

**\*\* OFFICIAL RECORDS \*\***  
**BK 2128 PG 1074**

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**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**KELLY PLANTATION**

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**Atlanta, Georgia 30303**

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2019

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**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR KELLY PLANTATION**

**W I T N E S S E T H:**

THIS AMENDMENT is made by Kelly Plantation Partners, a Florida general partnership ("Declarant").

WHEREAS, on February 10, 1994, Declarant executed that certain Declaration of Covenants, Conditions and Restrictions for Kelly Plantation which was recorded in the Office of the Clerk of the Circuit Court of Okaloosa County, Florida on October 10, 1994, at Official Records Book 1869, Page 1878, et seq. (the "Original Declaration"); and

WHEREAS, pursuant to Article XIII of the Original Declaration, Declarant reserved the specific right to unilaterally amend that instrument for the orderly development of the community; and

WHEREAS, pursuant to Section 15.2(a) of the Original Declaration, Declarant reserved the right to unilaterally amend that instrument from time to time until termination of the Class "B" membership, subject to certain limitations described therein; and

WHEREAS, the Class "B" membership has not terminated; and

WHEREAS, pursuant to Section 6.6(a) of the By-Laws of Kelly Plantation Owners Association, Inc., (the "Original By-Laws") the Class "B" member may unilaterally amend that instrument during the Class "B" Control Period, subject to certain limitations described in that Section; and

WHEREAS, the Class "B" Control Period is still in effect; and

WHEREAS, Declarant, as the Class "B" Member, desires to amend the Original Declaration and the Original By-Laws in various respects;

NOW, THEREFORE, the Original Declaration and the Original By-Laws are hereby replaced and superseded in their entirety and the following Amended and Restated Declaration and Amended and Restated By-Laws are substituted in their place:

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**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**KELLY PLANTATION**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made by KELLY PLANTATION PARTNERS, a Florida general partnership (the "Declarant") as of the date set forth on the signature page hereof.

This Declaration imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties.

All of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

**Article I**  
**DEFINITIONS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Kelly Plantation Owners Association, Inc., as filed with the Secretary of State of the State of Florida.

1.3. "Association": Kelly Plantation Owners Association, Inc., a Florida nonprofit corporation, its successors or assigns.

1.4. "Base Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.3.

1.5. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Florida corporate law.

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1.6. "Builder": Any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.7. "By-Laws": The Amended and Restated By-Laws of Kelly Plantation Owners Association, Inc., attached as Exhibit "E," as they may be further amended.

1.8. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3 of the By-Laws.

1.9. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Exclusive Common Area, as defined below.

1.10. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class "A" vote of the Association.

1.11. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee.

1.12. "Covenant To Share Costs": That certain Declaration of Easements and Covenant to Share Costs executed by Declarant and recorded, or to be recorded, in the Official Records which creates certain easements for the benefit of the Association and the present and future owners of the real property subject thereto and which obligates the Association and such owners to share the costs of maintaining certain property described therein.

1.13. "Declarant": Kelly Plantation Partners, a Florida general partnership, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.14. "Design Guidelines": The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article IX.

1.15. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Article II.

1.16. "Golf Course": Any parcel of land adjacent to or within the Properties which is privately owned and which is operated as a golf course by Persons other than the Association, and related and supporting facilities and improvements operated and/or maintained in connection with or incidental to such golf course.

1.17. "Member": A Person entitled to membership in the Association pursuant to Section 3.2.



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1.18. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.19. "Mortgagee": A beneficiary or holder of a Mortgage.

1.20. "Mortgagor": Any Person who gives a Mortgage.

1.21. "Neighborhood": Each separately developed residential area within the Properties, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each townhome development, cluster home development, and single-family detached housing development may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as defined below) having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 3.4.

1.22. "Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 8.1 and 8.4.

1.23. "Neighborhood Association": Any condominium association or other owners association having concurrent jurisdiction with the Association over any Neighborhood.

1.24. "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Neighborhood(s).

1.25. "Official Records": The Office of the Clerk of the Circuit Court of Okaloosa County.

1.26. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.27. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.28. "Private Amenity": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, and shall include, without limitation, the Golf Course, if any, which is so located and all related and supporting facilities and improvements.

1.29. "Properties": The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article VII.

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- 1.30. "Special Assessment": Assessments levied in accordance with Section 8.6.
- 1.31. "Specific Assessment": Assessments levied in accordance with Section 8.7.
- 1.32. "Supplemental Declaration": An instrument filed in the Official Records pursuant to Article VII which subjects additional property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument filed by the Declarant pursuant to Section 3.4(c) which designates Voting Groups.
- 1.33. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, common property of any Neighborhood Association, or property dedicated to the public. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the maximum number of Units allowed by the applicable local zoning ordinances or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat or condominium plat, if any, is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

With prior written approval of Declarant, the Owner of two or more contiguous Units may consolidate the Units for the sole purpose of constructing a Dwelling Unit thereon. The Owner of this consolidated Unit shall be responsible for assessments as if the Units had not been consolidated and shall have the number of votes for purposes of voting on Association matters as if the Units had not been consolidated.

1.34. "Voting Group": One or more Voting Members who vote on a common slate for election of directors to the Board of Directors of the Association, as more particularly described in Section 3.4(c) of this Declaration or, if the context so indicates, the group of Members whose Units are represented thereby.

1.35. "Voting Member": The representative selected by the Class "A" Members within each Neighborhood to be responsible for casting all Class "A" votes attributable to Units in the Neighborhood on all matters requiring a vote of the membership (except as otherwise specifically provided in this Declaration and in the By-Laws). The term "Voting Member" shall also refer to alternate Voting Members acting in the absence of the Voting Member and any Owners authorized personally to cast the votes for their respective Units pursuant to Section 3.4(b).

**Article II**  
**PROPERTY RIGHTS**

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;

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- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association after notice and a hearing pursuant to Section 3.24 of the By-Laws;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
- (g) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (i) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.2; and
- (j) The right of the Association to rent or lease any portion of any recreational facility within the Common Area on a short-term basis to any Owner for the exclusive use of such Owner and such Owner's family and guests, and/or to rent or lease any portion of any recreational facility within the Common Area on a short-or long-term basis to the owner of the Golf Course for the exclusive use of the owner of the Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees, and authorized users of the Golf Course.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of Units within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of Units in the Neighborhood(s) to which the Exclusive Common Areas are assigned.

Initially, any Exclusive Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed by which the Declarant conveys the Common Area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude the

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Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 7.1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Voting Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as the Declarant owns any property described on Exhibits "A" or "B" for development and/or sale, any such assignment or reassignment shall also require the Declarant's written consent.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or board of directors of the Neighborhood Association for the Neighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Area.

2.3. Private Amenities. Access to and use of any Private Amenity is strictly subject to the rules and procedures of the owner of such Private Amenity, and no Person gains any right to enter or to use any Private Amenity by virtue of membership in the Association or ownership or occupancy of a Unit.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of the Private Amenities. No purported representation or warranty in such regard, written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity.

The ownership or operation of any Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent Person, (b) establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity, or (c) the conveyance of a Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association, any Neighborhood Association, or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity, subject to the terms of any written agreements entered into by such owners.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

2.4. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.5. Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least 67% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent

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domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Voting Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

### **Article III** **MEMBERSHIP AND VOTING RIGHTS**

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board or the membership may adopt pursuant to Article X. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Florida.

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.11. All Class "A" votes shall be cast as provided in Section 3.3(c) below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Section 3.3 of the By-Laws. After termination of the Class "B" Control Period,

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the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in Section 3.19 of the By-Laws.

The Class "B" membership shall terminate upon the earlier of:

- (i) two years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws; or
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Units within any additional property made subject to this Declaration pursuant to Article VII, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Voting Member representing the Neighborhood of which the Unit is a part, as provided in Section 3.4(b). The Voting Member may cast all such votes as it, in its discretion, deems appropriate.

In any situation where a Member is entitled personally to exercise the vote for his Unit and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

#### 3.4. Neighborhoods, Voting Members and Voting Groups.

(a) Neighborhoods. Every Unit shall be located within a Neighborhood. The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except as required by law. Any Neighborhood which does not have a Neighborhood Association may elect a Neighborhood Committee, as described in Section 5.3 of the By-Laws, to represent the interests of Owners of Units in such Neighborhood.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood and, upon the affirmative vote, written consent, or a combination thereof, of Owners of 67% of the Units within the Neighborhood, the Association shall provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Article VIII hereof.

Exhibit "A" to this Declaration, and each Supplemental Declaration filed to subject additional property to this Declaration, shall initially assign the property described therein to a specific Neighborhood (by name or other identifying designation), which Neighborhood may be then existing or newly created. So long as it has the right unilaterally to annex additional property pursuant to Section 7.1, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to redesignate Neighborhood boundaries; provided,

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two or more existing Neighborhoods shall not be combined without the consent of Owners of 67% of the Units in the affected Neighborhoods.

