

SRecord and Return to:

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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
FOXWOOD

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FOXWOOD (the "Declaration") made on this 1 day of August, 2014 by FOXWOOD DEVELOPMENT, LLC, a Foreign Limited Liability Company, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in **Exhibit "A"** (the "Property") and desires to create a residential town home community upon the Property to be known as "**FOXWOOD**";

WHEREAS, this Amended and Restated Declaration, amends and restates in its entirety the Declaration of Covenants, Conditions and Restrictions for Foxwood created by Tousea Homes, Inc., as the original Developer and Declarant on April 12, 2007 as recorded at Official Records Book 2157 Page 602 of the public records of Indian River County, Florida.

WHEREAS, Tousea Homes, Inc. assigned all of its rights, title and interest in and to the Declaration to Foxwood at Vero Beach, LLC by an Assignment of Declarant's Rights dated November 28, 2007 as recorded at Official Records Book 2239 Page 1938 in the public records of Indian River County, Florida.

WHEREAS, Foxwood Development, LLC's interest in the Property was foreclosed on by a partial Final Judgment of Foreclosure dated March 10, 2010 as recorded at Official Records Book 2404, Page 2139 in the public records of Indian River County, Florida, and the Certificate of Title to the Property was issued to First East Side Savings Bank dated July 15, 2010 as recorded at Official Records Book 2432 Page 1078 of the public records of Indian River County, Florida. The Federal Deposit Insurance Corporation as Receiver for First East Side Savings Bank transferred the Property to Stearns Bank National Association by virtue of a Receiver's

Deed dated October 19, 2012 as recorded at Official Records Book 2677 Page 1069 of the public records of Indian River County, Florida.

WHEREAS, Foxwood Development, LLC. Acquired the Property and assumed the responsibilities as Developer of the Property by virtue of a Special Warranty Deed dated June 7, 2013 from Stearns Bank National Association as recorded at Official Records Book 2677 Page 1072 in the Public Records of Indian River County, Florida.

WHEREAS, it is the intent of the Developer to establish a general plan and uniform scheme of development and improvement of the Property, as more fully defined in this Declaration;

WHEREAS, it is the intent of the Developer to provide for the preservation and enhancement of property values, amenities and opportunities within the Property in order to contribute to the personal and general health, safety and welfare of the property owners and residents, to maintain the land and improvements therein, and to this end wishes to subject the Property to the Declaration, restrictions, easements of records, reservations, liens, charges, assessments and other provisions set forth herein;

NOW, THEREFORE, Developer hereby declares that all the Property shall be held, transferred, sold, occupied and conveyed subject to the easements of record, restrictions, covenants, liens, terms and conditions hereinafter set forth, all of which are for the purpose of protecting the value and desirability of, and which shall run with the Property and shall be binding upon all parties having any right, title and interest therein and their devisees, successors and assigns.

ARTICLE I **DEFINITIONS**

Section 1. "Articles" and "Bylaws" shall mean and refer to the Articles of Incorporation and the Bylaws of the Association as they exist from time to time.

Section 2. "Association" shall mean and refer to Foxwood Homeowners Association, Inc., a Florida corporation not for profit, its successors and assigns.

Section 3. "Building" shall mean that structure containing the single family town home Residences.

Section 4. "Common Expenses" shall mean and refer to expenditures for services required and authorized to be performed by the Association.

Section 5. "Common Property" shall mean and refer to all real property, whether improved or not, that may, from time to time, be conveyed by the Developer or such other person in accordance with this Declaration to the Association and designated as Common Property or Common Area. Such Common Property shall be designed and intended for the common and nonexclusive use of the Owners and their tenants, guests, licensees and invitees. Common Property shall include those areas designated as such herein or in any Supplemental Declaration hereto or by or on any plat, Site Plan where dedication thereon is made by Developer, together

with, if applicable and to the extent provided herein, driveways, certain private roadways, Recreational Facility, landscaping and pedestrian areas, entry features, fences, walls, signs erected by Developer to identify the Property or any portions thereof, irrigation and sprinkler systems, internal signalization and signage, areas surrounding canals or lakes and special design or landscaping features over or around such canals or lakes so long as such areas, special design or landscaping features and as long as the aforesaid items are within the Property.

Without limiting the generality of the foregoing, it is specifically intended that the Common Property shall include any and all subsequent capital improvements made by or at the direction of the Developer and/or the Association beyond the initial installations and/or maintenance provided by any governmental or quasi-governmental entity to which applicable portions of the Property may now or hereafter be dedicated. In addition to the Association, Developer shall have the right, subject to obtaining all required governmental approvals and permits, to construct or to have constructed on such Common Property those facilities Developer deems appropriate. All references herein to particular property or structures which are or may become part of the Common Property are by way of illustration and example only, and Developer shall be under no obligation to grant or construct such particular property or structures by reason of such references. Additionally, the timing, phasing and dates of completion of all such construction relative to Common Property shall be solely within the discretion of the Developer. It is specifically contemplated that the Common Property may change from time to time in connection with changes in Developer's development plans and other factors not now known.

Section 6. "Declaration" shall mean and refer to this instrument as it may, from time to time, be amended.

Section 7. "Developer" shall mean and refer to FOXWOOD DEVELOPMENT, LLC, a foreign limited liability company, or the successors and assigns to the rights of the Developer hereunder.

Section 8. "Easements" shall mean that portion of the Property including the Buildings or Residences or portions thereof which have or may hereafter be set aside by the Developer for the limited or common use of the Developer. Owners, their invitees, guests, successors or assigns for the ingress, egress, utilities, water sewer, lighting, drainage, or otherwise and for all purposes related to the Development or as may be indicated on any Site Plan or Plat filed among the Public Records of Indian River County, Florida.

Section 9. "Escrow Agent" shall mean and refer to a bank or savings and loan association or other entity acceptable to the St. John's River Water Management District and which shall serve as the depository for the assessments for maintenance, inspection and/or replacement of the storm water management system.

Section 10. "Improvements" shall mean and refer to all structures of any kind, including, without limitation any building, fence, wall, sign, paving, grading, any addition, alteration, screen enclosure, sewer, drain, disposal system, decorative building, landscaping or landscaping device or object or other changes to the natural state of the Property and vegetation existing thereon.

Section 11. "Individual Assessments" shall mean and refer to assessments levied against particular Residences and/or Owners to the exclusion of others and other charges against specific Residences or Owners as contemplated in this Declaration.

Section 12. "Institutional Lender" shall mean and refer to the owner and holder of a mortgage encumbering a residence, which owner and holder of said mortgage shall be a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust or a lender generally recognized in the community as an institutional lender.

Section 13. "Lake" shall refer to the Lakes as identified on the Site Plan or Plat.

Section 14. "Lake Maintenance Easement" shall mean and refer to the fifteen foot (15') perimeter buffer on the north, east, south and west sides of the Lake as shown on the Site Plan or Plat.

Section 15. "Limited Common Property" shall mean and refer to any portion of the Property which may be reserved for the exclusive benefit and use of specific Owners, as set forth on the Site Plan or as otherwise established by Developer, the maintenance of which shall be a Common Expense.

Section 16. "Member" shall mean and refer to all those Owners who are Members of the Association as hereinafter provided.

Section 17. "Owner" shall mean and refer to the Owner as shown by the real estate records in the Office of the Clerk of the Circuit Court of Indian River County, Florida, whether it be the Developer, one or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Residence. Owner shall not mean or refer to the holder of a mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure, nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

Section 18. "Property" shall mean and refer to the real property described in "Exhibit A" attached hereto.

Section 19. "Recreation Facility" shall mean and refer to any portion of the Common Property which is intended for recreational use, including improvements such as a swimming pool, and other such recreational areas as designated by the Developer.

Section 20. "Residence" shall mean and refer to a single family town home residence or unit which is intended for residential use, including the garage appurtenant thereto.

Section 21. "Site Plan" shall mean the Site Plan and other related development documents for Foxwood prepared by Kimley-Horn and Associates, Inc.

