the Assessments by electing not to utilize the garbage collection service.

10.19 Vehicles and Recreational Equipment. No Truck or Commercial Vehicle (each as defined below), limousine, mobile home, motor home, house trailer, utility trailer, camper, personal water craft, boat, boat trailer, all terrain vehicle, dirt bike motorcycle, or other recreational vehicle or equipment, horse trailer, bus, passenger vehicle without current registration or valid license plates, or the like shall be permitted to be parked or stored on any portion of the Property unless they are parked within a garage. For the purposes of this rule the following definitions shall apply:

10.19.1 “**Truck**” means a vehicle with any sort of weight capacity (except pick-up trucks, vans or sport utility vehicles with a cargo capacity of one ton or less) which has a compartment or bed for carrying cargo, as opposed to passengers, regardless if such vehicle has a cover or topper for the cargo-carrying area.

10.19.2 “**Commercial Vehicle**” means any vehicle (except pick-up trucks, vans or sport utility vehicles with a cargo capacity of one ton or less) which from viewing the exterior of the vehicle or any portion thereof, shows any commercial markings, signs, logos, displays, tool racks, saddle racks, or other elements of a commercial nature or otherwise indicates a commercial use.

This prohibition of parking shall not apply to temporary parking of Trucks and Commercial Vehicles used for pickup, delivery, and repair and maintenance of a Lot, or to any vehicles of Developer or Builders.

Inoperable vehicles (e.g., missing major components such as engines and/or transmissions, one or more flat tires, etc.), or derelict vehicles (e.g., broken glass, severely damaged body panels, unpainted body panels, etc.) must be fully enclosed within a closed garage at all times, and in any case may not be parked in plain view.

Owners shall park their vehicles within the garage portion or driveway of Owner’s Residence. Vehicles shall not in any event be parked on the lawn portion of any Lot, the grass portion of any rights-of-way, or the grass portion of any Common Areas. All parking within the Property shall be in accordance with the rules and regulations adopted from time to time by the Board. Each Owner is specifically cautioned that they and the occupants of their Residence may be limited or restricted as to



the number of vehicles they may park or store on the Property. Any vehicle parked in violation of this Section is subject to being towed away at the owner's expense without further warning.

10.20 Towing. Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations adopted by the Board may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle or if such a vehicle was cited for such violation within the preceding fourteen (14) day period. Each Owner by acceptance of title to a Lot irrevocably grants the Association and its designated towing service the right to enter the Owner's Lot and tow vehicles in violation of this Declaration. Neither the Association nor the towing company shall be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing or removal and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean campers, mobile homes, trailers, or other similar recreational equipment. By accepting title to a Lot, the Owner provides to the Association the irrevocable right to tow or remove vehicles parked on the Owner's Lot, Common Areas, or other areas of the Property that are in violation of this Declaration. An affidavit of the person posting the foresaid notice stating it was properly posted shall be conclusive evidence of proper posting.

10.21 Garages. Garage doors shall be closed except when reasonably necessary for use of the garage and shall not be permanently enclosed or screened. No garage may be converted for use as living space, office or for any purpose other than as a garage.

10.22 Business and Garage Sales or Yard Sales. Except as expressly contemplated in this Declaration or the Plat, no manufacturing, trade, business, commerce, industry, profession or other occupation whatsoever will be conducted or carried on or upon any Lot or within any Residence. Home business offices may be maintained within Residences. No "Garage Sales" or "Yard Sales" or similar sales, by whatever name given or ascribed to the same, shall be conducted or permitted on or within the Lots without prior written approval by the Board.

10.23 Repairs. No maintenance or repairs shall be performed on any vehicles upon any portion of the Property for longer than a six (6) hour period except in an emergency situation. Notwithstanding the foregoing, all repairs to disabled vehicles within the Property must be completed within twelve (12) hours from its immobilization or the vehicle must be removed.

10.24 Prohibited Structures. No trailers, tents, shacks, sheds, barns, tree-houses, garages, tool sheds, guest quarters, carports, storage buildings or other outbuildings, other than separate construction and sales trailers to be used by Developer or Builder, shall be placed upon any portion of the Property either temporarily or permanently. No trailer, motor home or recreational vehicle shall be: (i) used as a residence, either temporarily or permanently, or (ii) parked upon the Property.

10.25 Nuisances. No obnoxious, unpleasant, unsightly or offensive activity shall be carried on, nor may anything be done, which can be reasonably construed to constitute a nuisance, public or private

in nature. Any questions with regard to the interpretation of this Section shall be decided by the Board, whose decision shall be final.

10.26 Window Treatment. Within thirty (30) days of occupancy of a Residence, each Owner shall install permanent suitable window treatments on all windows facing a street. No reflective foil, sheets, newspapers or other similar material shall be permitted on any window or glass door. Drapes, blinds, verticals, and other window coverings visible from outside a Residence shall have a white, beige or similar light coloring. No security bar system may be installed on any window or door of any Residence.

10.27 Air Conditioners and Solar Panels. Except as may be initially installed by a Builder, wall or window air conditioning units or heating units are not permitted. Solar energy collecting units or panels may be placed, constructed or installed upon a Lot only at such locations as are determined by the ARB to minimize objectionable aesthetics, subject to the requirements of Section 163.04, Florida Statutes, as amended from time to time.

10.28 Games and Play Structures. All game and play structures, tree houses, trampolines and other recreational equipment and structures shall not be permitted on a Lot unless located at the rear of the Residence on the Lot so they cannot be seen from any Street. All bicycles, toys, temporary roll-out basketball hoops and backboards, and other outdoor recreational equipment must be taken inside the Residence when not in use. No permanent basketball standards, hoops, backboards or similar structures may be placed on any Lot.

10.29 Weapons. The use and discharge of weapons within the Property is prohibited. The term "weapons" includes bows and arrows, slingshots, "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

10.30 Swimming Pools. No swimming pool shall be constructed on any Lot without prior written approval of the ARB. Swimming pools shall not be located within any of the drainage or utility easements shown on the Plat. Aboveground swimming pools are prohibited. Pool screen enclosures constructed on any Lot shall be subject to the approval and requirements of the ARB. The ARB shall have the right to adopt such standards as it deems advisable in regard to the location and height of and colors and materials for any pool screen enclosures installed with the Property; provided, however, that nothing herein shall be construed to restrict or prohibit compliance with the minimum requirements for installation, operation and maintenance of fences or other barriers constituting safety barriers around swimming pools, hot tubs or spas on a Lot as may be required by governmental regulation or law, subject to the approval and additional requirements of the ARB.

10.31 Common Area. Other than improvements and landscaping constructed or installed by Developer, no improvements or landscaping shall be constructed or installed upon any portion of the Common Area nor shall any alterations or additions be made to said improvements or landscaping without the approval of the Board. The following shall apply to the Common Area:

10.31.1 No activities constituting a nuisance shall be conducted upon the Common Area.

10.31.2 No rubbish, trash, garbage or other discarded items shall be placed or allowed to remain upon the Common Area.

10.31.3 The Association may from time to time adopt reasonable rules and regulations concerning use of the Common Area which shall be binding upon all Members.

10.31.4 Nothing shall be stored, constructed within or removed from the Common Area other than by Developer or the Association, except with the prior written approval of the Board.

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

10.33 No Implied Waiver. The failure of the Association or Developer to object to an Owner's or other party's failure to comply with this Declaration or any other Governing Documents shall in no event be deemed a waiver by Developer or the Association, or any other Person having an interest therein, of that Owner's or other party's requirement and obligation to abide by this Declaration.