The Owner(s) of 67% of the total number of Units within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two or more Neighborhoods. Such petition shall be in writing and shall include a survey of the entire parcel which indicates the proposed boundaries of the new Neighborhoods or otherwise identifies the Units to be included within the proposed Neighborhoods. Such petition shall be deemed granted 30 days following the filing of all required documents with the Board unless the Board of Directors denies such application in writing within such 30 day period. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(b) Voting Members. Each Neighborhood shall elect a Voting Member who shall be responsible for casting all votes attributable to Units owned by Class "A" Members in the Neighborhood on all Association matters requiring a membership vote, except as otherwise specified in this Declaration or the By-Laws. In addition, each Neighborhood shall elect an alternate Voting Member who shall be responsible for casting such votes in the absence of the Voting Member. The Voting Member and alternate Voting Member from each Neighborhood shall be elected on an annual basis, either by written ballot cast by mail or at a meeting of the Class "A" Members within such Neighborhood, as the Board determines; provided, upon written petition signed by Class "A" Members holding at least 10% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. The presence, in person or by proxy, of Class "A" Members representing a majority of the total Class "A" votes attributable to Units in the Neighborhood shall constitute a quorum at any Neighborhood meeting.

The Board shall call for the first election of a Voting Member from a Neighborhood not later than one year after the conveyance of a Unit in the Neighborhood to a Person other than a Builder. Subsequent elections shall be held within 30 days of the same date each year. Each Class "A" Member who owns a Unit within the Neighborhood shall be entitled to cast one equal vote per Unit owned. The candidate who receives the greatest number of votes shall be elected as Voting Member and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Member. The Voting Member and the alternate Voting Member shall serve a term of one year and until their successors are elected.

Any Voting Member may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the total number of Units owned by Class "A" Members in the Neighborhood which the Voting Member represents.

Until such time as the Board first calls for election of a Voting Member for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue requiring a vote of the Voting Members under this Declaration, the By-Laws, or the Articles.

(c) Voting Groups. The Declarant may designate Voting Groups consisting of one or more Neighborhoods for the purpose of electing directors to the Board, in order to promote representation on the Board of Directors for various groups having dissimilar interests and to avoid a situation in which the Voting Members representing similar Neighborhoods are able, due to the number of Units in such Neighborhoods, to elect the entire Board of Directors, excluding representation of others. Following termination of the Class "B" Control Period, the number of Voting Groups within the Properties shall not exceed the total number of directors to be elected by the Class "A" Members pursuant to the By-Laws. The Voting Members representing the Neighborhoods within

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each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of directors specified in Section 3.5 of the By-Laws.

The Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Class "B" Control Period by filing with the Association and in the Official Records, a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by the Declarant, acting alone, at any time prior to the expiration of the Class "B" Control Period.

After expiration of the Declarant's right to annex property pursuant to Article VII, the Board shall have the right to file or amend such Supplemental Declaration upon the vote of a majority of the total number of directors. Neither recordation nor amendment of such Supplemental Declaration shall constitute an amendment to this Declaration, and no consent or approval of any Person shall be required except as stated in this paragraph. Until such time as Voting Groups are established, all of the Properties shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed, any and all portions of the Properties which are not assigned to a specific Voting Group shall constitute a single Voting Group.

#### **Article IV** **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibits "A" or "B", personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the By-Laws, or Association rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, in accordance with Section 3.24 of the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case



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in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit Okaloosa County or the City of Destin to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. For so long as the Declarant owns any property described on Exhibits "A" or "B," the Declarant may designate sites within the Properties for fire, police, and utility facilities, public schools and parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Florida law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to Okaloosa County, Florida, the City of Destin, or to any other local, state, or federal governmental or quasi-governmental entity.

4.8. Security. **The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measures, including any mechanism or system for limiting access to the Properties, can not be compromised or**

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circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9. Powers of the Association Relating to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association or Neighborhood Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association or Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association, and (b) require that a proposed budget include certain items and that expenditures be made therefor.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association or Neighborhood Committee shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association or Neighborhood Committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Units in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Section 8.7. Such assessments may be collected as a Specific Assessment hereunder and shall be subject to all lien rights provided for in Article VIII.

## **Article V** **MAINTENANCE**

### 5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all landscaping and other flora, parks, lakes, structures, and improvements, including any private streets, bike and pedestrian pathways/trails, situated upon the Common Area;

(ii) landscaping within public rights-of-way within or abutting the Properties;

(iii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, the Covenant to Share Costs, or any contract or agreement for maintenance thereof entered into by the Association;

(iv) all ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith; and

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(v) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, a Covenant to Share Costs, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

Upon resolution of the Board of Directors, the Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility which solely benefits such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent public roads, private streets within the Neighborhood and ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless, such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants

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applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Neighborhood's Responsibility. Any Neighborhood Association whose common property is adjacent to any portion of the Common Area upon which a wall, other than a wall which forms part of a building, is constructed shall maintain and irrigate that portion of the Common Area between the wall and the Neighborhood Association's property line. Any Neighborhood Association whose common property fronts on any roadway within the Properties shall maintain and irrigate the landscaping on that portion of the Common Area or right-of-way between the property line and the nearest curb of such roadway. Any Neighborhood Association whose common property abuts any pond or wetland area within the Properties shall maintain and irrigate all landscaping between the boundary of its common property and such bank or water's edge; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article IX.

Any Neighborhood Association having responsibility for maintenance within a particular Neighborhood pursuant to additional covenants applicable to such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may perform such responsibilities and assess the costs as a Specific Assessment against all Units within such Neighborhood as provided in Section 8.7.

5.4. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner and/or a Neighborhood Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5. Party Walls and Similar Structures.

(a) General Rules of Law To Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

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(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Disputes. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

**Article VI**  
**INSURANCE AND CASUALTY LOSSES**

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) directors and officers liability coverage;

(v) fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance and building ordinance coverage.

In addition, the Association may obtain and maintain property insurance on the insurable improvements within any Neighborhood in such amounts and with such coverages as the Owners in such Neighborhood may agree upon pursuant to Section 3.4(a). Any such policies shall provide for a certificate of

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insurance to be furnished to the Neighborhood Association or Neighborhood Committee, as applicable, and to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment, except that (i) premiums for property insurance obtained on behalf of a Neighborhood shall be charged to the Owners of Units within the benefitted Neighborhood as a Neighborhood Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. The Association shall have no insurance responsibility for any portion of the Private Amenities.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Okaloosa County, Florida area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.7.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Florida which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners of Units within the Neighborhood and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

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- (aa) a waiver of subrogation as to any claims against the Association's Board, officers, committees, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
- (bb) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (cc) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (dd) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (ee) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (ff) a cross liability provision; and
- (gg) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Voting Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Neighborhood, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

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If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Voting Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Neighborhood Association (if any) for the Neighborhood in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Unit and the Owner thereof pursuant to Section 8.7.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association responsible for common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Unit. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

## **Article VII**

### **ANNEXATION AND WITHDRAWAL OF PROPERTY**

7.1. Annexation Without Approval of Membership. Until all property described on Exhibit "B" has been subjected to this Declaration or 25 years after the recording of this Declaration in the Official Records, whichever is earlier, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B." The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing in the Official Records a Supplemental Declaration describing the property being annexed. Such Supplemental Declaration shall not require the consent of the Class "A" Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Voting Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called



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for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Official Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to Section 7.1, for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

7.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property; provided, no such provision may operate to revoke or suspend the application of this Declaration.

7.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibits "A" or "B."

### **Article VIII** **ASSESSMENTS**

8.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 8.6; and (d) Specific Assessments as described in Section 8.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (computed from the due date of such assessment at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Florida law), late charges in such amount as the Board may establish by resolution, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to

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a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

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

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay regular assessments on all of its unsold Units or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

8.3. Computation of Base Assessment. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.5.

Base Assessments shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year, as well as any income expected pursuant to the Covenant to Share Costs, if any.

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So long as the Declarant has the right unilaterally to annex additional property pursuant to Section 7.1, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.2), which may be treated as either a contribution or an advance against future assessments due from the Declarant, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidiary shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by the Owners representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.4. Computation of Neighborhood Assessments. At least 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association and, upon approval of Owners in accordance with Section 3.4(a), any additional costs shall be added to such budget. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood benefitted thereby and levied as a Neighborhood Assessment; provided, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by 67% of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefitted Units in proportion to the benefit received.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least 30 days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting by Owners of 67% of the Units in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least 10% of the Units in such Neighborhood, which petition must be presented to the Board within 10 days after delivery of the notice of assessment. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood.

If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

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8.5. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Neighborhood Assessments, as appropriate, over the budget period.