Section 22. “Surface Water or Storm Water Management System” shall mean and refer to the system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or re-use water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges, as constructed pursuant to the St. John’s River Water Management District Permit.

Section 23. “Surface Water Management System Easements” shall refer to that property which the Developer grants and reserves a non-exclusive easement burdening the areas of the Property designated on the Site Plan (and associated control structures), said areas being for the purpose of the Association effectively maintaining and operating the Surface Water Management System in accordance with the St. John’s River Water Management District Permit.

Section 24. “Tract A” shall mean and refer to the Lake and/or storm water tract referenced on the Site Plan.

Section 25. “Water Management District Permit” shall mean and refer to St. John’s River Water Management District Surface Water Management Permit No. 42-06193036-1 dated September 24, 2004, which is applicable to the Development and transferred to the Association on May 29, 2014 under Permit No. 42-061-93036-3.

Section 26. Interpretation and Flexibility. In the event of any ambiguity or question as to whether any person, entity, property or improvement falls within any of the definitions set forth in this Article, the determination made by Developer in such regard (as evidenced by a recorded instrument stating same) shall be binding and conclusive. Moreover, Developer may, also by way of a recorded instrument, alter or amend the application of any portion of this Declaration as to any specified portion(s) of the Property in order to reflect any unique characteristics thereof; provided, that such altered or amended application is not in the reasonable judgment of Developer, unequivocally contrary to the overall uniform scheme of development for the Property.

ARTICLE II

PROPERTY RIGHTS

Section 1. Legal Description. The real property comprising the Property which shall be held, transferred, sold, conveyed, leased and occupied subject to this Declaration is described in Exhibit “A” attached hereto and made a part hereof by reference. Developer may, in its sole discretion, either bring within this Declaration additional lands, or withdraw lands pursuant to this Article.

Section 2. Additional Property. Developer may, at any time and from time to time in its sole discretion, subject additional property to and bring additional property within this Declaration, including without limitation, platted subdivisions, Residences, Buildings, Common Property, phases, Recreation Facility, and other amenities, by recording in the public records of the County an amendment to this Declaration, describing such additional property and setting forth any use restrictions, voting rights, maintenance requirements, user fees, dues or other provisions

pertaining to such property. Notwithstanding the fact that Developer's submission of additional property to this Declaration may result in an overall increase or decrease in Assessments attributable to each Building, or may result in an overall increase or decrease in the total number of votes or Members in the Association, such an amendment by Developer shall not require the joinder or consent of the Association, other Owners, Institutional Mortgagees or other mortgagees of any portion of Foxwood, or any other person or entity. Any property submitted to the Declaration pursuant to the terms hereof shall be included in the term "Property" and may be in Developer's discretion part of Foxwood, regardless of where such property is located.

Section 3. Title to Common Property. Title to all Property heretofore designated by Developer as Common Property shall remain vested at all times in Developer or its successors or assigns, unless and until Developer, in its sole and absolute discretion, elects to convey the Common Property to the Association, in which event Developer shall convey all of its right, title and interest in the Common Property to the Association. Notwithstanding any other provisions of this Declaration, Developer shall in no event be required to convey, dedicate or otherwise transfer title to any or all of the Common Property to the Association, and Developer may at any time and from time to time designate additional property as Common Property, or relocate property previously designated as Common Property, or otherwise add to, subtract from or replace Common Property. Notwithstanding the manner in which fee simple title to the Common Property is held, the Association shall be responsible for the management, maintenance and operation of the Common Property from and after the date of recordation of this Declaration. Anything herein contained to the contrary notwithstanding, certain portions of the Common Property may be reserved by Developer, in its sole and absolute discretion, as Limited Common Property for the exclusive benefit and use of specific Owners.

Section 4. Owner's Easements of Enjoyment in Common Property. Every Owner shall have a right and easement of enjoyment in and to the Common Property which right and easement shall be appurtenant to and shall pass with the title to each Residence and shall be subject to and limited by the following:

A. The right of the Association to suspend an Owner's right and easement to use the Recreation Facility for any period during which any assessment against said Owner's Residence remains unpaid.

B. The right of the Association to dedicate or transfer all or any portion of the Common Property to any public agency, authority or utility, provided however, that no such dedication or transfer shall be effective until approved by an affirmative vote of the holders of two-thirds (2/3) of the total votes of the Association.

C. The Rules and Regulations of the Association.

Section 5. Owners' Easements of Ingress and Egress. Each Owner shall have, as an appurtenance to his Residence, a perpetual easement for ingress and egress to and from their Residence over and upon portions of the Common Property intended for such access.

Section 6. Delegation of Use. Any Owner may delegate the right and easement granted to said Owner pursuant to this Article II to the members of his family or his tenants who reside in

his Residence but any such delegation shall be subject to and limited by the terms and conditions of this Declaration, the Articles and Bylaws of the Association and the Rules and Regulations of the Association.

Section 7. Restraint Upon Separation. The rights and easements granted to an Owner pursuant to this Article are appurtenant to his Residence, shall not be separated therefrom and shall pass with the title to his Residence, whether or not separately described.

Section 8. Conveyance to Association. The Association shall be obligated to accept any and all deeds of conveyance delivered to it by Developer, which deeds convey title to Common Property.

Section 9. Rules and Regulations Governing Use of the Common Property. Developer and the Association, through its Board of Directors, shall regulate the use of the Common Property by Members and Owners, and may from time to time promulgate such Rules and Regulations consistent with this Declaration, governing the use thereof as Developer or the Association may deem to be in the best interests of its Members; provided, however, that any conflict between Developer and the Association relating to such Rules and Regulations shall at all times be resolved in favor of Developer. A copy of all Rules and Regulations established hereunder and any amendments thereto shall be made available to all Members at the office of the Association. Such Rules and Regulations and all provisions, restrictions and covenants as now or hereafter provided, including, without limitation, all architectural and use restrictions contained in this Declaration, may be enforced through legal or equitable action by Developer or the Association. Without limiting the foregoing, the Association shall have the right to assess fines against Owners who violate the Rules and Regulations of the Association and against Owners whose family members, guests, employees, agents, lessees, licensees or invitees violate the Rules and Regulations, which fines shall be collected as an Individual Assessment from such Owners, and to suspend such Owner's rights and easements of enjoyment with respect to the Common Property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. General Purposes of Association. The Association is organized for the purpose of providing common services to the Residences; owning and maintaining landscaping and lighting on the Common Property; improving and adding to Common Property improvements and facilities; maintaining the drainage easements; maintaining, operating, and repairing the swale areas, Common Property, Recreational Facility, surface water and/or storm water management systems (as hereinafter set forth); providing enforcement of this Declaration and engaging in activities for the mutual benefit of the Owners.

Section 2. Members. Every Owner, including the Developer, shall automatically be a member of the Association. There shall be a one time initiation fee of \$575.00 per Residence which is an initial capital contribution for the Project, payable to the Association, at the time a Residence is conveyed to its initial Owner. Membership shall be appurtenant to and may not be

separated from ownership of any Residence, and any such membership shall terminate simultaneously with any termination of such ownership.

Section 3. Classification of Membership.

A. The qualification of members, the manner of their admission to and termination of such membership, and voting by members shall be as follows:

1. All Owners shall be members of the Association, and no other persons or entities shall be entitled to membership, except as otherwise provided herein.

2. Subject to the provisions of the Declaration and the By-Laws of this Association, membership shall be established by the acquisition of the ownership of fee title to or fee interest in a residence, whether by conveyance, devise, judicial decree, or otherwise and by the recordation amongst the Public Records of Indian River County, Florida, of the deed or other instruments validly establishing such acquisition and designating the Residence affected thereby, and by the delivery to the Association of a true copy of such deed or other instrument, and shall be terminated automatically upon his or her being divested of title to all Residences owned by such member. Membership is nontransferable, except as an appurtenance to a Residence.

B. The Corporation shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Developer, and shall be entitled to one (1) vote for each Residence owned. When more than one (1) person holds an interest in any Residence, all such persons shall be members. The vote for such Residence shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residence.