10.34 Imposition of Fines for Violations. To the maximum extent lawful, the Association may suspend, for reasonable periods of time, the rights of an Owner or an Owner's tenants, guests and invitees, or both, to use the Common Areas and may levy reasonable fines, not to exceed the maximum amounts permitted by Section 720.305(2) of the Florida Statutes, as amended from time to time, against an Owner, tenant, guest or invitee, for failure to comply with any provision of this Declaration.

10.34.1 A fine or suspension may not be imposed without notice of at least fourteen (14) days to the Person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) persons (the "**Violations Committee**") appointed by the Board who are not officers, directors or employees of the Association, or the spouse, parent, child, brother, sister of an officer, director or employee of the Association. If the Violations Committee does not by a majority vote approve a fine or suspension, the same may not be imposed. The written notice of violation shall be in writing to the Owner, tenant, guest or invitee and detail the infraction or infractions. Included in the notice shall be the date and time of the hearing of the Violations Committee.

10.34.2 The non-compliance shall be presented to the Violations Committee acting as a tribunal, after which the Violations Committee shall hear reasons why a fine should not be imposed. The hearing shall be conducted in accordance with the procedures adopted by the Violations Committee from time to time. A written decision of the Violations Committee shall be submitted to the Owner, tenant, guest or invitee, as applicable, by not later than



twenty-one (21) days after the meeting of the Violations Committee. The Owner, tenant, guest or invitee shall have a right to be represented by counsel and to cross-examine witnesses.

10.34.3 The Violations Committee may impose a fine against the Owner in the amount of \$100 (or any greater amount permitted by law from time to time) for each violation. Each day of non-compliance shall be treated as a separate violation and there is no cap on the aggregate amount the Violations Committee or Board may fine an Owner, tenant, guest or invitee. Fines shall be paid not later than five (5) days after notice of the imposition of the fine. All monies received from fines shall be allocated as directed by the Board. Any fine of One Thousand Dollars (\$1,000) or more shall constitute a lien against the applicable Lot, and a fine may further be foreclosed to the extent otherwise permitted under Florida law.

10.35 Compliance with Documents. Each Owner and their family members, guests, invitees, lessees and their family members, guests, and invitees; and their or its tenants, licensees, guests, invitees and sub-tenants shall be bound and abide by this Declaration. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within the Property. Such Owner shall be liable to the Association for the cost of any maintenance, repair or replacement of any real or personal property rendered necessary by their act, neglect or carelessness, or by that of any other of the foregoing parties which shall be immediately paid for by the Owner as a Specific Assessment. Failure of an Owner to notify any Person of the existence of the covenants, conditions, restrictions, and other provisions of this Declaration shall not in any way act to limit or divest the right to enforcement of these provisions against the Owner or such other Person.

10.36 Property Maintenance. Each Lot and all improvements and landscaping thereon, shall at all times be kept and maintained in a safe, clean, wholesome and attractive condition and shall not be allowed to deteriorate, fall into disrepair or become unsafe or unsightly. In particular, no weeds, underbrush or other unsightly growth and no trash, rubbish, refuse, debris or unsightly objects of any kind shall be permitted or allowed to accumulate on a Lot. In the event an Owner of any Lot shall fail to maintain the premises and improvements situated thereon in such a manner, the Owner shall be notified and given seven (7) days within which to correct or abate the situation. If the Owner fails to do so, the Association shall have the right (although it shall not be required to do so) to enter upon the Lot for the purpose of repairing, maintaining, and restoring the Lot and the exterior of the building and other improvements located thereupon at the sole cost of the Owner of the Lot. The cost of such repair, maintenance and restoration, together with reasonable attorneys' fees and costs for collection thereof incurred through all appellate levels, shall thereupon constitute a lien upon the Lot, which lien shall become effective upon the filing of a written claim of lien. The form, substance and enforcement of the lien shall be in accordance with the construction lien law of the State of Florida, and the Owner of the Lot shall, by virtue of having acquired the Lot subject to these restrictions, be deemed to have authorized and contracted for such repair, maintenance and restoration. The lien herein provided will be subordinate to a first mortgage lien.

10.37 Picketing or Protesting Developer, Association or other Owners. No picketing, protest marches, sit-in demonstrations, protest speeches, or other forms of public protest or conduct, including, without limitation, displaying signs or placards on any Lot or on any vehicle, apparatus or otherwise within public view in the Property, which tends to vilify, ridicule, denigrate, or impugn the character of the Developer, the Association, their respective officers, directors or employees, or any Owner or resident of the Property, is permitted under any circumstances whatsoever. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on his or her constitutional right of free speech.

10.38 Sales, Marketing and Promotional Activities. Notwithstanding anything to the contrary set forth in this Article or elsewhere in this Declaration, Developer and Builder and their respective affiliates, successors, nominees and assigns, may use any portion of the Property, including Lots (other than Lots owned by others), for sales, marketing and promotional activities and related or supportive administrative activities pertaining to and/or in connection with the sale and/or resale of Lots or Residences constructed by Developer or Builder and their respective affiliates, successors, nominees, and assigns, in their sole and absolute discretion, including without limitation, the construction, maintenance and operation of a sales and administrative center and one (1) or more model homes on Lots. The location of such sales and administrative center within the Property may be changed from time to time by Developer or Builder and their respective affiliates, successors, nominees and assigns in their sole and absolute discretion. It is expressly provided, however, that the location and operation of such sales and administrative center on Lots shall be subject to such approvals of the City and/or County as may be required for the same.

10.39 Association Waiver. In the event that a violation of any of these restrictions shall occur, which violation shall not be of such nature to defeat the intent and purpose of these covenants, the Board shall have the right and authority to waive such violation.

## ARTICLE XI INSURANCE

11.1 Requirement to Maintain Insurance. Each Owner shall be required to obtain and maintain homeowner's insurance on that Owner's Residence. All Residences shall be insured in an amount equal to the maximum insurable replacement value. Such coverage shall afford protection against:

11.1.1 Loss or damage to the Lot and Residence by fire and other hazards covered by a standard extended coverage endorsement;

11.1.2 Any and all risks of loss to the Lot and Residence, the contents thereof, or the personal liability related thereto; and

11.1.3 Such other risks as from time to time shall be customarily covered with respect to personal residences similar in construction, location and use as the Residences, including but not limited to sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, water damage and windstorm.

Upon the request of the Association, each Owner shall be required to supply the Board with evidence of insurance coverage on that Owner's Residence which complies with the provisions of this Section. Without limiting any other provision of this Declaration or the powers of the Association, the Association shall specifically have the right to bring an action to require an Owner to comply with their obligations hereunder.

11.2 Requirement to Reconstruct. In the event that any Residence is damaged or destroyed by fire or other casualty, the Owner of such Residence shall commence reconstruction and/or repair of the Residence (the "**Required Repair**") in conformance with the original plans and specifications of the Residence. Such work must be commenced within thirty (30) days of the Owner's receipt of the insurance proceeds respecting such Residence, or within one hundred twenty (120) days of the loss, whichever is earlier. Such repair and/or reconstruction must be completed in a continuous, diligent and timely manner. The Association shall have the right to inspect the progress of all reconstruction and/or repair work. Without limiting any other provision of this Declaration or the powers of the Association, the Association shall have the right to bring an action against Owner who fails to comply with the foregoing requirements. Each Owner acknowledges that the issuance of a building permit in no way shall be deemed to satisfy the requirements set forth in this Section, which are independent of and in addition to any requirements for completion of work or progress requirements set forth in applicable statutes, zoning codes and/or building codes.