8.6. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment will be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Voting Members (if a Common Expense) or Owners (if a Neighborhood Expense) representing at least 51% of the total votes allocated to Units subject to the Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.7. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, janitorial service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with By-Laws Section 3.24, before levying in Specific Assessment under this subsection (b).

The Association may also levy a Specific Assessment against any the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules, provided the Board gives prior written notice to the Owners of Units in, or the Voting Member representing, the Neighborhood and an opportunity for such Owners or Voting Member to be heard before levying any such assessment.

8.8. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Florida law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be

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exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.9, including such acquirer, its successors and assigns.

8.9. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.10. Failure To Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.11. Exempt Property. The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;
  - (b) Any property dedicated to and accepted by any governmental authority or public utility;
- and
- (c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

8.12. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

**Article IX**  
**ARCHITECTURAL STANDARDS**

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9.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and with the approval of the appropriate committee under Section 9.2. Notwithstanding this, the Board may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Any Owner may remodel, paint or redecorate the interior of structures on his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association or to improvements to the Private Amenity.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

9.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the two committees described in subsections (a) and (b) below. The members of the Committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers or other professionals.

(a) New Construction Committee. The New Construction Committee (NCC) shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant retains the right to appoint all members of the NCC who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board may, at its option, either appoint the members of the NCC, who shall thereafter serve and may be removed in the Board's discretion, or combine the NCC and the MC (hereafter defined) into a single architectural review committee which shall assume all powers and responsibilities of both committees under this Declaration.

(b) Modifications Committee. The Board may establish a Modifications Committee (MC) to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC, if established, shall have jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space. The MC may delegate its authority as to a particular Neighborhood to the Neighborhood Association, if any, so long as the MC has determined that such Neighborhood Association has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. The NCC shall have the right to veto any action taken by the MC or

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a Neighborhood Association which the NCC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the NCC.

9.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the committees in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the committees and compliance with the Design Guidelines does not guarantee approval of any application.

The NCC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the NCC is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The NCC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Design Guidelines may be recorded in the Official Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the NCC. Any architectural guidelines and standards adopted by the Board or MC may be more restrictive than the Design Guidelines, but under no circumstances shall they be inconsistent with the Design Guidelines.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the appropriate committee for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the committees may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Decisions of the committees may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as committee members change over time.

In the event that the NCC or MC fails to approve or to disapprove any application within 30 days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the NCC pursuant to Section 9.5.

Notwithstanding the above, the NCC by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

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9.4. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.5. Variance. The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the NCC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.6. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the NCC nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.6.

9.7. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with By-Laws Section 3.24, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specified Assessment.

9.8. View Impairment. Nothing in this Declaration or in the Design Guidelines shall be interpreted to guarantee or represent that the view from a Unit over and across the adjacent Properties will be preserved without impairment. The NCC or MC do not have to consider an adjoining Unit's line of sight when reviewing applications.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the NCC and MC.



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**Article X**  
**USE RESTRICTIONS AND RULES**

10.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Properties as a master planned community in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community and to regulate and control the Area of Common Responsibility. The Properties are subject to the land development, architectural, and design provisions set forth in Article IX, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

10.2. Authority To Promulgate Use Restrictions and Rules. Initial use restrictions applicable to all of the Properties are attached as Exhibit "C" to this Declaration. Subject to the terms of this Article, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise sound business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial use restrictions set forth on Exhibit "C." The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by Voting Members representing at least 51% of the total Class "A" votes and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Voting Members to consider disapproval except upon petition of the Voting Members as required for special meetings in the By-Laws.

(b) Alternatively, the Voting Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Voting Members representing 51% of the total Class "A" votes and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules") to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Voting Members to modify, repeal or expand the Design Guidelines. Except as otherwise specifically provided in this Declaration, including Exhibit "C," or the Design Guidelines, all matters within the scope of Section 9.1 shall be governed by the Design Guidelines.

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10.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Use Restrictions and Rules may change from time to time.

10.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C," neither the Board nor the Voting Members may adopt any rule in violation of the following provisions:

- (a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.
- (b) Speech. The rights of Owners and occupants to display political signs and symbols in or on their Units shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants of Units.
- (c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.
- (d) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.
- (e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.
- (f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.
- (g) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of its costs to administer that lease or transfer.

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(h) Reasonable Rights To Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they reside prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

The limitations in this Section 10.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 16.2.

### **Article XI** **EASEMENTS**

11.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit and any Private Amenity due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. 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, the Person claiming the benefit of such easement.

11.2. Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; lakes, ponds, wetlands, and drainage systems; street lights and signage, and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plats of the Properties.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."

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(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.3. Easements for Lake and Pond Maintenance and Flood Water. The Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within one hundred feet of lake beds, ponds, streams and wetlands within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; and (d) enter upon and across such portions of the Properties for the purpose of exercising their rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

11.4. Easements To Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefitting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, the members of the New Construction Committee and the Modifications Committee pursuant to Article IX, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or

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refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.6. Easements for Golf Course. **Every Owner acknowledges by acceptance of a deed, that the Owner has independently inspected the site plan approved by Declarant and has determined the location and configuration of his or her Unit relative to the Golf Course and has considered the risk of intrusion of golf balls, golf clubs or parts thereof, golfers, and/or overspray from the Golf Course and has taken title to the Unit based on his or her independent investigation and analysis.**

(a) Every Unit and the Common Area and the common property of any Neighborhood Association are burdened with an easement permitting golf balls unintentionally to come upon such Common Area, Units or common property of a Neighborhood and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant; the Association or its Members (in their capacity as such); the owner of the Golf Course; successors, successors-in-title or assigns to the Golf Course; any successor Declarant; any builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

(b) The Properties immediately adjacent to the Golf Course are hereby burdened with a non-exclusive easement in favor of the Golf Course for overspray of water from any irrigation system serving the Golf Course. Under no circumstances shall the Association or the owners of the Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(c) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from the Golf Course.

(d) The owner of the Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees, agents, contractors, designees and authorized users of the Golf Course, shall at all times have a right and non-exclusive easement of access and use over those portions of the Properties (Common Area or otherwise) reasonably necessary to the construction, operation, maintenance, repair and replacement of the Golf Course and over all roadways located or to be located within the Properties reasonably necessary to travel between the entrance to the Properties and the Golf Course. Without limiting the generality of the foregoing, the members of the Golf Course and guests and invitees of the Golf Course shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during and after golf tournaments and other similar functions held by or at the Golf Course to the extent that the Golf Course has insufficient parking to accommodate such vehicles.

(e) The owner of the Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees, and authorized users of the Golf Course, shall at all times have a right and non-exclusive easement of access to and use of any clubhouse located on the Golf Course.

(f) The owner of the Golf Course, its respective agents, successors and assigns, with the prior written approval of Declarant, may maintain and carry on within any facility within the Common Areas such activities as may be reasonably required, convenient, or incidental to the operation of and/or sale of memberships in the Golf Course, including, but not limited to, business offices, signs, and sales offices. The owner of the Golf

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Course, its respective agents, successors and assigns shall have easements for access to and use of such facilities. These rights to use any facility within the Common Area for the purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Areas by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent.

(g) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Properties, for the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment, including, without limitation, wells, pumps and pipelines, serving all or portions of the Golf Course.

(h) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual, non-exclusive easement to the extent reasonably necessary, over the Properties for the installation, maintenance, repair, replacement and monitoring of utility lines, wires, drainage pipelines and pipelines serving all or portions of the Golf Course.

(i) The Properties are hereby burdened with easements in favor of the Golf Course for natural drainage of storm water runoff from the Golf Course.

(j) The Properties are hereby burdened with easements in favor of the Golf Course for golf cart paths serving the Golf Course. Under no circumstances shall the Association or the owner of the Golf Course, or their respective agents, successors, or assigns, be held liable for any damage or injury resulting from the exercise of this easement.

(k) The owner of the Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees, and authorized users of the Golf Course shall at all times have a right and non-exclusive easement of access and use over the golf cart paths, if any, and located within the Properties as reasonably necessary for the use and enjoyment of the Golf Course.

## **Article XII**

### **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties.

12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

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12.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

### **Article XIII**

#### **DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Official Records.

The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Official Records.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions or Rules, or Design Guidelines made after the termination of the Class "B" Control Period shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Properties primarily for development and sale.

In contemplation of changing conditions and circumstance not present on the Properties upon the recording of this Declaration, the Declarant retains the unilateral right, as long as it owns any of the property described in Exhibits "A" or "B," to change the name of the community and portions thereof.

The Declarant retains the unilateral right amend this Declaration in whole or in part to effectuate any right reserved in this Article XIII.

Nothing in this Article shall be construed as limiting the rights of the Declarant to those specified herein or affecting the rights of the Declarant specified elsewhere in this Declaration.