Class B. The Class B member shall be the Developer or successor and shall be entitled to five (5) votes for each Residence or residential lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) Three (3) months after ninety percent (90%) of the Residences have been conveyed by the Developer to an Owner or Owners; or
- (b) On December 31, 2016.

Except as hereinafter set forth, from and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Residence or residential lot in which it holds the interest required for membership in the Association.

Section 4. Developer Control. Initially, Developer shall have the right to retain control of appointment of members of the Board of Directors of the Association (the period of "Developer Control"). Members other than Developer are entitled to elect at least a majority of the members of the Board of Directors of the Association based on the happening of either of the following

events, whichever occurs earlier: three (3) months after ninety percent (90%) of the Residences have been conveyed by the Developer to an Owner or Owners; or on December 31, 2016.

The Developer is entitled to elect at least one (1) member of the Board of Directors of the Association as long as Developer holds for sale, in the ordinary course of business, at least one (1) Residence in the project. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer owned voting interest in the same manner as any other Member, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors. During the period of Developer Control, Developer shall have, in addition to such other rights as it may have under this Declaration, the Articles of Incorporation, Bylaws and as otherwise provided by law, the following rights with respect to the Association:

1. The right to appoint all members of the Board of Directors of the Association and fill all vacancies on the Board;

2. The right to approve the appointment of all Officers of the Association. After turnover of control of the Association, no action shall be taken or decision adopted by the Board which would adversely impact on the construction, development, sale or marketing of the Property, or on the condition or appearance of the Property without the prior written consent of Developer for a period of six (6) months following recording of the Notice of Turnover. The Board shall submit such decisions and actions in writing within twenty (20) days after receipt thereof. In the event Developer fails to act within such time period, such failure shall be deemed an approval by the Developer of such action.

Section 5. Duties and Powers. The Association, acting through its Board of Directors, shall have all the powers conferred upon it by this Declaration, its Articles, Bylaws and otherwise available under the law. The Association shall have the duty to carry out all of the obligations placed upon it by this Declaration and for which it was created as set forth herein and in the Articles, including, but not limited to, the duty to maintain the Common Property, levy and collect Annual Assessments, Individual Assessments and Special Assessments, maintain such policies of insurance as the Board deems appropriate, pay bills, taxes and expenses related to the Common Property and Improvements thereon and Common Expenses.

Section 6. Board of Directors. The Association shall be governed by a Board of Directors as provided for in the Articles and Bylaws of the Association.

Section 7. Notices to Members. All notices, mailings and other documents provided or to be provided by the Association to Members shall be sent to each Member at the current address on file with the Association.

Section 8. General Matters. When reference is made in this Declaration, or in the Articles of Incorporation or Bylaws, or other relevant documents, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members at a duly constituted meeting thereof (i.e., one for which proper notice has been given and at which a quorum exists) and not of the Members themselves

or of their Residences or Units. To the extent lawful, the foregoing sentence shall apply to, without limitation, the establishment of a quorum at any applicable meeting.

Section 9. Developer Rights. Nothing stated in this Article shall be deemed to, in any manner, impair or diminish any rights, reservations or easements granted to or reserved by the Developer as stated elsewhere in this Declaration, the Articles and Bylaws or any exhibit hereto.

Section 10. Change of Membership. Change of membership in the Association shall be established by recording in the Public Records of Indian River County, Florida, a deed or other instrument conveying record fee title to any Residence and by the delivery to the Association of a copy of such recorded instrument. The Owner designated by such instrument shall, by his acceptance of such instrument, become a member of the Association, and the membership of the prior Owner shall be terminated. In the event that a copy of said instrument is not delivered to the Association, said Owner shall become a member, but shall not be entitled to voting privileges enjoyed by his predecessor in interest. The foregoing shall not, however, limit the Association's powers or privileges. The interest, if any, of a member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his Residence. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner transfers or conveys of record his interest in the Residence upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the Residence interest upon which membership is based.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation for Assessments. By acceptance of a deed to a Residence, each Owner other than the Developer, is deemed to covenant and agree to pay to the Association annual and special assessments as hereinafter provided, regardless whether such covenant and agreement shall be expressed in such deed. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees incurred in collecting same, shall be secured by a continuing lien upon the Residence against which each such assessment is made. Each Owner shall be personally liable for all assessments coming due upon his Residence while he is the Owner of said Residence. As long as the Developer is in control of the Association and/or has Residences available for sale, in the ordinary course of business, the Developer shall not be subject to annual, individual or special assessments. The Developer hereby obligates itself to pay any operating expenses that exceed assessments received from the members and other income sources of the Association. This obligation shall terminate when the Developer no longer controls the Association.

Section 2. Purpose of Annual Assessments. Assessments shall be determined annually for Common Expenses for the purpose of maintenance and management of the Association, Buildings and the Common Property, as provided in this Declaration, and for the purpose of promoting the safety and welfare of the Owners. Without limiting the foregoing, the annual Assessments shall be used for: operation, maintenance and management of the Association and

the Common Property and the Building Roofs; painting of the exterior of each Building and maintaining the landscaping of each Building; insurance coverage for the Common Property, and Buildings; legal and accounting fees; maintenance of the streets and roads within the Property; management fees; emergency services; repair and replacement of property required to be maintained by the Association pursuant to the terms of this Declaration; utility service for the Common Property; cleaning services for such property required to be maintained by the Association pursuant to the terms of this Declaration; expenses and liabilities incurred by the Association in the enforcement of its rights and duties under this Declaration; maintenance of vacant property; creation of reasonable reserves; and all other expenses deemed by the Board of Directors of the Association to be necessary or proper to carry out the Association's management, maintenance, repair, operation and enforcement responsibilities.

Assessments shall also be used for the maintenance, operation, and repair of the Surface Water Management System, including Tract A, all ditches, culverts, drains, pipes, conduits, ponds, and other facilities located on or benefiting the Property for the purpose of conveying, transmitting, draining, retaining, and storing storm water runoff from the Property, including with limitation any and all of such items used or useful in connection with the operational and maintenance of Easements. Such maintenance, operation, and repair such include the exercise of practices which allow the Surface Water Management System to collect, convey, channel, hold, inhibit, or divert the movement of storm water as permitted by the St. Johns River Water Management District. The Association shall maintain, operate and repair the Surface Water Management System in accordance with the provisions of The Development Order and in the Water Management District Permit, which provides for a maintenance and monitoring program which shall be performed by the Association. The Association and its agents, employees and independent contractors shall have the right of ingress and egress to and from the Surface Water Management System for the purpose of complying with the terms and conditions of the Water Management District Permit and all applicable governmental regulations and requirements governing the use, maintenance, operation and repair of the Surface Water Management System. Assessments shall be used for the maintenance and repair of the surface water or storm water management systems including but not limited to work within retention areas, drainage strictures and drainage easements.

Section 3. Proportion and Amount of Annual Assessments. Each Owner, other than the Developer, shall pay an annual assessment equal to his proportionate share of the Common Expenses. The proportionate share of Common Expenses for each Owner, other than the Developer, shall be determined by multiplying the Common Expenses by a fraction, the numerator of which is equal to the total number of Residences owned by said Owner and the denominator of which is equal to the total number of Residences which are not owned by the Developer.

Section 4. Special Assessments. The Association shall have the power and authority to levy and collect Special Assessments from each Member for the following purposes: acquisition of property by the Association; construction, reconstruction, unexpected repair or replacement of improvements to the Common Property, including the necessary fixtures and personal property related thereto, or exterior and roofs of the Buildings; and the expense of indemnification of each director and officer of the Association, provided that any such special assessment shall have been

first approved by two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5. Emergency Special Assessments. The Association may levy an Emergency Special Assessment when, in the sole and absolute determination of the Board of Directors, there is potential danger of damage to persons or property. Emergency Special Assessments may be utilized for preventative, protective or remedial construction, reconstruction, repairs or replacements. Events justifying Emergency Special Assessments include, but are not limited to, hurricanes, floods, fires, and freezing temperatures. Emergency Special Assessments shall be levied on an equitable basis as determined by the number of Residences in the Property, and shall be collectible in such manner as the Board of Directors shall determine in its sole and absolute discretion.