11.3 Additional Rights of the Association. If an Owner fails or refuses, for any reason, to perform the Required Repair as herein provided, then the Association, in its sole and absolute discretion, and through the Board, is hereby authorized by such Owner to perform the Required Repairs. All Required Repairs performed by the Association pursuant to this Section shall be in conformance with the original plans and specifications for the Residence. The Board may levy a Specific Assessment against the Owner in whatever amount sufficient to adequately pay for the Required Repairs performed by the Association.

11.4 Association Has No Liability. Notwithstanding anything herein to the contrary, the Association, its officers and Board, shall not be liable to any Owner should an Owner fail for any reason whatsoever to obtain insurance coverage for that Owner's Residence. Further, the Association, its officers and Board, shall not be liable to any Person if the Association does not enforce the rights given to the Association in this Section.

## **ARTICLE XII** **SHORT TERM RENTALS**

12.1 No Short Term Rentals. Owners shall be allowed to lease their Residences, provided that any such lease shall require the tenant thereunder to comply with the terms and conditions of the Governing Documents, and provided that such lease and tenancy is otherwise in compliance with any rules and regulations promulgated by the Board. No lease of a Residence shall be for a term of less than seven (7) months, and any such lease shall be in writing and shall be enforceable by the Association, whether or not so stated in its terms. The preceding minimal lease term restriction shall

not apply to a Park Square Authorized Builder Leaseback. No Owner may lease their Residence more than twice during any calendar year. All leases must be submitted to the Association at least five (5) days prior to the commencement of the lease. The Association shall review the lease for compliance with the requirements set forth in this Section, but shall not perform background checks, criminal records search, financial or credit check or any other information search in connection with a review of a lease. During the term of any lease, Owner shall not be relieved of any obligations under the terms of the Governing Documents, and Owner shall be liable for the actions of their tenants which may be in violation of the terms and conditions of the Governing Documents, any rules and regulations promulgated by the Board, and any other documents set forth above, notwithstanding the fact that the tenants are also fully liable for any violation of the Governing Documents and regulations. In the event a tenant, occupant, or Person living with the tenant violates the Governing Documents or the rules and regulations promulgated by the Board, the Association shall have the power to bring an action or suit against the tenant or occupant and the Owner, or any combination of the foregoing, to recover sums due for damages or injunctive relief or for any other remedy available at law or in equity. Developer, the Association, and the individual members, officers, directors, employees or agents of any of them, shall not, jointly or severally, be individually or personally liable or accountable in damages or otherwise to any Owner or other Person or party affected by this Declaration, or to anyone submitting leases for any required consent or approval hereunder, by reason or on account of any decision, approval or disapproval required to be made, given or obtained pursuant to this Declaration, or for any mistake in judgment, negligence or nonfeasance related to or in connection with any such decision, approval or disapproval.

12.2 Time-Share Prohibition. No time sharing plan as the term is defined in Chapter 721, Florida Statutes, as amended, or any similar plan of fragmented or interval ownership of Residences shall be permitted on the Property, and no attempt to create same by lease or otherwise shall be allowed.

12.3 Amendment. This Article shall not be amended without the written consent of Developer, unless Developer no longer owns any land which is subject to this Declaration or subject to annexation to the Declaration. In addition, so long as the Park Square Authorized Builder owns any portion of the Property, any amendment to apply the minimal lease term restriction, as set forth in Section 12.1, to a Park Square Authorized Builder Leaseback shall require the written consent of the Park Square Authorized Builder, which may be withheld in its sole discretion.

### **ARTICLE XIII** **ENFORCEMENT OF NON-MONETARY DEFAULTS**

13.1 Non-monetary Defaults. In the event of a violation by any Member or Owner (other than the nonpayment of any Assessments or other monies) of any of the provisions of the Governing Documents or restrictions set forth by the Association, the Association shall notify the Member or Owner of the violation by written notice. If the violation is not cured as soon as practicable, and in any event, no later than seven (7) days after the receipt of the written notice, or if the Member or Owner fails to commence, within said seven (7) day period, and, using their best efforts, diligently proceed to completely cure the violation, the Association may, at its option:



13.1.1 Specific Performance. Commence an action to enforce the performance on the part of the Member or Owner, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

13.1.2 Damages. Commence an action to recover damages; and/or

13.1.3 Corrective Action. Take any and all action reasonably necessary to correct such violation, which action may include, but is not limited to, removing any building or improvement for which architectural approval has not been obtained, or perform any maintenance required to be performed by this Declaration, including the right to enter upon a Lot to make such corrections or modifications as are necessary, or remove anything in violation of the provisions of the Governing Documents or any restrictions set forth by the Board.

13.2 Expenses. All expenses incurred by the Association in connection with the correction of any violation, or the commencement of any action against any Owner, including administrative fees and costs and reasonable attorneys' fees and disbursements through the appellate level, shall be a Specific Assessment assessed against the applicable Owner, and shall be due upon written demand by the Association.

13.3 Late Fees. Any amount due to Developer or the Association which is not paid within fifteen (15) days after the due date shall bear a late fee of Twenty-Five Dollars (\$25) and interest at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Owner's Lot.

13.4 No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by the Governing Documents shall not constitute a waiver of the right of the Association to enforce such right, provisions, covenant or condition in the future.

13.5 Rights Cumulative. All rights, remedies, and privileges granted to the Association pursuant to any terms, provisions, covenants, or conditions of the Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from executing such additional remedies, rights or privileges as may be granted or as it might have by law.

13.6 Enforcement By or Against the Persons. In addition to the foregoing, this Declaration may be enforced by Developer, the Association, or any Owner by any procedure at law or in equity against any Person violating or attempting to violate any provision herein, to restrain any violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this Declaration shall be borne by the Person against whom enforcement is sought, provided such proceeding results in a finding that such Person was in violation of this Declaration. The prevailing party in any such action shall be entitled to recover its reasonable attorney fees and disbursements through the appellate level.



13.7 Certificate as to Default. Upon request by any Owner or mortgagee, holding a mortgage encumbering any Lot, and for a reasonable charge, the Association shall execute and deliver a written certificate as to whether such Owner is in default with respect to compliance with the terms and provisions of this Declaration.

#### **ARTICLE XIV** **INDEMNIFICATION**

14.1 Indemnification of Officers, Directors or Agents. The Association shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that they are or were a director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by them in connection with such action, suit or proceeding if they acted in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interest of the Association. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the Person did not act in good faith and in a manner which they reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that they had no reasonable cause to believe that their conduct was unlawful.

To the extent that a director, officer, employee or agent of the Association is entitled to indemnification by the Association in accordance with this Article, they shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by them in connection therewith.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of Members, or otherwise. As to action taken in an official capacity while holding office, the indemnification provided by this Article shall continue as to a Person who has ceased to be a member of the Board, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a Person.

The Association shall have the power to purchase and maintain insurance on behalf of any Person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against them and incurred by them in any such capacity, or arising out of their status as such, whether or not the Association would have the power to indemnify them against such liability under the provisions of this Article.

**ARTICLE XV**  
**AMENDMENTS**

15.1 Approval of Amendments by the Park Square Authorized Builder. Notwithstanding anything to the contrary in this ARTICLE XV, this Declaration, the Articles or the Bylaws, and for as long as the Park Square Authorized Builder owns any portion of the Property, neither Developer nor the Association shall modify the Declaration, the Articles or the Bylaws in any respect without the Park Square Authorized Builder's prior written approval if the result of such a modification would be to alter the Park Square Authorized Builder's rights or qualifications pertaining to the payment of Annual Assessments or Commencement Assessments in accordance with the provisions of Sections 8.4 and 8.5 of this Declaration or materially impair the Park Square Authorized Builder's ability or cost to construct and market a Residence on any Lot. Any such modification of the Declaration, the Articles or the Bylaws in violation of the foregoing covenant shall be void and of no force and effect.