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This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 40 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

**Article XIV**  
**DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

14.1. Agreement To Avoid Costs of Litigation and To Limit Right To Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section 14.2, shall be resolved using the procedures set forth in Section 14.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

14.2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 14.3:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);
- (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX (Architectural Standards) and Article X (Use Restrictions and Rules);
- (c) any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of Florida in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00;
- (d) any suit arising out of any written contract between Owners, or between the Declarant and any Builder or Owner, which would constitute a cause of action under the laws of the State of Florida in the absence of the Declaration, By-Laws, and Articles of the Association; and
- (e) any suit in which all parties are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 14.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 14.3 shall require the approval of the Association.

14.3. Mandatory Procedures for All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:



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(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

(ii) the basis of the Claim (e.g., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the Claim arises);

(iii) what Claimant wants Respondent to do or not do to resolve the Claim; and

(iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

(i) each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(ii) upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

(i) if the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association, any dispute resolution center or other such independent agency providing similar services in the area upon which the Parties may mutually agree.

(ii) if Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(iii) if the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(iv) each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

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(d) Final and Binding Arbitration.

(i) if the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(ii) this subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Florida. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Florida.

14.4. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 14.3 (a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 14.3(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 14.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 14.4(c).

(c) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

14.5. Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 14.3 and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 14.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

**Article XV**  
**GOLF COURSE**

15.1. General. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use the Golf Course. Rights to use the Golf Course will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the owner of the Golf Course. The owner of the Golf Course shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Golf Course, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use

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privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

15.2. View Impairment. Neither the Declarant, the Association, nor the owner or operator of the Golf Course, guarantees or represents that any view over and across the Golf Course from Units adjacent to the Golf Course will be preserved without impairment. The owner of the Golf Course, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in his sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the owner of the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees, bunkers, fairways and greens from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

15.3. Assessments. In consideration of the fact that the Golf Course will benefit from maintenance of the roads, rights-of-way, and Common Areas within the Properties, the Golf Course shall be obligated to pay assessments to the Association as provided in Article VIII. In addition, the Association may enter into a contractual arrangement or covenant to share costs with any Golf Course obligating it to contribute funds for, among other things, shared property or services and/or a higher level of Common Area maintenance.

15.4. Architectural Control. Neither the Association, the Modifications Committee, nor any Neighborhood Association, board or committee thereof, shall approve or permit any construction, addition, alteration, change, or installation on or to any portion of the Properties which is adjacent to, or otherwise in the direct line of sight of, the Golf Course without giving the Golf Course at least 15 days' prior written notice of its intent to approve or permit the same together with copies of the request and all other documents and information finally submitted in such regard. The owner of the Golf Course shall then have 15 days to submit comments to the appropriate committee or association, stating in detail any objections, which shall take such objections into consideration prior to approving any construction. Nothing in this Section is intended to apply to any actions or approval of the New Construction Committee or intended to or shall require the approval of the Golf Course prior to the approval by the appropriate committee or association.

15.5. Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Golf Course, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefitting any Golf Course, may be made without the written approval of the Golf Course. The foregoing shall not apply, however, to amendments made by the Declarant.

15.6. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the Golf Course shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Association shall have no power to promulgate Use Restrictions or Rules other than those set forth on Exhibit "C" affecting activities on or use of the Golf Course without the prior written consent of the owners of the Golf Course affected thereby.

**Article XVI**  
**GENERAL PROVISIONS**

16.1. Duration.

(a) Unless terminated as provided in Section 16.1(b), this Declaration shall have perpetual duration. If Florida law hereafter limits the period during which covenants may run with the land, then to the

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extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Florida law, in which case such law shall control, this Declaration may not be terminated within 20 years of the date of recording without the consent of all Unit Owners. Thereafter, it may be terminated only by an instrument signed by Owners of 75% of the total Units within the Properties and by the Declarant, if the Declarant owns any portion of the Properties, which instrument is recorded in the Official Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

16.2. Amendment.

(a) By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" membership Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; (iv) to enable any reputable private insurance company to insure mortgage loans on the Units; or (v) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 75% of the total Class "A" votes in the Association, including 75% of the Class "A" votes held by Members other than the Declarant, and the consent of the Declarant, so long the Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Official Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

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16.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

16.4. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Voting Members. A Voting Member representing Units owned by Persons other than himself shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners holding 75% of the total votes attributable to Units in the Neighborhood represented by the Voting Member. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XIV, if applicable.

16.5. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and declarations applicable to any property annexed by Supplemental Declaration, and the Association may, but shall not be required to, enforce the covenants, conditions, and provisions applicable to any such property; provided, however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and Use Restrictions and Rules of the Association shall prevail. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

16.6. Use of the Words "Kelly Plantation". No Person shall use the words "Kelly Plantation" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Kelly Plantation" in printed or promotional matter where such term is used solely to specify that particular property is located within the community and the Association shall be entitled to use the words "Kelly Plantation" in its name.

16.7. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, any applicable Supplemental Declaration, the By-Laws, and the Use Restrictions and Rules promulgated pursuant to Article X. Subject to the terms of Article XIV, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

16.8. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

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IN WITNESS WHEREOF, the undersigned Declarant has executed this Amended and Restated Declaration this 27<sup>th</sup> day of JANUARY, 1998.

KELLY PLANTATION PARTNERS, a Florida general partnership

By: Its General Partners

By: EMERALD COAST 300, INC., a Florida corporation

By: *Davage J. Runnels, Jr.*  
Davage J. Runnels, Jr.  
Its: President

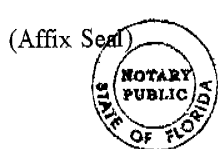
By: BLOUNT/McNEIL, Inc., a Florida corporation

By: *John McNeil, Jr.*  
John McNeil, Jr.  
Its: President

STATE OF FLORIDA

COUNTY OF OKALOOSA

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of January, 1998, by Davage J. Runnels, Jr., as President of Emerald Coast 300, Inc., a Florida corporation, and by John McNeil, Jr., as President of Blount/McNeil, Inc., a Florida corporation, on behalf of such corporations and as general partners of Kelly Plantation Partners, a Florida general partnership. Such persons are personally known to me.



STEPHANIE M. GEARY  
My Comm Exp. 9/20/98  
Bonded By Service Ins  
No. CC408357  
 Personally Known     Other I.D.

*Stephanie M. Geary*  
Notary Public  
My Commission Expires:

This instrument prepared by:

Wayne S. Hyatt and Federico A. Boyd  
Hyatt & Stubblefield, P.C.  
225 Peachtree Street, N.E., Suite 1200  
Atlanta, Georgia 30303

**\*\* OFFICIAL RECORDS \*\***  
**BK 2128 PG 1120**EXHIBIT "A"**LEGAL DESCRIPTION FOR THE REAL PROPERTY INITIALLY SUBMITTED**

A parcel of land lying in unsectionalized Township 2 South, Range 22 West, Okaloosa County, Florida, lying east of the headwaters of Indian Bayou, north of U.S. HIGHWAY 98 and west of the CHOCTAWHATCHEE BAY BRIDGE ROAD and being more particularly described as follows:

Commencing at a concrete monument marking the Southeast corner of Lot 4, Block 6 Silver Beach Subdivision, as recorded in Plat Book 1, Page 16 1/2 of the Official Records of Okaloosa County,; thence go North 03 degrees 58 minutes 04 seconds along the East line and a projection of the East line of said Lot 4, for 1177.28 feet (passing a concrete monument at 1167.13 feet) to the centerline of STATE ROAD 30 (U.S. HIGHWAY 98 BYPASS); thence go South 86 degrees 02 minutes 07 seconds East along said centerline, for 3848.75 feet to a point of curvature; thence go Northeasterly along the curve for 1398.46 feet (said curve having a radius of 5729.52 feet, a central angle of 13 degrees 59 minutes 05 seconds, a chord length of 1394.99 feet and a chord bearing of North 86 degrees 57 minutes 35 seconds East) to an iron rod at a point of tangency in the centerline; thence leaving the centerline, go North 10 degrees 01 minutes 55 seconds West for 90.00 feet to the northerly right-of-way line of said highway. Then go North 79 degrees 58 minutes 05 seconds East along said northerly right-of-way, for 399.78 feet to a concrete monument and the POINT OF BEGINNING.