Section 6. Individual Assessments. The Association shall have the power and authority to levy and collect an Individual Assessment against a particular Residence for the cost of maintenance, repairs or replacements within or without the Residence, which the Owner thereof has failed or refused to perform, and which failure or refusal has, in the opinion of the Association, endangered or impaired the use or value of other portions of the Property. The Association shall have a right of entry onto each Residence to perform any necessary maintenance, repairs and replacements, including the right to abate or eliminate any nuisance. The Individual Assessment may include an administrative fee charged by the Association in an amount to be determined by the Board of Directors in its sole and absolute discretion from time to time. All Individual Assessments shall be collectible in such manner as the Association shall determine in its sole and absolute discretion.

Section 7. Date of Commencement and Proration of Annual Assessments Due Date. The annual assessments provided for herein shall commence against each Residence on the date of its conveyance by the Developer to a purchaser thereof. The annual assessments for the year in which this Declaration is recorded among the Public Records of Indian River County, Florida, shall be adjusted in accordance with the number of months remaining in said year from and after said recordation. Thereafter, the Board of Directors shall have the power to change the date upon which annual assessments become due and payable and also to determine the manner of payment of annual assessments, e.g., lump sums or monthly installments; provided, however, that the annual assessments shall be due and payable not less frequently than quarter annually.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall prepare an annual budget and a roster fixing the amount of annual assessment against each Residence which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment and the past-due date thereof shall thereupon be sent to every Owner subject thereto as provided in this Declaration. The Association shall upon reasonable demand furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Nonpayment of Assessment; Lien. If any assessment is not paid on or before the past-due date specified herein, then such assessment shall become delinquent and

shall, together with interest thereon at the maximum rate allowed under law from the due date and the cost of collection thereof as hereinafter provided, thereupon become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made.

Section 10. Remedies. If any assessment is delinquent for a period of at least thirty (30) days, the Association may bring an action at law against the Owner personally obligated to pay the same or an action in equity to foreclose the lien against the subject property, and there shall be added to the amount of such assessment the costs of preparing the filing of the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, late fees, costs of the action and reasonable attorney's fees through and including appellate litigation.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages held by an Institutional Lender now or hereafter placed upon the Property subject to assessment; provided, however, that such subordination shall apply only to the transfer of such property pursuant to a decree of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien created thereby.

Section 12. Annual Statements. The Association shall prepare an annual financial report within sixty (60) days after the close of the fiscal year. The Association shall, within the time limits set forth in Florida Statute §720.303, provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request, at no charge to the member. The financial report must consist of either: a) financial statements presented in conformity with generally accepted accounting principles; or b) a financial report of actual receipts and expenditures, cash basis, which report must show: 1) the amount of receipts and expenditures by classification; and 2) the beginning and ending cash balances of the Association.

Section 13. Fines. The Association may levy reasonable fines against an Owner for violations by the Owner or by the Owner's family members, guests, employees, agents, lessees, licensees or invitees of the provisions contained in this Declaration, the Articles of Incorporation, the By-Laws, and the Rules and Regulations promulgated by Developer and the Association from time to time subject to the provisions of Chapter 720 Florida Statutes. The Association may levy fines according to a schedule of fines to be adopted by the Board of Directors. Any Owner who violates any of the foregoing documents or rules shall be entitled to notice and a hearing before the Board of Directors of the Association, prior to the imposition of any fine. Fines are individual assessments and shall be collectible as such, and upon any delinquency in the payment of any fine the Association shall have all rights set forth in this Article, including, without limitation, lien rights against the Owner.

Section 14. Effect of Non-Payment of Assessments or Fines. All notices of Assessments or fines from the Association to an Owner shall designate when the Assessment or fine is due and payable. If an assessment or fine is not paid on the date when due, it shall then become delinquent and shall bear interest at the maximum rate allowed by the civil usury laws of the State of Florida, from the date when due until paid. The Assessment or fine, together with

interest thereon and the costs of collection thereof, including attorney's fees, shall be a continuing lien against the Residence against which the Assessment or fine is made, and shall also be a continuing personal obligation of the Owner thereof. The Association may also record a claim of lien in the public records of the County, designating the Residence against which the lien is filed, the Owner of record of the Residence against which the lien is filed, the amount of the unpaid Assessment or fine, the rate of interest due thereon, and the total amount claimed to be due, including interest, attorney's fees and costs of collection. If any Assessment or fine, or any installment thereof, shall not be paid within thirty (30) days following the due date, the Association may declare the entire Assessment or fine immediately due and payable. The Association may at any time thereafter bring an action to foreclose the lien provided herein against the Residence in the manner in which mortgages on real property are foreclosed, and may also institute any action on the personal obligation of the Owner. There shall be added to the amount of the Assessment or fine the costs of any such action, including attorney's fees incurred by the Association in prosecuting such action (including, without limitation, costs and fees incident to any appeals). Regardless of the date of recordation of any claim of lien as specified herein, the effective date thereof shall relate back, and it shall take priority, as of the date of recordation of this Declaration. Any successor in title to a Residence shall be held to have constructive notice of the records of the Association to determine the existence of any delinquency in the payment of Assessments or fines and shall be held liable and responsible for the payment of any delinquent Assessments or fines on the Residence.

ARTICLE V

MAINTENANCE OF PROPERTY

Section 1. Owner Responsibility. The Owner of each Residence shall be responsible for maintenance of all interior areas of his Residence, and for all other Improvements which may be designated by the Association from time to time, such as, without limitation, associated with the Building and/or Residence, including drywall, garage, windows, and doors associated with the Residence. The expense of any maintenance, repair or construction of the Common Property and Residence necessitated by the negligent or willful acts of an Owner, or of his family members, guests, employees, agents, lessees, licensees or invitees, shall be borne solely by such Owner, and such Owner's Residence and Building shall be subject to an Individual Assessment for such expense.

Section 2. Building and Residence Party Walls. Each wall built as a part of the original construction of the Residences within the Property and placed on the dividing line between the Residences of a Building shall constitute a party wall and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

A. **Easements.** Easements are reserved in favor of all Residences sharing a party wall for overhangs or other encroachments (including, but not limited to, overhangs and encroachments from adjacent roof systems, screens, gutters and all other similar structures and building components) resulting from original construction or from restoration that conforms substantially to the original construction.

B. Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall, as applicable, shall be shared by the Owners who make use of or are benefited by the wall, in proportion to the amount of use and benefit of such wall enjoyed by each, regardless of whether or not they make any actual use of same. In case of a wall affecting two Residences, each Owner shall be responsible for maintenance on that Owner's side of the wall, including the drywall. In no instance shall the Association be responsible for repair or maintenance of all or any portion of any such party wall unless such maintenance or repair responsibility is expressly assumed by the Association.

C. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has or could have used the wall may restore it, but no greater dimension of that party wall, or of any extension or restoration thereof, shall be placed upon the Building or Residence of the other Owner who is not extending, constructing or restoring it than that existing prior to the fire or other casualty, unless the written consent of the latter is first obtained. No part of any addition to the dimensions of that party wall (or of any extension thereof already built) that may be made by either one of the Owners who have used it (or by those claiming under them respectively) shall be placed in the Residence of the other Owner, unless the written consent of the latter is first obtained. If the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof proportionate to his use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omission.

D. Negligent or Willful Acts of Omissions. Notwithstanding any other provision of this Article, any Owner who by his negligent or willful act or omission causes damage to all or any part of the party wall, including, without limitation, causing all or a part of the party wall not previously exposed to the elements to be exposed to the elements, shall bear the whole cost of repairing such damage, including the furnishing of necessary protection against such elements.

E. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title to his Residence, as applicable. Upon conveyance or other transfer of title, the liability of the prior Owner shall cease.