15.2 Amendment by the Association. Other than as otherwise specifically set forth in this Declaration, this Declaration may be amended, changed, or added to, at any time and from time to time, upon the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than a majority of the total votes of the Association. Any amendment of this Declaration shall be recorded in the public records of the County. Notwithstanding anything herein to the contrary, as long as the Class B Membership exists any amendment to this Declaration must first be approved in writing by the Developer.

15.3 Amendment to Comply with Governmental Authority. Developer, prior to Turnover, or the Board, after Turnover, specifically reserves the right to amend this Declaration, without the consent or joinder of any party, in order to comply with the requirements of the Department of Housing and Urban Development, Veteran's Administration, the District, Federal National Mortgage Association, the City and/or County, or any other governmental agency.

ANY AMENDMENT TO THIS DECLARATION AFFECTING THE SURFACE WATER MANAGEMENT SYSTEM OR THE OPERATION AND MAINTENANCE OF THE SURFACE WATER MANAGEMENT SYSTEM SHALL HAVE THE PRIOR WRITTEN APPROVAL OF THE DISTRICT.

15.4 Amendment by Developer. Except as prohibited by law or as otherwise set forth in this Declaration, prior to Turnover Developer shall have the right to amend this Declaration as it deems appropriate, without the joinder or consent of any Person.

15.5 Amendment to Make Non-Material Changes, Correct Scrivener's Errors and Clarify Ambiguities. Developer specifically reserves the right to amend this Declaration, without the consent or joinder of any party, to correct scrivener's errors, to clarify ambiguities determined to exist herein, and to make other non-material amendments which Developer believes are in the best interest of the Owners.

15.6 Limitation on Amendments. Notwithstanding anything to the contrary set forth in this Declaration, the rights of Developer and the Association to change, amend or modify the terms and provisions of and the covenants, conditions, restrictions, easements and reservations set forth in this Declaration shall at all times be subject to the following limitations and restrictions, to wit:

15.6.1 To the extent that particular rights or interests are expressly conferred upon or granted to the City or County pursuant to this Declaration, the particular terms and provisions of this Declaration pursuant to which any such rights and interests are conferred upon and granted to the City or County shall not be changed, amended or modified without the prior written consent and joinder of the City or County, as applicable.

15.6.2 This Declaration may not be changed, amended or modified in such manner as to terminate or eliminate any easements granted or reserved herein to Developer, the Association, the City, the County, the District or utility company, respectively, without the prior written approval of Developer, the Association, the City, the County, the District or utility company, as the case may be, and any attempt to do so shall be void and of no force and effect.

15.6.3 No amendment to this Declaration shall be approved which conflicts with any land use approval or permits granted by the City or County or which conflicts with the Code of Ordinances or Uniform Land Development Regulations of the City or County.

15.6.4 No amendment to this Declaration may remove, revoke or modify any right or privilege of Developer without the prior express written consent of Developer.

## ARTICLE XVI GENERAL PROVISIONS

16.1 Developer Rights Assignment Option of the Park Square Authorized Builder. In acknowledgement that the Park Square Authorized Builder has a paramount interest in protecting the value and desirability of the Property and recognizing that Developer may, as set forth in Section 1.16 and 16.2 of this Declaration, assign all or a portion of its rights under the Declaration, Developer hereby grants the Park Square Authorized Builder a “Developer Rights Assignment Option” as such term is more particularly described in this Section 16.1. Prior to (i) Developer’s exercise of its right to assign all or any portion of its rights which are created or reserved by this Declaration, or (ii) the date when Developer is divested of its interest in any portion of the Property or has terminated its interest in the Property, the Developer shall give the Park Square Authorized Builder written notice that it may exercise an option to assume all or any portion of such rights to be assigned (the “**Developer Rights Assignment Option**”). If the Park Square Authorized Builder, in its sole discretion, desires to assume any or all or any of the rights to be assigned, it shall give Developer notice of such election within six (6) business days of its receipt of the Developer Rights Assignment Option. Developer and the Park Square Authorized Builder shall execute an instrument identifying and evidencing the rights assigned by Developer and assumed by the Park Square Authorized Builder and such instrument shall be recorded among the Public Records of Polk County, Florida; however,

the Park Square Authorized Builder shall not thereby assume any duties or obligations of Developer which are attributable to the period prior to the date of such assignment. As is set forth in Section 1.16 of this Declaration, in the event of a partial assignment and assumption of the Developer's rights which are created or reserved by this Declaration, the Park Square Authorized Builder shall not be deemed Developer hereunder but may exercise such rights of Developer specifically assigned to and assumed by it and any such assignment and assumption of Developer's rights hereunder may be made on a non-exclusive basis. Notwithstanding anything to the contrary in this Section 16.1, no Developer rights which are required to be assigned only to a specific entity or entities by this Declaration, Florida Statutes, Florida Administrative Code or any local government ordinances, rules or regulations shall be assigned to the Park Square Authorized Builder.

16.2 Assignment of Rights and Duties to the Association. Developer may at any time assign and delegate to the Association all or any portion of Developer's rights, title, interests, duties or obligations created by this Declaration. It is understood that the Association has been formed as a homeowners' association in order to effectuate the intent of Developer for the proper development, operation and management of the Property. Wherever herein Developer or the Association or both are given the right, duty, or obligation to approve, enforce, waive, collect, sue, demand, give notice, or take any other action or grant any relief or perform any task, such action may be taken by Developer or the Association until such time as Developer or any successor developer or any party to whom Developer assigned all or any portion of its rights created or reserved by this Declaration is divested of its interest in any portion of the Property or has terminated its interest in the Property, or Developer has assigned its rights, duties, and obligations hereunder to the Association. Thereafter, all rights, duties and obligations of Developer shall be administered solely by the Association in accordance with the procedures set forth herein and the Governing Documents.

16.3 Covenants to Run with the Title to the Land. This Declaration, as amended and supplemented from time to time as herein provided, shall be deemed to run with the title to the Property and shall remain in full force and effect until terminated in accordance with provisions set out herein.

16.4 Enforcement. Developer, the Association, the District or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by Developer, the Association, the District or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

16.5 Enforcement by the District. The District shall have the right to take enforcement measures, including a civil action for injunction and/or penalties, against any Owner or the Association to compel such Owner or the Association, as applicable, to correct any outstanding problems with the Surface Water Management System.

16.6 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

16.7 Wild Animals. The Property is located adjacent or nearby to certain undeveloped areas which may contain various species of wild creatures (including, but not limited to, alligators, bears, panthers,



raccoons, coyotes and foxes), which may from time to time stray onto the Property, and which may otherwise pose a nuisance or hazard, all risks associated with which each Owner accepts by their purchase of a Lot. Owners shall not feed wild creatures of any kind nor otherwise engage in conduct that attracts wild creatures onto any portion of the Property. Conduct that may attract wild creatures onto the Property, and that may be restricted or regulated by the Association, includes, but is not necessarily limited to: (i) leaving food waste in containers or areas that are accessible by wild creatures, or allowing wild creatures to access food waste, pet food, BBQ grills, refrigerators or freezers in garages or on porches or patios; (ii) not picking fruit (including vegetables and berries) when they are ripe but allowing them to fall and remain on the ground; (iii) leaving birdfeeders out overnight; (iv) keeping bees; (v) not keeping garage doors closed in accordance with Section 10.21 hereof; and (vi) leaving trash containers outside overnight for next day pick-up by trash haulers, in lieu of putting them out in the morning of the day of pick-up. The Association, by and through the Board shall have the right to promulgate rules and regulations which regulate or restrict these activities or any other activities which, in the sole determination of the Board, attract wild creatures onto the Property. For purposes of illustration and not limitation of the foregoing sentence, the Board may promulgate rules and regulations mandating that Owners acquire, at their sole cost and expense, and use so called "Bear Resistant Trash Containers" for the disposition of food waste. Any such Bear Resistant Trash Containers shall be a type or types that are acceptable to the Association and that are capable of pick-up by any trash hauler(s) servicing the Property.