For the southwestern and southerly boundary of the parcel, from said POINT OF BEGINNING, leaving the northerly right-of-way, go North 10 degrees 01 minutes 55 seconds West for 375.33 feet to a concrete monument; thence go North 60 degrees West for 875.00 feet to a concrete monument; thence go North 10 degrees West for 400.00 feet to a concrete monument; thence go North 35 degrees 02 minutes 58 seconds East for 586.07 feet to a concrete monument; thence go North 10 degrees 02 minutes 28 seconds West for 376.36 feet to an iron rod marking a corner on the eastern boundary of a parcel described in Book 1612 Page 1482, Official Records of Okaloosa County; thence go along the easterly and northerly boundary of said parcel and the northern boundary of the parcel described in Book 1597 Page 799, Official Records of Okaloosa County as follows: North 10 degrees 02 minutes 09 seconds West for 847.03 feet, North 62 degrees 00 minutes 21 seconds West for 67.07 feet, North 83 degrees 31 minutes 32 seconds West for 96.65 feet, North 43 degrees 13 minutes 40 seconds West for 25.74 feet, North 43 degrees 44 minutes 18 seconds West for 60.21 feet, North 54 degrees 42 minutes 19 seconds West for 92.54 feet, North 10 degrees 23 minutes 36 seconds West for 36.55 feet, North 45 degrees 35 minutes 36 seconds West for 92.71 feet, North 65 degrees 53 minutes 04 seconds West for 902.96 feet, North 85 degrees 43 minutes 58 seconds West for 96.03 feet, South 57 degrees 04 minutes 49 seconds West for 36.01 feet, North 79 degrees 43 minutes 07 seconds West for 107.73 feet; thence, leaving said northerly boundary go

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South 83 degrees 56 minutes 55 seconds West for 636.24 feet to a concrete monument; thence continue South 83 degrees 56 minutes 55 seconds West for 65 feet, more or less, to the mean high water line of Indian Bayou, said point hereinafter referred to as "Point A".

For the eastern, northern and western boundary of the parcel, from the POINT OF BEGINNING, go North 79 degrees 58 minutes 05 seconds East along the northerly right-of-way of U.S. HIGHWAY 98, for 440.00 feet to a concrete monument; thence leaving said right-of-way, go north 10.00 degrees 01 minute 55 seconds West for 400.37 feet to a concrete monument; thence go North 60.00 degrees West for 800 feet to a concrete monument; thence go North 10 degrees West for 575.00 feet to a concrete monument; thence go North 28 degrees East for 300.00 to a concrete monument; thence go North 08 degrees East for 300.00 feet to a concrete monument; thence go North 20 degrees West for 1260.00 feet to a concrete monument; thence go North 51 degrees west for 825.00 feet to a concrete monument; thence go North 03 degrees East for 700.00 feet to a concrete monument; thence go North 57 degrees West for 600.00 feet to a concrete monument; thence go North 03 degrees 42 minutes 00 seconds East for 1038.66 feet to a concrete monument; Thence continue North 03 degrees 42 minutes 00 seconds East for 32 feet more or less, to the mean high water line of Jones Bayou; thence to northerly along the westerly mean high water line of Jones Bayou, westerly along the southerly mean high water line of Choctawhatchee Bay and southerly along the easterly mean high water line of Indian Bayou to previously described "Point A". Said parcel containing 240 acres, more or less.

**LESS AND EXCEPT:**

A parcel of land lying in Township 2 South, Range 22 West, Okaloosa County, Florida described as: Commencing at the southeast corner of Lot 4, Block 6, Silver Beach Subdivision, as recorded in Plat Book 1, Page 16 1/2 of the Official Records; thence North 03 degrees 58 minutes 04 seconds East along a projection of the east line of said Lot 4, a distance of 1177.25 feet to the centerline of STATE ROAD 30 (U.S. HIGHWAY 98 BYPASS); thence South 86 degrees 02 minutes 07 seconds East (reference bearing per Florida D.O.T. Section 57030-2548 dated 1979) a distance of 3749.01 feet to a centerline point of curvature, Station 560+16.51; thence northeasterly 1399.78 feet, along said centerline curve, having a radius of 5729.578 feet a central angle of 13 degrees 59 minutes 52 seconds, and a chord bearing North 86 degrees 57 minutes 57 seconds East, 1396.30 feet to a centerline point of tangency, Station 574+16.29; thence North 10 degrees 01 minutes 59 seconds West, 1190 feet to the POINT OF BEGINNING; thence continuing along the last described course 100.00 feet; thence South 79 degrees 58 minutes 01 seconds West 100.00 feet; thence South 10 degrees 01 minutes 59 seconds East 100.00 feet; thence North 79 degrees 58 minutes 01 seconds East, 100.00 feet to the POINT OF BEGINNING. Containing 0.230 acres more or less, all in Township 2 South, Range 22 West, Okaloosa County, Florida.



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AND LESS AND EXCEPT:

A PARCEL OF LAND LYING IN UNSECTIONALIZED TOWNSHIP 2 SOUTH, RANGE 22 WEST, OKALOOSA COUNTY, FLORIDA, LYING NORTH OF STATE ROAD NO. 30 (U.S. 98), AND WEST OF THE CHOCTOWHATCHEE BAY BRIDGE ROAD AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF LOT 4, SILVER BEACH SUBDIVISION, AS RECORDED IN PLAT BOOK 1, PAGE 16 1/2 OF THE OFFICIAL RECORDS OF OKALOOSA COUNTY. THENCE GO N03°58'04"E ALONG THE EAST LINE AND A PROJECTION OF THE EAST LINE OF SAID LOT 4, FOR 1177.28 FEET (PASSING THROUGH A CONCRETE MONUMENT AT 1167.13 FEET) TO THE CENTERLINE OF STATE ROAD NO. 30 (U.S. 98); THENCE GO S86°02'07"E ALONG SAID CENTERLINE FOR 3848.75 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 5729.52 FEET, A CENTRAL ANGLE OF 13°59'05" (CHORD = 1394.99 FEET, CHORD BEARING = N86°57'35"E); THENCE RUN NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 1398.46 FEET TO THE POINT OF TANGENCY OF THE CENTERLINE; THENCE LEAVING THE CENTERLINE, RUN N10°01'55"W 90.00 FEET TO THE POINT OF TANGENCY OF NORTHERLY RIGHT-OF-WAY LINE OF SAID STATE ROAD NO. 30 (U.S. 98); THENCE RUN N79°58'05"E ALONG SAID NORTHERLY RIGHT-OF-WAY FOR 863.62 FEET TO THE POINT OF BEGINNING. THENCE DEPARTING SAID RIGHT-OF-WAY RUN N10°01'55"W FOR 46.45 FEET; THENCE RUN N58°38'37"W FOR 236.45 FEET; THENCE RUN N10°01'55"W FOR 171.73 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF A COMMERCIAL INGRESS, EGRESS, AND UTILITY EASEMENT (50' R/W). SAID POINT BEING ON A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 762.50 FEET, A CENTRAL ANGLE OF 14°19'38" (CHORD = 190.17 FEET; CHORD BEARING = N85°08'33"E) THENCE RUN NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 190.67 FEET. THENCE DEPARTING SAID EASEMENT RUN S10°01'55"E FOR 357.36 FEET TO THE AFOREMENTIONED NORTHERLY RIGHT-OF-WAY OF STATE ROAD NO. 30. THENCE RUN S79°58'05"W ALONG SAID RIGHT-OF-WAY FOR 12.00 FEET TO THE POINT OF BEGINNING.

**\*\* OFFICIAL RECORDS \*\***  
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EXHIBIT "B"

**LEGAL DESCRIPTION FOR THE REAL PROPERTY SUBJECT TO ANNEXATION**

Approximately 478 acres more or less, in unsectionalized Township-2-South, Range-22-West, Okaloosa County, Florida, lying North of U.S. HIGHWAY NO. 98 and West of the CHOCTAWHATCHEE BAY BRIDGE ROAD and being more particularly described as follows:

Commence at a concrete monument marking the Southeast corner of Lot 4, Block 6, Silver Beach Subdivision, as recorded in Plat Book 1, Page 16 1/2 of the Official Records of Okaloosa County, and run North 03 degrees 58 minutes 04 seconds West along the East boundary and a projection thereof of said Lot 4, for a distance of 1177.28 feet to the centerline of STATE ROAD NO. 30 (U.S. HIGHWAY 98 BYPASS); thence South 86 degrees 02 minutes 07 seconds East along said centerline a distance of 3848.75 feet to a point of curve to the left; thence Northeasterly along said curve with a radius of 5729.52 feet, through a central angle of 13 degrees 59 minutes 05 seconds, for an arc length of 1398.46 feet (the chord of said arc being North 86 degrees 57 minutes 35 seconds East 1394.99 feet); thence leaving said centerline and run North 10 degrees 01 minutes 55 seconds West 90.00 feet to the Northerly right-of-way boundary of said STATE ROAD NO. 30; thence North 79 degrees 58 minutes 05 seconds East along said right-of-way a distance of 839.78 feet; thence leaving said right-of-way and run North 10 degrees 01 minutes 55 seconds West 400.37 feet; thence North 60 degrees 00 minutes 00 seconds West 310.38 feet to the POINT OF BEGINNING.