F. Association Rights and Indemnities. Notwithstanding anything to the contrary contained elsewhere in this Article or the Declaration, in no manner shall the Developer or the Association have any responsibility for the maintenance and repair of a party wall. Further, in the event an Owner proposed to materially alter a party wall, such Owner shall be required to obtain the prior written consent of the Association and the Owner of the adjoining Residence with whom the party wall is shared and all such material alterations shall be subject to the architectural approvals as are required pursuant to this Declaration. Each Owner hereby agrees to indemnify, hold harmless and defend the Developer and Association and their respective officers, directors, employees and agents from any claim or liability directly or indirectly related to the sharing, repair, maintenance, destruction or act or omission relative to such party walls. Such indemnity, hold harmless and agreement to defend shall include all attorneys' fees at trial and appellate levels and costs incurred relative to the defense of the

Association and Developer and their respective Officers, Directors, employees and agents in the event of any such claim for liability

Section 3. Construction/Arbitration. Notwithstanding any other provisions in this article, an Owner who, by his negligent or willful acts causes a party wall to be exposed to the elements or to breach privacy between Residences and/or Buildings shall bear the whole cost of furnishing the necessary protection against such elements or breach of privacy. The right of any Owner to contribution or indemnification from any other Owner under this article shall run with the land, and shall pass to such owner's successors in title. In the event of any dispute arising concerning a party wall, such dispute shall be submitted to arbitration by the Association. If the Association is unable to resolve the dispute, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The decision of a majority of all the arbitrators shall bind the parties.

Section 4. Association Responsibility.

A. The Association shall be responsible for the maintenance of all Common Property, including the Recreation Facility, landscaping, easements; provided, however, that the expense of any maintenance, repair or reconstruction of any portion of the Common Property, the Recreation Facility; or other such properties designated by the Developer necessitated by the negligent or willful acts of an Owner, or of his family members, guests, employees, agents, lessees, licensees or invitees, shall be borne solely by such Owner, and such Owner's Residence shall be subject to an Individual Assessment for such expense. The Association shall also be responsible for the maintenance and repair of exterior portions of all Buildings including the roof, and structure. The Association shall also be responsible for the painting of the exterior of all Buildings (except those areas which are specifically the responsibility of the Owner as described in the immediately preceding section), and the maintenance of all sod and landscaping associated with each Building. The Association shall have a right of access to all Buildings to perform its maintenance obligations and to do other work reasonably necessary for the proper maintenance and operation of the Property, and such access shall not constitute a trespass.

B. The Association may undertake to be responsible for the maintenance of a Building or Residence when it is determined by the Association in its sole and absolute discretion that the Owner thereof has failed or refused to perform said maintenance, the expense of which will be borne by the Owner of said Building as an Individual Assessment.

C. Without limiting the foregoing, the Association shall be responsible for the maintenance of all water management or retention tracts within the Property, if any.

D. Developer, its parents, subsidiaries, affiliates, and their successors and assigns, may be the management agent for the Association and may employ or hire such employees, including but not limited to, attorneys, accountants, bookkeepers, brokers, gardeners and laborers, as Developer may deem necessary or appropriate in order to maintain the property described herein. No management agreement between the Association and Developer, its parents, subsidiaries, affiliates, or their successors and assigns shall be held invalid solely for the reason that at the time of entering into the management agreement, the employees, officers or agents of Developer, or its parents, subsidiaries, affiliates, or their successors and assigns are

officers, directors or employees of the Association.

Section 5. Maintenance of Additional Property. As additional property, including without limitation additional Residence and Common Property, is made subject to this Declaration, Developer shall have the absolute right to change, amend, or alter the maintenance provisions set forth in this Article V, and to add additional maintenance provisions for such additional property as deemed appropriate by Developer in its sole and absolute discretion.

ARTICLE VI

LANDSCAPING AND ARCHITECTURAL CONTROL

Section 1. Structures. No structure of any kind, including towers and antennas, shall be erected, altered, placed or permitted to remain, nor shall construction commence on or with respect to any residence by any person or entity other than the Developer, unless the design, construction specifications and a plan showing the location of the structure have been approved in writing by the Association as to quality, design and materials, in harmony with existing structures, and as to location with respect to topography and finished grade elevation.

Section 2. Landscaping. No trees, flowers, hedges, vines, bushes, sod, shrubs or landscaping of any kind shall be planted, placed or altered on any Residence until plans and specifications showing the nature, kind, materials and location of same shall have been submitted to and approved in writing by the Association. Approval or disapproval of any such plans and specifications may be based upon any considerations, including purely aesthetic considerations, so long as such considerations are applied on a uniform basis throughout the Property. Such approval may be based upon any reasonable conditions including without limitation the condition that such growths and landscaping be maintained by the Owner thereof rather than the Association. Such approval of the Association shall not be required in the event that the Association fails to give such approval or disapproval within thirty (30) days after receipt of a written request for same. In no event will the Associations' approval be unreasonably withheld nor will any charge be made therefor. Nothing contained in the paragraph shall be construed to lessen the obligation of any owner to make prompt application for and obtain all necessary governmental permits and other approvals with respect to any such structure. The provisions of this section shall not apply to the Developer.

Section 3. No Changes. No Owner may change the color of the exterior of his or her Residence or the color or type of roof shingles without prior written approval of the Association, which approval shall require two-thirds (2/3) affirmative vote of the members who are voting in person or by proxy.

ARTICLE VII

FUNCTIONS OF THE ASSOCIATION

Section 1. Required Services. In addition to those responsibilities specified in this Declaration, the Association shall be required to provide the following services:

A. Except as performed by an Owner pursuant to Article V of this Declaration, maintenance and care for all landscaped areas within the Property together with irrigation of same where provided by Developer.

B. Maintenance of any and all streets, roads, driveways, sidewalks and paths throughout the Property which have not been dedicated to the public.

C. Cleanup, maintenance and payment of property taxes with respect to the Common Property, both prior to and after conveyance of the Common Property by Developer to the Association.

D. Operation of the Common Property in accordance with the rules, regulations and standards adopted by the Association from time to time.

E. Taking any and all actions necessary to enforce all covenants, conditions and restrictions affecting the Property and to perform any of the functions or services delegated to the Association in any covenants, conditions or restrictions applicable to the Property or in the Articles or Bylaws.

F. Conducting business of the Association, including but not limited to administrative services such as legal, accounting and financial, and communication services informing Owners of activities, notice of meetings, and other important events.

G. Purchasing hazard insurance covering all improvements on the Common Property, and general liability insurance covering activities on the Common Property to the extent deemed necessary or desirable by the Association, both prior to and after conveyance of the Common Property by Developer to the Association. Further, the Association shall purchase hazard insurance at maximum replacement value covering any Residence for which the Owner thereof has not provided the Association with evidence of such insurance. Any such expense shall be specifically assessed against the Owner for whose residence such insurance is purchased. Notwithstanding the foregoing, it is the primary obligation of each Owner to purchase hazard insurance at maximum replacement value covering his Residence.

H. The Association shall effectively operate and maintain the Surface Water Management System in accordance with the St. John's River Water Management District Permit.

Section 2. Authorized Services. The Association shall be authorized, but not required, to provide the following services, which would be included in the Common Expenses of the Association:

- A. Lighting of roads, sidewalks and walks and paths throughout the Property.
- B. Fire protection and prevention.
- C. Garbage and trash collection and disposal.
- D. Protection and security, including, but not limited to, the employment of security guards within the Property.

- E. Maintenance of electronic and other security devices.
- F. Installation, operation and maintenance of cable television facilities.
- G. Pest control.

Section 3. Powers and Duties. The powers and duties of the Association shall include those set forth in the Articles, the Bylaws and this Declaration and shall include, but not be limited to, the following:

A. The irrevocable right of access to each Residence as may be necessary for making emergency repairs necessary to prevent damage to the Common Property or to another Residence.

B. The power to levy and collect Assessments from Owners and to maintain, repair and replace the Common Property.

C. The keeping of accounting records in accordance with good accounting practices which records shall be open to inspection by Owners or their authorized representatives at reasonable times and written summaries of which shall be supplied at least annually to Owners or their authorized representatives.