16.8 Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded. Thereafter these covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless termination of the provisions of this Declaration is approved by the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than a majority of the total votes of the Association. Any termination of this Declaration shall be recorded in the public records of the County. Unless this Declaration is terminated as provided above, the association shall re-record this Declaration or other notice of its terms at intervals necessary under Florida law to preserve its effect.

16.9 Communication. All communication from Owners to Developer, its successors or assigns, the Board, or any officer of the Association shall be in writing.

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

16.11 Conflict. This Declaration shall take precedence over conflicting provisions in the Articles and Bylaws and the Articles shall take precedence over the Bylaws.

16.12 Usage. Whenever used herein the singular number shall include the plural, and the plural shall include the singular, and the use of any gender shall include all genders.



16.13 Governing Law. The construction, validity and enforcement of this Declaration shall be determined according to the laws of the State of Florida. Any action or suit brought in connection with this Declaration shall be in the County.

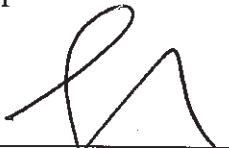
16.14 Security. Developer and the Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make them safer than they otherwise might be. Neither Developer nor the Association shall in any way be considered insurers or guarantors of security within the Property, nor shall Developer or the Association be held liable for any loss or damage by reason of failure to provide adequate security or of any effectiveness of security measures undertaken.

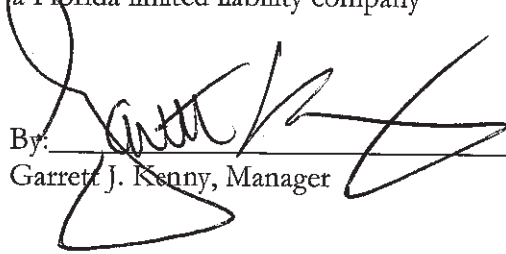
[signature page follows]


IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal the day and year first above written.

Signed, sealed and delivered  
in our presence:

**FELTRIM ROE ROAD, LLC,**  
a Florida limited liability company

  
\_\_\_\_\_  
Print: Emely Alvarez-Williams

By:   
\_\_\_\_\_  
Garrett J. Kenny, Manager

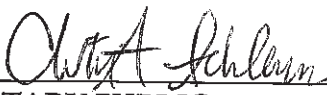
  
\_\_\_\_\_  
Print: Christina Schlemmer

STATE OF FLORIDA  
COUNTY OF Seminole

The foregoing instrument was acknowledged before me, by means of  physical presence  
or  online notarization, this 30th day of January, 2020 (year), by Garrett J. Kenny, as Manager of  
Feltrim Roe Road, LLC, a Florida limited liability company, on behalf of the company. He [ ] is  
personally known to me or  has provided Florida Drivers License as identification.



(seal)

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 11/03/2023

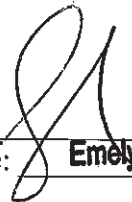
**JOINDER OF ASSOCIATION**

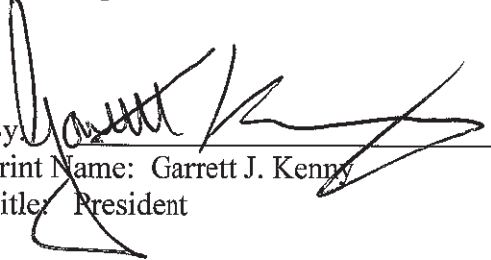
The undersigned, **TARPON BAY HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation (the "Association") does hereby join in this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TARPON BAY (the "Declaration"), to which this Joinder of Association is attached, and acknowledges and agrees that the terms and provisions thereof are and shall be binding upon the undersigned and its successors in title.

Signed, sealed and delivered  
in the presence of :

**"ASSOCIATION"**

**TARPON BAY HOMEOWNERS  
ASSOCIATION, INC.**, a Florida not-for-profit corporation

  
Print Name: Emely Alvarez-Williams

By   
Print Name: Garrett J. Kenny  
Title: President

  
Print Name: Christina Schlemmer

[CORPORATE SEAL]

STATE OF FLORIDA  
COUNTY OF Seminole

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this 30<sup>th</sup> day of January, 2020, by Garrett J. Kenny, as President of TARPON BAY HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the corporation. He/She is personally known to me or has produced Florida Drivers License as identification.



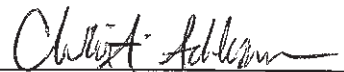
  
Print Name Christina Schlemmer  
Title: Notary Public  
Serial Number, if any: n/a  
My Commission Expires: GG928448  
(NOTARY SEAL)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PART OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 27 SOUTH, RANGE 27 EAST, POLK COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NAIL & DISK, STAMPED LB #7805 MARKING THE SOUTHEAST CORNER OF SAID SOUTHWEST 1/4 PER CERTIFIED CORNER RECORD 106785; RUN THENCE N00°24'10"W ALONG THE EAST LINE OF SAID SOUTHWEST 1/4, A DISTANCE OF 40.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF LAKE MARION ROAD (HIGHWAY 544) PER RIGHT-OF-WAY MAP SECTION #16841-2601; THENCE S89°44'31"W ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 13.00 FEET FOR A POINT OF BEGINNING; THENCE CONTINUE S89°44'31"W ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 654.18 FEET TO THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SAID SOUTHWEST 1/4 OF SECTION 34; THENCE N00°20'53"W ALONG SAID WEST LINE, A DISTANCE OF 1353.03 FEET TO THE NORTHWEST CORNER OF SAID EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 34; THENCE S89°43'37"W ALONG THE SOUTH LINE OF THE NORTH 1/2 OF SAID SOUTHWEST 1/4 OF SECTION 34, A DISTANCE OF 1664.72 FEET TO THE SOUTHWEST CORNER OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SAID SOUTHWEST 1/4 OF SECTION 34; THENCE N00°12'41"W ALONG THE WEST LINE OF SAID EAST 1/2 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 34, A DISTANCE OF 1380.92 FEET TO THE SOUTH MAINTAINED RIGHT-OF-WAY LINE OF ROE ROAD PER MAP BOOK 14, PAGES 3 THROUGH 6, PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE THE FOLLOWING 12 COURSES ALONG SAID SOUTH MAINTAINED RIGHT-OF-WAY LINE OF ROE ROAD: (1) N88°51'16"E A DISTANCE OF 68.48 FEET; (2) N88°51'15"E A DISTANCE OF 100.00 FEET; (3) N87°08'12"E A DISTANCE OF 100.08 FEET; (4) N89°26'19"E A DISTANCE OF 99.99 FEET; (5) N89°59'46"E A DISTANCE OF 293.02 FEET; (6) N89°41'28"E A DISTANCE OF 724.95 FEET; (7) N89°56'51"E A DISTANCE OF 309.39 FEET; (8) S89°56'44"E A DISTANCE OF 235.68 FEET; (9) N87°53'46"E A DISTANCE OF 136.98 FEET; (10) N89°25'38"E A DISTANCE OF 199.99 FEET; (11) S89°59'55"E A DISTANCE OF 37.92 FEET; (12) S54°46'35"E A DISTANCE OF 24.23 FEET TO SAID EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 34; THENCE S00°24'10"E ALONG SAID EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 34, A DISTANCE OF 1375.64 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST 1/4 OF SAID SOUTHWEST 1/4 OF SECTION 34; THENCE S89°42'52"W ALONG THE SOUTH LINE OF THE NORTH 1/2 OF SAID SOUTHWEST 1/4 OF SECTION 34, A DISTANCE OF 13.00 FEET TO THE WEST LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 10472, PAGE 1676, PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE S00°24'10"E ALONG SAID WEST LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 10472, PAGE 1676, A DISTANCE OF 1353.79 FEET TO THE POINT OF BEGINNING.