From said POINT OF BEGINNING continue North 60 degrees 00 minutes 00 degrees West 489.62 feet; thence North 10 degrees 00 minutes 00 degrees West 575.00 feet; thence North 28 degrees 00 minutes 00 seconds East 300.00 feet; thence North 08 degrees 00 minutes 00 seconds East 300.00 feet; thence North 20 degrees 00 minutes 00 seconds West 1260.00 feet; thence North 51 degrees 00 minutes 00 seconds West 825.00 feet; thence North 03 degrees 00 minutes 00 seconds East 700.00 feet; thence North 57 degrees 00 minutes 00 seconds West 600.00 feet; thence North 03 degrees 42 minutes 00 seconds East 1038.66 feet; thence continue North 03 degrees 42 minutes 00 seconds East 32.00 feet more or less, to the mean high water line of Jones Bayou; thence Northerly along the Easterly mean high water line of Jones Bayou and Easterly along the Southerly mean high water line of Choctawhatchee Bay a distance of 8983.00 feet more or less to a point lying on the Westerly right-of-way boundary of the CHOCTAWHATCHEE BAY BRIDGE ROAD; thence Southerly along said right-of-way as follows: South 20 degrees 03 minutes 00 seconds West 1383.00 feet more or less to a point of curve to the left; thence Southerly along said curve with a radius of 1487.39 feet, through a central angle of 16 degrees 26 minutes 00 seconds for an arc length of 426.61 (the chord of said arc being South 11 degrees 50 minutes 00 seconds West 425.15 feet); thence South 03 degrees 37 minutes 00 seconds West 1197.24 feet to a point of curve to the left; thence Southerly along said curve with a radius of 1692.02 feet, through a central angle of 13 degrees 38 minutes 59 seconds for an arc distance of 403.09 feet (the

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chord of said arc being South 03 degrees 12 minutes 30 seconds East 402.14 feet); thence South 10 degrees 01 minutes 59 seconds East 374.03 feet; thence leaving said right-of-way and run South 79 degrees 58 minutes 01 seconds West 1320.00 feet; thence South 10 degrees 01 minutes 59 seconds East 800.00 feet; thence South 79 degrees 58 minutes 01 seconds West 1401.13 feet to the POINT OF BEGINNING.

**AND INCLUDING:**

Approximately 112 acres more or less, in unsectionalized Township-2-South, Range-22-West, Okaloosa County, Florida, lying North of U.S. HIGHWAY NO. 98 and West of the CHOCTAWHATCHEE BAY BRIDGE ROAD and being more particularly described as follows:

Commence at a concrete monument marking the Southeast corner of Lot 4, Block 6, Silver Beach Subdivision, as recorded in Plat Book 1, Page 16 1/2 of the Official Records of Okaloosa County, and run North 03 degrees 58 minutes 04 seconds West along the East boundary and a projection thereof of said Lot 4, for a distance of 1177.28 feet to the centerline of STATE ROAD NO. 30 (U.S. HIGHWAY 98 BYPASS); thence South 86 degrees 02 minutes 07 seconds East along said centerline a distance of 3848.75 feet to a point of curve to the left; thence leaving said centerline and run North 03 degrees 57 minutes 08 seconds West 100.00 feet to the Northerly right-of-way boundary of said STATE ROAD NO. 30; thence North 86 degrees 02 minutes 07 seconds West along said right-of-way a distance of 608.09 feet; thence leaving said right-of-way and run North 03 degrees 57 minutes 53 seconds East 336.59 feet; thence North 28 degrees 22 minutes 07 seconds West 903.40 feet; to the POINT OF BEGINNING. From said POINT OF BEGINNING continue North 28 degrees 22 minutes 07 seconds West 827.78 feet; thence South 61 degrees 37 minutes 53 seconds West 35.00 feet; thence North 28 degrees 22 minutes 07 seconds West 198.57 feet; thence North 81 degrees 27 minutes 38 seconds West 500.89 more or less to the Southeast corner of INDIAN BAYOU SUBDIVISION; thence North 04 degrees 32 minutes 16 seconds East along the East boundary of said subdivision a distance of 1694.00 feet more or less to the mean high water line of Indian Bayou; thence Southeasterly along the Northwesterly mean high water line of Indian Bayou 875.00 feet more or less to a point lying on the Westerly boundary of KELLY PLANTATION, a subdivision prepared by Florida Engineering Services Corporation; thence North 83 degrees 53 minutes 55 seconds East 65.00 feet more or less; thence continue North 83 degrees 53 minutes 55 seconds East 636.24 feet; thence South 79 degrees 43 minutes 07 seconds East 107.73 feet; thence North 57 degrees 04 minutes 49 seconds East 36.01 feet; thence South 85 degrees 43 minutes 58 seconds East 96.03 feet; thence South 65 degrees 53 minutes 04 seconds East 902.96 feet; thence South 45 degrees 35 minutes 36 seconds East 92.71 feet; thence South 10 degrees 23 minutes 36 seconds East 36.55 feet; thence South 54 degrees 42 minutes 19 seconds East 92.54 feet; thence South 43 degrees 44 minutes 18 seconds East 60.21 feet; thence South 43 degrees 13 minutes 40 seconds East 25.74 feet; thence South 83 degrees 33 minutes 31 seconds East 96.65 feet; thence South 62 degrees 00 minutes 21 seconds East 67.07 feet; thence South 10 degrees 02 minutes 32 seconds East 1223.38 feet; thence South 35 degrees 02 minutes 58 seconds West 586.07 feet; thence South 10 degrees 00

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minutes 00 seconds East 400.00 feet; thence South 60 degrees 00 minutes 00 seconds East 448.48 feet; thence South 79 degrees 58 minutes 01 seconds West 1245.71 feet; thence North 25 degrees 17 minutes 24 seconds West 389.75 feet to a point of curve to the left; thence Northwesterly along said curve with a radius of 500.00 feet, through a central angle of 60 degrees 44 minutes 43 seconds for an arc length of 530.10 feet, (the chord of said arc being North 55 degrees 39 minutes 45 seconds West 505.62 feet); thence North 86 degrees 02 minutes 07 seconds West 532.58 feet to the POINT OF BEGINNING.

Subject to a 30 feet Ingress, Egress and Utility Easement as described in Official Records Book 1597, Page 800 of the public records of Okaloosa County, Florida.

LESS AND EXCEPT the Equestrian Centre and BIRD FARM as per Official Records Book 1612, Page 1482 and 1597, and Page 799 respectively, of the public records of Okaloosa County, Florida.

**AND INCLUDING:**

Approximately 40.613 acres more or less, in unsectionalized Township-2-South, Range-22-West, Okaloosa County, Florida, lying North of U.S. HIGHWAY 98 and West of the CHOCTAWHATCHEE BAY BRIDGE ROAD and being more particularly described as follows:

Commence at a concrete monument marking the Southeast corner of Lot 4, Block 6, Silver Beach Subdivision, as recorded in Plat Book 1, Page 16 1/2 of the Official Records of Okaloosa County, and run North 03 degrees 58 minutes 04 seconds West along the East boundary and a projection thereof of said Lot 4, for a distance of 1177.28 feet to the centerline of STATE ROAD NO. 30 (U.S. HIGHWAY 98 BYPASS); thence South 86 degrees 02 minutes 07 seconds East along said centerline a distance of 3848.75 feet to a point of curve to the left; thence leaving said centerline and run North 03 degrees 57 minutes 08 seconds West 100.00 feet to the Northerly right-of-way boundary of said STATE ROAD NO. 30; for the POINT OF BEGINNING.

From said POINT OF BEGINNING run North 86 degrees 02 minutes 07 seconds West along said right-of-way a distance of 608.09 feet; thence leaving said right-of-way and run North 03 degrees 57 minutes 53 seconds East 336.59 feet; thence North 28 degrees 22 minutes 07 seconds West 903.40 feet; thence South 86 degrees 02 minutes 07 seconds East 532.58 feet to a point of curve to the right; thence Southeasterly along said curve with a radius of 500.00 feet, through a central angle of 60 degrees 44 minutes 43 seconds, for an arc length of 530.10 feet (the chord of said arc being South 55 degrees 39 minutes 45 seconds East 505.62 feet); thence South 25 degrees 17 minutes 24 seconds East 389.75 feet; thence North 79 degrees 58 minutes 01 seconds East 1245.71 feet; thence South 60 degrees 00 minutes 00 seconds East 426.52 feet; thence South 10 degrees 01 minutes 55 seconds East 375.33 feet to a point lying on the aforementioned Northerly right-of-way of STATE ROAD NO. 30; thence Westerly along said right-of-way as follows: South 79 degrees 58 minutes 05 seconds West 399.78 feet

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to a point of curve to the right; thence Westerly along said curve with a radius of 5639.52 feet, through a central angle of 06 degrees 08 minutes 59 seconds, for an arc distance of 605.31 feet (the chord of said arc being South 83 degrees 02 minutes 32 seconds West 605.02 feet); thence North 03 degrees 52 minutes 58 seconds West along a radial line 10.00 feet to a point lying on a curve concave to the North; thence Westerly along said curve with a radius of 5629.52 feet, through a central angle of 07 degrees 50 minutes 06 seconds for an arc distance of 769.83 feet (the chord of said arc being North 89 degrees 57 minutes 55 seconds West 769.22 feet) to the POINT OF BEGINNING.