D. The power to enter into contracts with others for the maintenance, management, operation, repair and servicing of the Property. The service and maintenance contracts referred to herein may delegate the Association's duty to maintain, preserve, repair and replace the Common Property, but shall not relieve each owner from his personal responsibility to maintain and preserve the interior surfaces of his Residence and to paint, clean, decorate, maintain and repair said Residence. Each Owner, by his acceptance of the deed to his Residence, shall bind himself, his heirs, personal representatives, successors and assigns to any management contract for the purposes herein expressed including, but not limited to, adopting, ratifying, confirming and consenting to the execution of same by the association, covenanting and promising to perform each and every of the covenants, promises and undertakings to be performed by Owners as required under said contract, acknowledging that all of the terms and conditions thereof, including the manager's fee, are reasonable and agreeing that the persons acting as directors and officers of the Association entering into such a contract have not breached any of their duties or obligations to the Association by virtue of the execution of said contract. The management contract, if any, and the acts of the Board of Directors and Officers of the Association in entering into such agreement, are hereby ratified, confirmed, approved and adopted.

E. The power to adopt reasonable rules and regulations for the maintenance and conservation of the Property, and for the health, comfort, safety and welfare of the Owners, all of whom shall be subject to such rules and regulations; provided, however, that no rule or regulation shall in any way affect any of the rights, privileges, powers or options of the Developer without the prior written consent of the Developer.

F. The power to purchase Residences and to acquire, hold, lease, mortgage and convey the same.

G. The maintenance, operation and repair of the surface water or storm water management system. Maintenance of the surface water or storm water management system(s) 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 St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or storm water management system shall be as permitted, or if modified, as approved by the St. Johns River Water Management District.

ARTICLE VIII

EASEMENTS

Section 1. Utilities. The Property shall be subject to such easements as may be determined in the sole discretion of Developer for utilities including, but not limited to, water, sewer, electric and cable television as may be reasonably required to properly and adequately serve the Property as it exists from time to time. Each of said easements, whether heretofore or hereafter created, shall constitute covenants running with the Property and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with the proper and intended use of any portion of the Property and said easements shall survive any termination of this Declaration. Said easements shall not interfere with, and shall be subordinate to, the use and title of every Residence.

Section 2. Drainage. The Association shall have a perpetual non-exclusive easement over all areas of the surface water or storm water management system for access to operate, maintain, or repair the system. By this easement, the Association shall have the right to enter upon any portion of the Property which are a part of the surface water or storm water management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or storm water management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or storm water management system. No person shall alter the drainage flow of the surface water or storm water management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District. The Developer reserves, for the Owners and the Association, collectively, the right to grant additional non-exclusive easements over, under, across and through the Common Areas, provided that such additional easement grants do not interfere with the effective maintenance and operation of the Surface Water Management System.

Section 3. Developer. Developer hereby reserves unto itself and for the benefit of its designees and invitees, over, under and through the Common Property, such non-exclusive easements of access, ingress and egress, use and enjoyment, parking and other purposes as Developer in its full discretion deems necessary or desirable. The easement right reserved hereunder unto Developer may be exercised by it or its designees notwithstanding that Developer shall no longer own any portion of the Property.

Section 4. Encroachments. An encroachment of a Residence's chimney, ground level steps, driveway, overhang, or awnings into a right-of-way of the Property must be authorized by both

the Association and the appropriate governmental authority. If the encroachment is damaged by work within utility easement areas, such damage shall be the responsibility of the Owner and the Owner shall indemnify and hold harmless Developer, the Association, and the appropriate governmental authority from such damage.

Section 5. Unintentional Encroachments. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Residence in such portion or portions of the Common Area as are adjacent thereto and between adjacent Residences due to the unintentional placement or settling or shifting of the improvements constructed, re-constructed, or altered thereon (in accordance with the terms of these Restrictions) to a distance of not more than three (3) feet as measured from any point on the common boundary line between each Residence and the adjacent portion of the Common Area or as between said adjacent Residences, as the case may be, along the line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of or with the knowledge and consent of an Owner, occupant, or the Association.

Section 6. Service. Developer hereby grants to delivery, pick-up and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities authorized by the Developer to service the Property, and to such other persons as the Developer from time to time may designate, the non-exclusive, perpetual right of ingress and egress over and across the Common Property for the purposes of performing their authorized services and investigation.

Section 7. Association. Such easements throughout the Property as may reasonably be necessary for the Association to perform its services required and authorized hereunder are hereby granted in favor of the Association.

Section 8. Execution. To the extent that the creation of any of the easements described in this Article requires the joinder of Owners, the Developer by its duly authorized officers may, as the agent or other attorney-in-fact for the Owners, execute, acknowledge and deliver such instruments and the Owners, by the acceptance of deeds to their Residences, irrevocably nominate, constitute and appoint the Developer, through its duly authorized officers, as their proper and legal attorney-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such instrument executed pursuant to this Article shall recite that it is made pursuant to this Article.

ARTICLE IX

USE RESTRICTIONS

Section 1. Signs. No signs of any kind shall be erected anywhere on the Property without the written consent of the Board of Directors, except signs installed by the Developer.

Section 2. Parking and Prohibited Vehicles. Vehicles shall be parked only in the garages or in the driveways serving the Residences or in designated spaces or areas in which parking may be assigned. Commercial vehicles, including pickup trucks, vehicles with commercial writing on

their exteriors, vehicles primarily used or designated for commercial purposes, tractors, mobile homes, recreational vehicles, trailers, campers, camper trailers, boats and watercraft shall be parked only in enclosed garages.

Section 3. Rules of the Property. The Association may adopt such reasonable rules and regulations as proposed by the Board of Directors for the use, governance, maintenance and occupation of the Property, which rules shall inure to the benefit of the Property and shall be binding upon all Owners.

Section 4. Quiet Enjoyment. No noxious, illegal, or offensive activities shall be carried on or upon any portion of the Property, nor shall anything be done thereon which causes embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. There shall not be maintained any plants, animals, or devices of any sort whose activities, existence, or use in any way is noxious, dangerous, unsightly, unpleasant, annoying, or of a nature as may diminish or destroy the enjoyment of the Property.

Section 5. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unhealthy, unsightly, or unkempt condition on his or her Residence, and upon failure of such, the Association is hereby authorized to remove the condition and assess the Owner for the cost thereof in the manner described elsewhere.

Section 6. Antennas. There shall be no exterior towers, antennas, aerials and satellite dishes, except as herein provided.

Section 7. Games and Play Apparatus. All games and play apparatus remaining outdoors for more than three days shall be located at the rear or side of the Residence, so as not to be visible from any street. The Association may make exceptions and permit basketball backboards or similar play apparatus that is visible from the street. Any permitted basketball standards must be in writing by the Association and shall be constructed of uniform black enamel pole and white backboard and shall be a minimum of fifteen (15) feet from any paved street.

Section 8. Animals, Birds and Foul. No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Property, except that a reasonable number of dogs, cats, or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. No pet shall be allowed to be unleashed on the Property. All pets shall be maintained in a quiet and orderly fashion so as not to disturb other Owners. Pet owners shall be responsible at all times for cleaning up after the pet and no pet may soil outside without immediate clean up. Pet owners shall comply with all governmental regulations concerning the proper care, maintenance, licensing and control of their individual pets.

Section 9. Street Address Numbers and Mailboxes. All street address numbers installed on each Residence and/or mailboxes shall be uniform as to type, color, and design as approved by the Association. The location of street address numbers shall be as uniform as possible on each Residence. The location and type of the mailboxes shall be as initially determined by the Developer.

Section 10. Subdivision and Timesharing. No Residence shall be subdivided or its boundary

lines changed. No Residence shall be made subject to any type of timesharing, or other program whereby the right to exclusive use of the Residence is offered to persons other than the Owner, without the prior written consent of the Association. Leasing of a Residences by the Owner is permitted, however, no lease terms shall exceed two (2) lease terms per calendar year period.