CONTAINS 4,113,288 SQUARE FEET OR 94,428 ACRES MORE OR LESS.

**EXHIBIT B**

**AMENDED ARTICLES OF INCORPORATION  
OF  
TARPON BAY HOMEOWNERS ASSOCIATION, INC.**

In compliance with the requirements of Chapter 617, Florida Statutes, the undersigned, a resident of Florida and of full age, for the purpose of forming a corporation not for profit does hereby certify:

**ARTICLE I**  
**NAME OF CORPORATION**

The name of the corporation shall be **Tarpon Bay Homeowners Association, Inc.** (the "**Association**").

**ARTICLE II**  
**PRINCIPAL OFFICE**

The principal office of the Association is located at **124 Kenny Boulevard, Haines City, Florida 33844.**

**ARTICLE III**  
**INITIAL REGISTERED OFFICE AND AGENT**

The initial registered office of the Association shall be located at **124 Kenny Boulevard, Haines City, Florida 33844,** and the initial registered agent of the Association shall be **Garrett J. Kenny.** The Association may change its registered agent or the location of its registered office, or both, from time to time, with amendment of these Articles of Incorporation.

**ARTICLE IV**  
**PURPOSE OF THE ASSOCIATION**

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is organized and for which it is to be operated are to provide for maintenance, preservation, and care of the property of the Association, and to provide architectural control of the residences, lots and common area within that certain tract of property (the "**Property**") described in the Declaration of Covenants, Conditions and Restrictions of Tarpon Bay, recorded or to be recorded in the Office of the Clerk of the Circuit Court, Polk County, Florida (the "**Declaration**") and as the same may be amended from time to time as therein provided, and to promote the health and welfare of the residents within the Property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for these purposes.



**ARTICLE V**  
**BOARD OF DIRECTORS**

The affairs of the Association shall be managed by a board of not less than three (3) directors nor more than five (5), who need not be members of the Association (the “**Board**”). The manner in which the directors are elected or appointed is as stated in the bylaws of the Association (the “**Bylaws**”). The initial number of directors shall be three (3) and may be changed by amendment of the Bylaws. The names and addresses of the persons who are to act in the capacity of directors until the election of their successors are:

- Garrett J. Kenny** - **124 Kenny Boulevard, Haines City  
Florida 33844**
  
- Lorcan Claffey** - **124 Kenny Boulevard, Haines City  
Florida 33844**
  
- Angela Kenny** - **124 Kenny Boulevard, Haines City  
Florida 33844**

**ARTICLE VI**  
**POWERS OF THE ASSOCIATION**

The Association shall have all the powers, rights and privileges which a not-for-profit corporation organized under Chapter 617, Florida Statutes, by law may now or hereafter have or exercise.

In addition to the powers set forth above, the Association shall have all of the powers and duties reasonably necessary to operate the Property pursuant to the Declaration and as more particularly described in the Bylaws, as they may be amended from time to time, including, but not limited to, the following:

1. To perform all the duties and obligations of Association set forth in the Declaration and Bylaws, as herein provided.
  
2. To enforce, by legal action or otherwise, the provisions of the Declaration and Bylaws and of all rules, regulations, covenants, restrictions and agreements governing or binding Association and the Property.
  
3. To operate, maintain and manage the common area and surface water management system for the Property in a manner consistent with the Southwest Florida Water Management District (the “**District**”) Permit(s) requirements and applicable District rules, and shall assist in the enforcement of the covenants and restrictions in the Declaration which relate to the surface water management system.

4. To require all owners of residential lots within the Property to be members of the Association.
5. To levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the surface water management system.
6. To fix, levy, collect and enforce payment, by any lawful means, of all assessments pursuant to the terms of the Declaration, these Articles and Bylaws.
7. To pay all operating costs, including, but not limited to, all licenses, taxes or governmental charges levied or imposed against the Property.
8. To own, acquire (by gift, purchase or otherwise), annex, hold, improve, build upon, operate, maintain, convey, grant rights and easements, sell, dedicate, lease, transfer or otherwise dispose of real or personal property in connection with the functions of Association except as limited by the Declaration.
9. To borrow money, and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money or debts incurred.
10. To dedicate, grant, license, lease, concession, create easements upon, sell or transfer all or any part of the Association's property, to any public agency, entity, authority, utility or other person or entity for such purposes and subject to such conditions as it determines and as provided in the Declaration.
11. To participate in mergers and consolidations with other non-profit corporations organized for the same purposes.
12. To establish, adopt, publish, promulgate or enforce rules, regulations, covenants, restrictions or agreements governing the Association, the Property as provided in the Declaration and to effectuate all of the purposes for which the Association is organized.
13. To have and to exercise any and all powers, rights and privileges which a not-for-profit corporation organized under the Laws of the State of Florida may now, or hereafter, have or exercise, and to take any other action necessary for the purposes for which the Association is organized.
14. To employ personnel and retain independent contractors to contract for management of the Association and the Property as provided in the Declaration and to delegate in such contract all or any part of the powers and duties of the Association.
15. To contract for services to be provided to, or for the benefit of, the Association, members of the Association, and the Property as provided in the Declaration such as, but not limited to, telecommunication services, maintenance, garbage pick-up, and utility services.

16. To establish committees and delegate certain of its functions to those committees.
17. To sue and be sued in the name of the Association.

#### ARTICLE VII MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to the Declaration, including contract sellers, shall be a member of the Association with the voting rights described herein. The foregoing shall not include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

#### ARTICLE VIII VOTING RIGHTS

The Association shall have two classes of voting membership with the relative rights and preferences as follows:

Class A: “**Class A Members**” shall be all owners of any lot shown upon any recorded plat of the Property (the “**Lot**” or “**Lots**”), excluding Developer (as defined in the Declaration). Each Class A Member shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, each such person shall be members, however, the vote for such Lot shall be exercised as they collectively determine, and in no event shall more than one vote be cast with respect to such a Lot.

Class B: The “**Class B Member**” shall be the Developer, who shall be entitled to the total number of votes of all Class A Members from time to time plus one (1) vote; provided, however, that the Class B membership shall cease and convert to Class A membership on the happening of any of the following events, whichever shall first occur:

1. 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 Class A Members; or
2. Developer, in its sole and absolute discretion, elects to terminate its Class B membership by written notice of such election delivered to the Association (whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association).

Notwithstanding that there shall be two (2) classes of voting membership in the Association, voting shall be based upon the votes cast by the membership as a whole; not on votes cast by or within each class of voting membership.