Subject to a 30 feet Ingress, Egress, and Utility Easement as described in Official Records Book 1597, Page 800 of the public records of Okaloosa County, Florida.

**AND INCLUDING:**

Approximately 58.997 acres more or less, in unsectionalized Township-2-South, Range-22-West, Okaloosa County, Florida, lying North of U.S. HIGHWAY NO. 98 and West of the CHOCTAWHATCHEE BAY BRIDGE ROAD and being more particularly described as follows:

Commence at a concrete monument marking the Southeast corner of Lot 4, Block 6, Silver Beach Subdivision, as recorded in Plat Book 1, Page 16 1/2 of the Official Records of Okaloosa County, and run North 03 degrees 58 minutes 04 seconds West along the East boundary and a projection thereof of said Lot 4, for a distance of 1177.28 feet to the centerline of STATE ROAD NO. 30 (U.S. HIGHWAY 98 BYPASS); thence South 86 degrees 02 minutes 07 seconds East along said centerline a distance of 3848.75 feet to a point of curve to the left; thence Northeasterly along said curve with a radius of 5729.52 feet, through a central angle of 13 degrees 59 minutes 05 seconds, for an arc length of 1398.46 feet (the chord of said arc being North 86 degrees 57 minutes 35 seconds East 1394.99 feet); thence leaving said centerline and run North 10 degrees 01 minutes 55 seconds West 90.00 feet to the Northerly right-of-way boundary of said STATE ROAD NO. 30; thence North 79 degrees 58 minutes 05 seconds East along said right-of-way a distance of 839.78 to the POINT OF BEGINNING.

From said POINT OF BEGINNING and leaving said right-of-way run North 10 degrees 01 minutes 55 seconds West 400.37 feet; thence North 60 degrees 00 minutes 00 seconds West 310.38 feet; thence North 79 degrees 58 minutes 01 seconds East 1401.13 feet; thence North 10 degrees 01 minutes 59 seconds West 800.00 feet; thence North 79 degrees 58 minutes 01 seconds East 1320.00 feet; to a point lying on the Westerly right-of-way boundary of CHOCTAWHATCHEE BAY BRIDGE ROAD; thence South 10 degrees 01 minutes 59 seconds East along said right-of-way a distance 1400.06 feet to a point on the Northerly right-of-way boundary of the aforementioned State Road No 30; thence South 79 degrees 58 minutes 05 seconds West along said Northerly right-of-way a distance of 2483.49 feet to the POINT OF BEGINNING.

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LESS AND EXCEPT:

COMMERCIAL PARCEL C-1B

A PARCEL OF LAND LYING IN UNSECTIONALIZED TOWNSHIP 2 SOUTH, RANGE 22 WEST, OKALOOSA COUNTY, FLORIDA, LYING NORTH OF STATE ROAD NO. 30 (U.S. 98), AND WEST OF THE CHOCTAWHATCHEE BAY BRIDGE ROAD AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF LOT 4, BLOCK 6, SILVER BEACH SUBDIVISION, AS RECORDED IN PLAT BOOK 1, PAGE 16 1/2 OF THE OFFICIAL RECORDS OF OKALOOSA COUNTY; THENCE GO N 03°58'04" E, ALONG THE EAST LINE AND A PROJECTION OF THE EAST LINE OF SAID LOT 4, FOR 1177.28 FEET (PASSING THROUGH A CONCRETE MONUMENT AT 1067.13 FEET) TO THE CENTERLINE OF STATE ROAD NO. 30 (U.S. 98); THENCE GO S86°02'07"E, ALONG SAID CENTERLINE FOR 3848.75 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 5729.52 FEET, A CENTRAL ANGLE OF 13°59'05" (CHORD = 1394.99 FEET, CHORD BEARING = N 86°57'35"E); THENCE RUN NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 1398.46 FEET TO THE POINT OF TANGENCY OF THE CENTERLINE; THENCE LEAVING THE CENTERLINE RUN N 10°01'55"W 90.00 FEET TO THE POINT OF TANGENCY OF NORTHERLY RIGHT-OF-WAY LINE OF SAID STATE ROAD NO. 30 (U.S. 98); THENCE RUN N79°58'05"E ALONG SAID NORTHERLY RIGHT-OF-WAY 2610.58 FEET TO THE POINT OF BEGINNING; THENCE RUN N 10°01'55"W FOR 115.11 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE EAST AND HAVING A RADIUS OF 308.70 FEET AND A CENTRAL ANGLE OF 13°18'06" (CHORD = 71.51 FEET, CHORD BEARING = N 03°22'52"W) THENCE RUN NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 71.67 FEET TO THE POINT OF TANGENCY; THENCE RUN N 03°16'11" E FOR 27.87 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 86°12'04" (CHORD = 34.16 FEET, CHORD BEARING = N39°49'51"W) THENCE RUN NORTHWESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 37.61 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 634.24 FEET AND A CENTRAL ANGLE OF 05°30'25" (CHORD = 60.94 FEET, CHORD BEARING = N80°10'40"W) THENCE RUN WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 60.96 FEET TO THE POINT OF TANGENCY; THENCE RUN N 77°25'28"W FOR 34.76 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 314.60 FEET AND A CENTRAL ANGLE OF 12°23'13" (CHORD = 67.88 FEET, CHORD BEARING = N 71°13'52"W) THENCE RUN NORTHWESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 68.01 FEET, THENCE DEPARTING SAID CURVE RUN S 24°57'45"W FOR 5.00 FEET; THENCE RUN N 65°02'15"W FOR 22.63 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 210.00 FEET A CENTRAL ANGLE OF 73°19'12" (CHORD = 250.77 FEET, CHORD BEARING = S78°18'20" W) THENCE RUN SOUTHWESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 268.73 FEET; THENCE DEPARTING SAID CURVE RUN N 48°21'16"W FOR 96.75 FEET; THENCE RUN N10°01'55"W FOR 212.90 FEET; THENCE RUN S79°58'05"W FOR 74.10 FEET; THENCE RUN N 10°01'51"W FOR 750.33 FEET; THENCE RUN N 79°58'05 E FOR 1270.33 FEET TO THE WESTERLY RIGHT OF WAY OF MID BAY BRIDGE ROAD; THENCE RUN S10°01'51"E ALONG SAID WESTERLY RIGHT OF WAY OF MID BAY BRIDGE ROAD FOR 1350.39 FEET TO THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY OF STATE ROAD NO. 30 (U.S. 98); THENCE RUN S79°58'05"W ALONG SAID NORTHERLY RIGHT OF WAY FOR 713.00 FEET TO THE POINT OF BEGINNING.

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**EXHIBIT "C"**

**Initial Use Restrictions and Rules**

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article X of the Declaration.

1. **General.** The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association or business offices for the Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

2. **Restricted Activities.** The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of any vehicles on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas;

(b) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;

(c) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

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- (i) Use and discharge of firecrackers and other fireworks;
- (j) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;
- (k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;
- (l) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;
- (m) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Official Records, except that the Declarant shall be permitted to subdivide or replat Units which it owns; and
- (n) Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams or other bodies of water within the Properties, except that fishing from the shore shall be permitted with appropriate licenses and the Declarant, its successors and assigns shall be permitted and shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas, draw water from lakes, ponds and streams within the Properties for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams or other bodies of water within or adjacent to the Properties.
- (o) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns;
- (p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;
- (q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank approved by the NCC;
- (r) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.



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The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program;

(s) Capturing, trapping or killing of wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons using the Properties;

(t) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(u) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without the prior approval of the appropriate committee pursuant to Article IX;

(v) Operation of motorized vehicles on pathways or trails maintained by the Association, except that golf carts may be operated on cart paths intended for such purposes; and

(w) Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IX of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind.

3. Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties;

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair;

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties, except that Declarant and the Association shall have the right to draw water from such sources; and

(d) Exterior antennas, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind unless completely contained within the Unit so as not to be visible from outside the Unit or unless otherwise approved pursuant to Article IX of the Declaration, except that, one such apparatus measuring no more than 40 inches in diameter may be placed on a Unit unless the Board

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disapproves or the NCC under Article IX determines that the apparatus is aesthetically incompatible with the surrounding structure or environment. Declarant and the Association shall have the right, without obligation, to erect or install and maintain such apparatus for the benefit of all or a portion of the Properties.