Section 11. Tree Removal. No trees shall be removed, except for diseased or dead trees, by any persons other than the Developer as necessary for development, unless such removal is approved by the Association.

Section 12. Air Conditioning Units. No window air conditioning units may be installed in any Residence.

Section 13. Refuse Containers. No Residence or Building shall be used or maintained as a dumping ground for rubbish. Except for the day allocate for collection, trash, garbage and other waste shall be kept in sanitary refuse containers, which shall be placed inside the garage area, so they are not visible from the Streets, from adjoining Buildings, from the Common Property, or from the Recreation Facilities. During construction upon a Building, the Developer may maintain a dumpster thereon for disposal of construction debris, subject to approval by the Association of the type and location of the dumpster.

Section 14. Emergencies. Buildings and/or Residences may be boarded up only when there is an imminent threat of a storm. In no event shall any Residence and/or Building be boarded up for any period of time after the imminent threat of a storm has passed. No hurricane or storm shutters shall be installed or maintained unless they are first approved, in writing, by the Association as provided herein.

Section 15. Lake Maintenance Easement. All Owners, invitees, guests, and contractors shall abide by and adhere to the following as it relates to the Lake and the Lake Maintenance Easement:

A. No boats, jet skis or similar water crafts, or any other floating devices, including but not limited to surf boards or swimming rafts and floats, shall be permitted to be used in the Lake;

B. No docks, decks, structures, building or any type of construction shall be permitted within the Lake Maintenance Easement or Tract A area.

C. No vegetation, including trees, limbs, bushes, shrubs, grass, shall be removed or cleared from the Lake Maintenance Easement without the prior approval of the Board of Directors, and on the approval list by St. Johns River Water Management District.

D. The Lake Maintenance Easement shall be maintained in full sod and/or natural vegetation to the water's edge and shall be kept neatly maintained. No sand beaches above the waterline shall be permitted.

E. No wildlife or waterfowl shall be imported into the Lake without prior written approval of the Association.

F. No fish shall be introduced into the Lake and Lake Maintenance Easement unless approved in writing by the Association and on an approval list by St. Johns River Water Management District of Florida Game and Fresh Water Fish Commission.

G. No guests shall be permitted upon or within the Lake Maintenance Easement and Tract A unless accompanied by the property owner who has legal access permitted under this Declaration.

ARTICLE X

RIGHTS OF DEVELOPER

Notwithstanding anything herein to the contrary, Developer shall, so long as it owns any portion of the Property, have the right to do as follows:

A. Use, occupy, demonstrate and show all portions of the Common Property for the purpose of promoting and aiding in the development, marketing, sale or rental of any portion of Property owned by it.

B. Display and erect signs and placards upon the Common Property and any portion of the Property owned by it.

C. Operate and maintain sales offices and related facilities upon Common Property and any portion of the Property owned by it.

ARTICLE XI

ENFORCEMENT

Enforcement of the terms, conditions, restrictions, covenants, reservations, liens and charges contained in this Declaration shall be by any proceeding at law or in equity against any person or entity violating or attempting to violate any of same, either to restrain violation or to recover damages, or against any real property subject to this Declaration or to enforce any lien rights hereunder. Any such proceeding, action or suit may be brought by the Association, any Owner, or the Developer, its successors or assigns. Failure by any Owner, the Association or the Developer, its successors or assigns, to enforce any covenant or restriction contained herein for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same. Should the Association find it necessary to institute legal action against a member of the Association other than the Developer to enforce compliance with this Declaration, the Articles and Bylaws of the Association or the rules and regulations of the Association, upon a finding by a court in favor of the Association, the defendant member shall reimburse the Association for its costs of suit, including reasonable attorney's fees at both trial and appellate level, incurred by it in bringing such action. The payment of any monetary award by the court in such legal action shall be secured by a lien against the Residence of said defendant member. The operation and foreclosure of such lien shall be in accordance with Article IV of this Declaration.

St. Johns River Water Management District shall have the right to enforce by a proceedings at law or in equity the provisions contained in this Declaration which relates to the maintenance, operation, and repair of the Surface Water or Storm Water Management System.

ARTICLE XII

TRANSFERS OF LOTS OR UNITS

In order to preserve the values and amenities of the Community, the following provisions shall be applicable to sales, leases and other transfers in the Community:

Section 1. Transfers Subject to Right of Refusal. In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the Property, no Owner, other than Developer, to whom this Article does not apply, may transfer title or beneficial ownership of his Residence, or any interest therein, by sale, lease or any other means whatsoever, without the prior written approval of the Association as provided hereinafter.

Section 2. Entity Ownership. If the purchaser or lessee of a Residence is a corporation, trust or entity other than an individual person, the person who executes the lease or contract to purchase shall be the primary occupant of the Residence unless the purchaser or lessee designates otherwise. All other occupants shall be considered as either guests or lessees, as may be appropriate, who shall be subject to all use and occupancy restrictions provided in the Declaration, and in the rules and regulations of all governing associations. All such approvals shall be made on forms supplied by the Association.

Section 3. Notice to the Association. Any Owner intending to make a bona fide sale, transfer or lease of his Residence, as the case may be, or any interest therein, (except a mortgage) shall give the Association notice of such intention by filing with the Association a written Resale Notice or Notice of Lease, as applicable, on the form prescribed by the Association. Such Notice shall include the name and address of the intended Purchaser or Lessee, the proposed purchase price or rent, the terms of the transaction, and such other information concerning the intended Purchaser or Lessee as the Association may reasonably require, together with an executed copy of the proposed Contract, Lease or other transfer instrument.

A reasonable administrative fee, as determined by the Association, may be charged by the Association to the Owner, for the purpose of defraying the cost associated with processing of the application for approval, reflecting the proposed transfer in the books and records of the Association and other matters associated with any Board approved transfer. If the required Notice to the Association shall not be given, then at any time after receiving the knowledge of the transfer of ownership or possession of the Residence, the Association may, without notice, approve or disapprove of the transaction.

Section 4. Certificate of Approval. In the case of a sale, if the proposed transfer is approved by the Association, such approval shall be evidenced by a Certificate of Approval, executed by the President, Vice President or Secretary of the Association, which Certificate shall be recorded in the Public Records of the County, at the expense of the Seller of the Residence.

ARTICLE XIII

INSURANCE AND CONDEMNATION

Section 1. Insurance Coverages. The Association shall purchase and maintain a policy of comprehensive general public liability insurance naming the Association and Developer as insureds. Coverage shall be in an amount to be determined from time to time by the Board of Directors. Coverage shall include liability of the Association and Developer for bodily injury, death and property damage. Any such policy will provide that it cannot be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and Developer. Each Owner is responsible for purchasing and maintaining a policy of comprehensive general public liability insurance providing coverage for his Residence. Copies of insurance policies shall be provided annually by the Owner to the Association, together with a Certificate of Insurance naming the Association as an additional insured. In the event that the certificate is not provided within fifteen (15) days of written request therefore, Association and Developer shall have the right and obligation to obtain similar insurance coverage with similar deductible and such Owner's Residence shall be subject to an Individual Assessment for such expense in accordance with Article IV of the Declaration.

Section 2. Waiver of Subrogation. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Developer and the officers, directors, agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received as compensation for such loss.

Section 3. Other Insurance Coverages. The Association shall maintain such other insurance coverages, including, but not limited to, a policy of insurance or fidelity bond naming the Association as the insured or as obligee to protect the Association against the wrongful acts or omissions of any officer, director, trustee, agent or employee of the Association and all of the persons who handle or are responsible for the handling of funds of, or funds administered by the Association in such amounts and upon such terms as the Board of Directors deems necessary. The Association may also obtain Workmen's Compensation Insurance and other liability insurance as it deems desirable insuring each Owner and the Association and Board from liability in connection with the Common Property. The premiums for all insurance coverages obtained by the Association shall be and are hereby declared Common Expenses and included in the Annual Assessments and Special Assessments made against Owners.