**ARTICLE IX**  
**DISSOLUTION**

The Association may be dissolved upon the affirmative vote (in person or by proxy) or written consent or any combination thereof, of members holding not less than a majority of the total votes of the Association. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency or to any non-profit corporation, association, or other organization to be used for purposes similar to those for which this Association was created.

In the event of termination, dissolution, or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an appropriate governmental unit or public utility or a non-profit corporation similar to the Association approved in writing by the Southwest Florida Water Management District prior to such termination, dissolution or liquidation.

**ARTICLE X**  
**COMMENCEMENT AND DURATION OF CORPORATE EXISTENCE**

The Association shall commence corporate existence on the date of filing of these Articles of Incorporation with the Florida Secretary of State. The Association shall exist in perpetuity.

**ARTICLE XI**  
**AMENDMENTS**

The Association shall have the right to amend these Articles of Incorporation at any time upon the affirmative vote (in person or by proxy) or written consent or any combination thereof, of members holding not less than a majority of the total votes of the Association. No amendment shall make any changes in the qualifications for membership nor the voting rights of the members, without approval in writing by all members and the joinder of all record owners of mortgages upon the Lots. No amendment shall be made that is in conflict with Florida law or the Declaration unless the latter is amended to conform to the same.

**ARTICLE XII**  
**BYLAWS**

The Bylaws shall be adopted by the Board at the first meeting of directors, and may be altered, amended or rescinded thereafter in the manner provided in the Bylaws.

**ARTICLE XIII**  
**INDEMNIFICATION**

In addition to any rights and duties under applicable law, this Association shall indemnify and hold harmless all its directors, offices, employees, and agents, and former directors, officers, employees,

and agents from and against all liabilities and obligations, including attorneys' fees, incurred in connection with any actions taken or failed to be taken by said directors, officers, employees, and agents in their capacity as such except for willful misconduct or gross negligence.

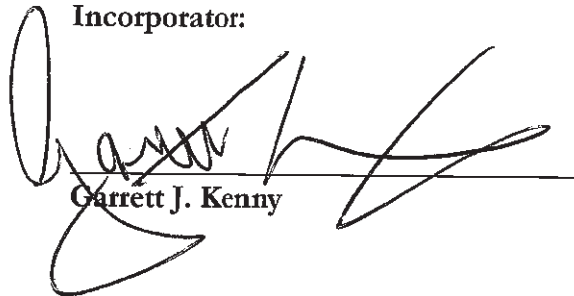
**ARTICLE XIV**  
**INCORPORATOR**

The name and address of the incorporator of these Articles of Incorporation is:

**Garrett J. Kenny**  
**124 Kenny Boulevard, Haines City, Florida 33844**

**IN WITNESS WHEREOF**, for the purpose of forming this corporation under the laws of Florida, the undersigned, constituting the sole incorporator of this Association, has executed these Articles of Incorporation this 20<sup>th</sup> day of January 2020.

**Incorporator:**

  
A handwritten signature in black ink, appearing to read "Garrett J. Kenny", is written over a horizontal line. The signature is stylized and cursive.

**Garrett J. Kenny**



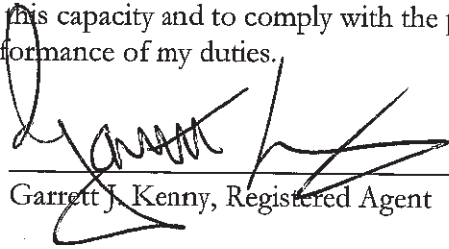
**CERTIFICATE DESIGNATING PLACE OF BUSINESS FOR THE  
SERVICE OF PROCESS WITHIN FLORIDA AND REGISTERED AGENT  
UPON WHOM PROCESS MAY BE SERVED**

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

**Tarpon Bay Homeowners Association, Inc.**, desiring to organize as a corporation under the laws of the State of Florida with its registered office and principal place of business at **124 Kenny Boulevard, Haines City, Florida 33844**, has named and designated **Garrett J. Kenny** as its Registered Agent to accept service of process within the State of Florida.

**ACKNOWLEDGEMENT**

Having been named to accept service of process for **Tarpon Bay Homeowners Association, Inc.**, at the place designated in this Certificate, I am familiar with the duties and obligations of a Registered Agent under Florida Law and I hereby agree to act in this capacity and to comply with the provisions of all statutes relating to the proper and complete performance of my duties.

  
\_\_\_\_\_  
Garrett J. Kenny, Registered Agent

Dated this 30<sup>th</sup> day of January 2020.

**EXHIBIT C**  
**BYLAWS**  
**OF**  
**TARPON BAY HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**NAME AND LOCATION**

The name of the corporation is Tarpon Bay Homeowners Association, Inc. The principal office of the Association shall be located at **124 Kenny Boulevard, Haines City, Florida 33844** but meetings of members or directors may be held at such places within Florida designated by the board of directors.

**ARTICLE II**

**DEFINITIONS**

Unless otherwise indicated to the contrary, all capitalized terms used herein without definition shall have the meaning given such term in the Declaration of Covenants, Conditions and Restrictions of Tarpon Bay ("**Declaration**") or the Articles of Incorporation of Tarpon Bay Homeowners Association, Inc. ("**Articles**"). For ease of reference, Tarpon Bay Homeowners Association, Inc., shall hereinafter be referred to as the "**Association**".

**ARTICLE III**

**MEMBERS**

1. **Qualifications.** The qualification of Members, the manner of their admission to membership, changes in membership and the termination of such membership, shall be as set forth in the Declaration and the Articles.
2. **Member Roster.** The Secretary of the Association shall maintain a roster in the office of the Association showing the names and addresses of the Members. Each Member shall at all times advise the Secretary of any change of address of the Member or any change of ownership of the Member's Lot. The Association shall not be responsible for reflecting any changes until notified of such change in writing.

## ARTICLE IV

### MEETING OF MEMBERS

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 annually. The Board shall determine the date, time and place to hold the annual meeting.
2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board, or upon written request of one-fourth (1/4) of the Class A Members who are entitled to vote.
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, delivering or electronically transmitting a copy of such notice at least fourteen (14) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. 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.
4. Attendance at Meetings. Any person entitled to cast the vote of a Member, and in the event a Lot is owned by more than one (1) person, all co-Owners of such Lot, may attend any meeting of the Members. Any person not expressly authorized to attend a meeting of the Members as set forth above may be excluded from any meeting of the Members by the presiding officer of such meeting.
5. Organization. At each meeting of the Members, the President, or in the President's absence, the Vice President, or their designee, shall act as Chairman of the Meeting. The Secretary or, in the Secretary's absence, any person appointed by the Chairman of the Meeting shall act as Secretary of the meeting.
6. Minutes. The Association shall maintain minutes of each meeting of the Members and the Board in written form or in another form which can be converted into written form within a reasonable time. The minutes shall be kept in a book available for inspection by Members or their authorized representatives at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years. A vote or abstention from voting on each matter voted upon for each Director present at a Board meeting must be recorded in the minutes.
7. Quorum. At meetings of Members, the presence of Members, in person or by proxy, entitled to cast one-tenth (1/10) of the votes of each class of Membership shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote shall have power to adjourn the meeting from time to time, without notice other than announcement at

the meeting of the time, date, and place that the meeting will be reconvened, provided that a quorum is obtained.

8. Proxies. At all meetings of Members, each Member may vote in person or by proxy duly appointed in writing which bears a date not more than ninety (90) days prior to such meeting. All proxies shall be in writing, shall comply with the requirements of Chapter 720, Florida Statutes, as amended from time to time and shall be filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of their Lot.

9. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the meetings of Members when not in conflict with the Governing Documents.

## ARTICLE V

### BOARD OF DIRECTORS: SELECTION AND TERM OF OFFICE

1. Number. The affairs of this Association shall be managed by a board of a minimum of three (3) and a maximum of five (5) directors as determined by the Members from time to time. The number of directors shall always consist of an odd number.
2. Term of Office. At the annual meetings of the Members, the Members, when entitled, shall elect directors for a term of one (1) year or until the next annual meeting of the Members whichever is later. The term of each director's services shall extend until the next annual Members meeting and until their successor is duly elected and qualified, or until he is removed in the manner elsewhere provided.
3. Removal. Any director may be removed from the Board, with or without cause, by the vote or agreement in writing of a majority of the Members of the Association. In the event of death, resignation or removal of a director, their successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of their predecessor.
4. Compensation. Directors shall serve without compensation or fees; provided, however, nothing herein shall be deemed to prevent reimbursement of out-of-pocket expenses approved by the Board and incurred on behalf of the Association.
5. Nomination. Nomination for election to the Board shall be made from the floor at the annual meeting unless the Board establishes a nomination process or committee as set forth in Section 720.306(9), Florida Statutes, as amended from time to time.
6. Election. Election to the Board shall be by written ballot (unless dispensed with by majority consent of the Lots represented at the meeting). At the election Members may cast, in respect to each position to be filled on the Board, 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.

7. Election of Directors After Turnover. After Turnover, for so long as Developer owns at least five percent (5%) of the Lots within the Property, Developer may appoint one (1) Director to the Board.

8. Certification of Directors. Within ninety (90) days after being elected or appointed to the Board, each Director shall certify in writing to the Secretary of the Association that he or she has read the Declaration, the Articles of Incorporation, these Bylaws and any other written rules and policies of the Association; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Members. Within ninety (90) days after being elected or appointed to the Board, in lieu of such written certification, the newly elected or appointed Director may submit a certificate of having satisfactorily completed the educational curriculum administered by an education provider approved by the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation or any successor governmental agency, division, or department of the State of Florida, within one (1) year before or ninety (90) days after the date of election or appointment. The written certification or educational certificate is valid for the uninterrupted tenure of the Director. A Director who does not timely file the written certification or educational certificate shall be suspended from the Board until he or she complies with the requirement. The Board may temporarily fill the vacancy during the period of suspension. The Association shall retain each Director's written certification or educational certificate for inspection by the Members for five (5) years after the Director's appointment or election. However, the Association's failure to have the written certification or educational certificate on file does not affect the validity of any Board action.

## ARTICLE VI

### MEETINGS OF DIRECTORS

1. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Meetings of the directors shall be open to all Members and notices of such meetings shall be posted in a conspicuous place on the Association property at least forty-eight (48) hours in advance of a meeting, except in an emergency. Notice of any meeting in which Assessments against Lots are to be established shall specifically contain a statement that Assessments shall be considered and a statement of the nature of such Assessments.

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

3. Quorum. A majority of the 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.

4. Minutes of Meetings. The minutes of all meetings of the Board shall be kept in a book available for inspection by the Members or the directors, at any reasonable time.



## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

1. Powers. The Board shall have 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 any infraction thereof.
  - B. Suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association. Such rights may also be suspended after notice and hearing 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 the Governing Documents.
  - D. Employ a manager, an independent contractor, and such other employees as they deem necessary, and to prescribe their duties.
  - E. Appoint by resolution, committees as from time to time may be deemed necessary which may exercise such powers, duties and functions as may be determined by the Board, which may include any powers which may be exercised by the Board.
  - F. Maintain or cause to be maintained all official records of the Association.
  
2. Duties. It shall be the duty of the Board to:
  - A. Cause to be kept minutes of all meetings of the Members and Board.
  - B. Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.
  - C. Fix the amount of the Annual Assessment against each Lot.
  - D. Send written notice of each Assessment to every Owner in advance of each Annual Assessment period.
  - E. Foreclose the lien against any property for which Assessments are not paid or to bring an action at law against the owner personally obligated to pay the same.

- F. 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.
- G. Procure and maintain adequate liability and hazard insurance on property owned by the Association.
- H. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
- I. Cause the Common Area to be maintained.
- J. Supervise and ensure the making of necessary repairs, additions and improvements to, or alterations of the Property.
- K. Maintain bank accounts on behalf of the Association and designate signatories required therefor.
- L. Enter into and upon any portion of the Property, including any Lot(s), when necessary to maintain, care and preserve any real or personal property in the event the respective Owner fails to do so.
- M. Perform all duties and obligations of the Association as set forth in the Governing Documents and as otherwise provided by statute or law, and all powers incidental thereto or implied therefrom.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

1. Enumeration of Offices. The officers of this Association shall be a President and Vice-President, who shall at all times be Members of the Board, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.
2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.
3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless the officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.

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.

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 by 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 as specified, and unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

6. Vacancies. A vacancy in any office shall 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.

7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special appointments created pursuant to Section 4 of this Article.

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

A. President. The President shall preside at all meetings of the Board; 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 their absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him 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; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures and deliver a copy of each to each of the Members.

**ARTICLE IX**

**INDEMNIFICATION**

The directors and officers of the Association shall be indemnified by the Association to the fullest extent now or hereinafter permitted by law and shall not be personally liable for any act, debt, liability or other obligation of the Association. Similarly, Members are not personally liable for any act, debt, liability or obligation of the Association. A Member may become liable to the Association for dues, Assessments or fee as provided by law.

**ARTICLE X**

**COMMITTEES**

The Board may appoint a committee or committees as deemed appropriate in carrying out its purpose.

**ARTICLE XI**

**BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times be subject to inspection by any Member. The Declaration, Articles, Bylaws and rules and regulations of the Association shall be available for inspection by any Member, where copies may be purchased at a reasonable cost.

**ARTICLE XII**

**CORPORATE SEAL**

The Association shall have a seal in circular form having within its circumference the words: Tarpon Bay Homeowners Association, Inc., and the words "Corporation Not-For-Profit". The seal may be used by causing it, or a facsimile thereof, to be impressed, affixed or otherwise reproduced upon any instrument or document executed in the name of the Association.

**ARTICLE XIII**

**AMENDMENTS**

These Bylaws may be amended at a regular or special meeting of the Members by a vote of a majority of the Members in attendance at a duly called meeting at which a quorum is present, or by a vote of at least two-thirds of the Board in attendance at a duly called meeting at which a quorum is present. Notwithstanding the foregoing, the Developer specifically reserves the right to amend these Bylaws in order to comply with the requirements of the Southwest Florida Water Management District or any other governmental agency.

## ARTICLE XIV

### MISCELLANEOUS

1. Fiscal Year. 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.
2. Partial Invalidity. If any of the provisions of these Bylaws shall be or become unenforceable at law or in equity, the remaining provisions shall, nevertheless, be and remain in full force and effect.
3. Conflicts. In the event of any conflict, any applicable Florida statute, the Declaration, Articles, Bylaws and the rules and regulations of the Association shall govern, in that order.
4. Captions. Captions are utilized only as a matter of convenience and for reference, and in no way are intended to or shall define, limit or describe the scope of these Bylaws or the intent of any provision.



**CERTIFICATION**

I, Harrett Kemy the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of Tarpon Bay Homeowners Association, Inc., a Florida corporation not for profit; and

THAT the foregoing Bylaws constitute the original Bylaws of the Association, as duly adopted by consent of the Board.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 30<sup>th</sup> day of January, 2020.

Harrett Kemy  
Secretary