Section 4. Hazard Insurance. Each Owner shall maintain, at his sole expense, windstorm, fire and extended insurance coverage with a responsible insurance company upon the insurable Improvements on his Residence, including, but limited to, his Building for the full replacement value thereof and all floor coverings, wall coverings, drywall, ceiling coverings and other portions of the individual Residence. Such policies may contain reasonable deductible provisions as may be determined by the Association. Such coverage shall afford protection against loss or damage from fire, windstorm and other hazards covered by a standard extended coverage endorsement, and such other risks as are from time to time customarily covered with respect to Residences and Improvements similar to the Project in construction, location and use,

including, but not limited to, vandalism and malicious mischief. Each Owner shall be responsible for insuring his own personal property within his Residence and any Improvements made by him within his Residence. Copies of insurance policies shall be provided annually by the Owner to the Association, together with a Certificate of Insurance naming the Association as an additional insured. In the event that the certificate is not provided within fifteen (15) days of written request therefore, Association and Developer shall have the right and obligation to obtain similar insurance coverage with similar deductible and such Owner's Residence shall be subject to an Individual Assessment for such expense in accordance with Article IV of the Declaration.

Section 5. Director and Officers Liability Coverage. The Association through its Board of Directors shall use reasonable efforts to obtain Directors and Officers liability insurance in such amounts of coverage as the Board of Directors determines, in its sole discretion, insuring each Director and Officer of the Association from any acts or omissions, which may occur in the performance of his duties as a Director or Officer of the Association. The cost of such Directors and Officers liability insurance shall be a General Expense of the Association.

Section 6. Developer Named As Insured. Whenever the Association is required to purchase and maintain a policy of insurance or bond which shall, according to the terms of this Article XIII, name Developer as an insured, such obligation to name the Developer as an insured shall cease upon Developer's and Developer's Affiliate's conveyance of title to the last Residence in owned by Developer.

Section 7. Condemnation. In the event all or any part of the Common Property are the subject of a taking by a governmental or quasi-governmental authority having the power of condemnation or eminent domain, the award for such taking shall be subject to the approval of the Board of Directors of the Association and such award shall be made payable to the Association as Trustee for all Owners to be disbursed in the following manner:

A. In the event the taking involves a portion of the Common Property on which Improvements have been constructed, then the Association shall restore or replace such Improvements taken on the remaining land included in the Common Property to the extent lands are available therefor. Such Improvements shall be in accordance with plans and specifications approved by the Board of Directors of the Association. In the event a determination is made by the Board of Directors of the Association that such Improvements being taken shall not be replaced or restored elsewhere on the remaining Common Property, such determination shall be subject to the approval of two-thirds (2/3) of the Members, voting in accordance with this Declaration and the Bylaws;

B. If the taking does not involve any Improvements on the Common Property or if a determination has been made not to repair or restore Improvements on land being taken, or in the event there is a balance existing after the payment of costs of restoration or replacement is completed, then such net award or net funds shall be disbursed to the Association to be used for such purposes as the Board of Directors of the Association shall determine;

C. Until such time as the Developer transfers control of the Association pursuant to Article III of this Declaration, all awards for the taking of Common Property or any

portion thereof and agreements and settlements related thereto shall be subject to the approval of the Developer, which approval shall be in Developer's sole discretion.

ARTICLE XIV

GENERAL PROVISIONS

Section 1. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, the Developer and any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon expiration of said thirty (30) year period this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes cast at a duly held meeting of members of the Association and two-thirds (2/3) of the Institutional Lenders are in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Official Real Estate Records for Indian River County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Amendments by Members. This Declaration may be amended only as follows:

A. Developer may amend this Declaration without the consent of the members at any time that it shall be in control of the Association.

B. Thereafter, this Declaration may be amended provided that two-thirds (2/3) of the votes cast by the members present at a duly called and held meeting of the Association vote in favor of the proposed amendment.

C. No amendment shall be passed which impairs or prejudices the right of Lenders or the Developer.

D. Notice shall be given at least forty-five (45) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the members as set forth above, the President and Secretary of the Association shall execute an Amendment to this Declaration which shall set forth the amendment, the effective date of the amendment which in no event shall be less than sixty (60) days after the date of recording the amendment, the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt the amendment, the total number of votes cast for the amendment, and the total number of votes cast against the amendment. Such amendment shall be recorded in the Official Records of Indian River County, Florida.

E. Notwithstanding Article XII of this Declaration, or any other amendment provision, any amendment (including a termination) of this Declaration that would directly and adversely affect the operation and maintenance of the surface water or storm water management system in a material respect must have the prior approval of the St. Johns River Water Management District.

Section 3. Quorum. Quorum requirements in the Articles of Incorporation to the contrary notwithstanding, the first time any meeting of the members of the Association is called to take action under Section 2 of this Article, the presence at the meeting of the members or proxies entitled to cast a majority of the total vote of the members shall be required.

Section 4. Notices. Any notice required to be sent to any member or Owner under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, to the last known address of the person or entity who appears as Owner in the public records of Indian River County, Florida. Notice to one of two or more Co-Owners of a Residence shall constitute notice to all Co-Owners. It shall be the obligation of every member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes an Owner and member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

Section 5. Severability. Should any covenant, condition or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof, which are hereby declared to be severable and which shall remain in full force and effect.

Section 6. Interpretation. The Board of Directors of the Association shall have the right except as limited by any other provisions of this document or the Bylaws to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its good faith, determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be given interpretation or construction that will best tend toward the consummation of the general plan of improvements.

Section 7. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the Bylaws of the Association, unless the terms of this instrument provide otherwise.

Section 8. Termination of Declaration. Should the members of the Association vote not to renew and extend this Declaration as provided herein, all Common Property shall be transferred to a Trustee appointed by the Circuit Court for Indian River County, Florida, which Trustee shall sell the Common Property free and clear of the limitations imposed hereby upon terms established by the Circuit Court for Indian River County, Florida. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Property then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of the Common Property. The excess of proceeds, if any, from Common Property shall be distributed among the Owners in a proportion which is equal to the proportionate share of such Owners in Common Expenses.

Section 9. Enforcement. The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water or storm water management system.

Section 10. Non-Condominium. The Association created pursuant to this Declaration and the Articles of Incorporation and By-Laws of the Association is expressly not intended to be a condominium association and is not created in accordance with, and is not subject to, Florida Statutes, Chapter 718, in existence as of the date of recording this Declaration or as amended at any time. The Common Property is not intended to be a condominium property under, and is not subject to, Florida Statutes, Chapter 718, in existence as of the date of recording this Declaration, and is not intended to be part of the common elements of any condominium.

Section 11. Context. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

Section 12. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Property.

IN WITNESS WHEREOF, the Developer has caused this Amended and Restated Declaration to be executed in its name and its corporate seal to be affixed this 1 day of Aug, 2014.

Signed, sealed and delivered in the presence of:

FOXWOOD DEVELOPMENT, LLC

By:

Print Name:

Meredith A Tessier

Name:

Lloyd S. Moody

Title:

Managing member

Print Name:

Brian J Burkew

STATE OF

FLORIDA

COUNTY OF

INDIAN RIVER

The foregoing instrument was acknowledged before me this 1st day of August, 2014, by Lloyd S. Moody, Managing Member of Foxwood Development, LLC., on behalf of the LLC, and who is personally known to me.

Notary Public, State of Florida



EXHIBIT A
LEGAL DESCRIPTION TO THE PROPERTY

Exhibit A
Legal Description of Property
Foxwood

The west ten acres of tract 13 of the INDIAN RIVER FARMS COMPANY SUBDIVISION, in Section 32, Township 32 South Range 39 East, recorded in Plat Book 2, page 25, of the Public Records of St Lucie County, Florida; said land now lying and being in Indian River County, Florida.

LESS AND EXCEPT Road Right-of-Way and LESS portions to Indian River County as recorded in Official Records Book 1086, page 2551 and Official Records Book 1736, page 1305, both of the Public Records of Indian River County, Florida.

EXHIBIT B
SITE PLAN AND ALL RELATED DEVELOPMENT PLAN DOCUMENTS