4. Leasing of Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term, which requirements may vary from Neighborhood to Neighborhood. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Use Restrictions and Rules.

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**EXHIBIT "D"**

**Rules of Arbitration**

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").
2. Each Party shall select an arbitrator ("Party Appointed Arbitrator"). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators ("Neutral(s)") so that the total arbitration panel ("Panel") has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within 20 days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings, selecting a Neutral in place of any missing Party Appointed Arbitrator. The Neutral arbitrator(s) shall select a chairperson ("Chair").
3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, Claimant may notify the Florida chapter of The Community Associations Institute, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator ("Arbitrator"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.
4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.
5. The Arbitrator or Chair, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties.
6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.
7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings.
8. There shall be no stenographic record of the proceedings.
9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.
10. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

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11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.
12. There will be no posthearing briefs.
13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.
14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.
15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

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**EXHIBIT "E"**

**AMENDED AND RESTATED**  
**BY-LAWS**  
**OF**  
**KELLY PLANTATION OWNERS ASSOCIATION, INC.**

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**AMENDED AND RESTATED**

**BY-LAWS**

**OF**

**KELLY PLANTATION OWNERS ASSOCIATION, INC.**

**Article I**

**Name, Principal Office, and Definitions**

1.1. Name. The name of the corporation is KELLY PLANTATION OWNERS ASSOCIATION, INC. (the "Association").

1.2. Principal Office. The principal office of the Association shall be located in Okaloosa County, Florida. The Association may have such other offices, either within or outside the State of Florida, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Kelly Plantation (the "Declaration"), filed in the Office of the Clerk of the Circuit Court, Okaloosa County, Florida (the "Official Records"), as it may be amended, unless the context indicates otherwise.

**Article II**

**Association: Membership, Meetings, Quorum, Voting, Proxies**

2.1. Membership. The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board, either within the Properties or as convenient as possible and practical.

2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Meetings shall be of the Voting Members. Subsequent regular annual meetings shall be set by the Board so as to occur during the first quarter of the Association's fiscal year on a date and at a time set by the Board.

2.4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Voting Members representing at least 25% of the total Class "A" votes in the Association.

2.5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Voting Members shall be delivered, either personally or by mail, to each Voting Member



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entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the records of the Association, with postage prepaid.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member shall be deemed waiver by such Voting Member of notice of the time, date, and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

The Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9. Proxies. Voting Members may not vote by proxy but only in person or through their designated alternates; provided, however, any Voting Member who is only entitled to cast the vote(s) for his own Unit(s) pursuant to Section 3.3 of the Declaration may cast such vote in person or by proxy until such time as the Board first calls for election of a Voting Member to represent the Neighborhood of which the Unit is a part. On any matter as to which a Member is entitled to personally cast the vote for his Unit, such vote may be cast in person or by proxy, subject to the limitations of Florida law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing specifying the Unit for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. Except as otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall

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be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or 90 days from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

2.11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence of Voting Members representing a majority of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association.

2.12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings. Such records shall be kept by the Association for at least seven years.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Voting Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by Voting Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Voting Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of Florida. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Voting Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Voting Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

### **Article III**

#### **Board of Directors: Number, Powers, Meetings**

##### **A. Composition and Selection**

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or Residents; provided, no Owner and Resident representing the same Unit may serve on the Board at the same time. A "Resident" shall be any natural person 18 years of age or older whose principal place of residence is a Unit within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, employee or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2. Number of Directors. The Board shall consist of three to seven directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

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3.3. Directors During Class "B" Control Period. Subject to the provisions of Section 3.5 below, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

(a) when 75% of the maximum number of Units allowed by the applicable local zoning ordinances for the property described on Exhibits "A" and "B" of the Declaration, as of the date the Declaration is recorded, have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders;

(b) December 31, 2018; or

(c) when, in its discretion, the Class "B" Member so determines.

3.4. Nomination of Directors and Election Procedures.

(a) Nominations. Except with respect to directors selected by the Class "B" Member, nominations for election to the Board shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and three or more Members or representatives of Members, with at least one representative from each Voting Group. The members of the Nominating Committee shall be appointed by the Board not less than 30 days prior to each election to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such election. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled as provided in Section 3.5 below. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Class "A" votes, and for the director(s) to be elected by the votes within each Voting Group.

(b) Election Procedures. Each Voting Member may cast all votes assigned to the Units which it represents for each position to be filled from the slate of candidates on which such Voting Member is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5. Election and Term of Office. Notwithstanding any other provision of these By-Laws:

(a) Within 90 days after the time that Class "A" Members other than Builders own 25% of the maximum number of Units allowed by the applicable local zoning ordinances for the property described in Exhibits "A" and "B" of the Declaration, as of the date the Declaration is recorded, or whenever the Class "B" Member earlier determines, the President shall call for an election at which the Voting Members shall be entitled to elect one of the three directors, who shall be an at-large director. The remaining two directors shall be appointees of the Class "B" Member. The director elected by the Voting Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within 90 days after the time that Class "A" Members other than Builders own 50% of the maximum number of Units allowed by the applicable local zoning ordinances for the property

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described in Exhibits "A" and "B" of the Declaration, as of the date the Declaration is recorded, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call for an election at which the Voting Members shall be entitled to elect two of the five directors, who shall serve as at-large directors. The remaining three directors shall be appointees of the Class "B" Member. The directors elected by the Voting Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within 90 days after termination of the Class "B" Control Period, the President shall call for an election at which the Voting Members shall be entitled to elect three of the five directors, who shall serve as at-large directors. The remaining two directors shall be appointees of the Class "B" Member. The directors elected by the Voting Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting is scheduled to occur within 90 days after termination of the Class "B" Control Period, this subsection shall not apply and directors shall be elected in accordance with subsection (d) below.

(d) At the first annual meeting after the termination of the Class "B" Control Period, the Board shall be increased to seven directors and an election shall be held. Six directors shall be elected by the Voting Members, with an equal number of directors elected by the Voting Members representing each Voting Group and any remaining directorships filled at large by the vote of all Voting Members. Three directors shall serve a term of two years and three directors shall serve a term of one year, as such directors determine among themselves.

Until termination of the Class "B" membership, the Class "B" Member shall be entitled to appoint one director. Upon termination of the Class "B" membership, the director appointed by the Class "B" Member shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which the Voting Members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years.

Upon the expiration of the term of office of each director elected by the Voting Members, the Voting Members entitled to elect such director shall be entitled to elect a successor to serve a term of two years. The directors elected by the Voting Members shall hold office until their respective successors have been elected.

3.6. Removal of Directors and Vacancies. Any director elected by the Voting Members may be removed, with or without cause, by the vote of Voting Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Voting Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Voting Members who has three or more consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

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In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Members shall elect a successor for the remainder of the term.

Any director which the Board appoints shall be selected from among Members within the Voting Group represented by the director who vacated the position.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member.

B. Meetings.

3.7. Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the time and place of a regular meeting shall be communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) facsimile, electronic mail, or any other such communication method. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, facsimile, electronic mail or similar communication method shall be delivered, telephoned, or otherwise communicated least 72 hours before the time set for the meeting.

3.10. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

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3.12. Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

3.14. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings. Such records shall be kept by the Association for at least seven years.

3.15. Notice to Owners; Open Meetings. Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Properties which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.17. Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declaration, Articles, these By-Laws, or Florida law directed to be done and exercised exclusively by the Voting Members or the membership generally.

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3.18. Duties. The duties of the Board shall include, without limitation:

- (a) preparation and adoption, in accordance with the Declaration, of an annual budget establishing each Owner's share of the Common Expenses and any Neighborhood Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules of the Association and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association;
- (l) keeping books with detailed accounts of the receipts and expenditures of the Association;
- (m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association, as provided in Section 6.4;
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

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(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required under Florida law, the Articles of Incorporation or the Declaration; and

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

3.19. Right of Class "B" Member To Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws, or interfere with development of or construction on any portion of the Properties, or diminish the level of services being provided by the Association.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.8, 3.9, 3.10, and 3.11 and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20. Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority or those duties set forth in Sections 3.18(a), 3.18(b), 3.18(f), 3.18(g) and 3.18(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.



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The Board may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least annually containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within 60 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines by an independent public accountant.

3.22. Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Voting Member approval in the same manner provided in Section 8.6 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt

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incurred within the previous 12-month period, exceeds or would exceed 25% of the budgeted gross expenses of the Association for that fiscal year.

3.23. Right To Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, within and outside the Properties; provided, any common management agreement shall require the consent of a majority of the total number of directors of the Association.

3.24. Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, for violation of any duty imposed under the Declaration, these By-Laws, or any Association rules. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the fine shall be assessed against the Unit and the Owner thereof upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 14 days within which the alleged violator may present a written request for a hearing to the Board, and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 14 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided, the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 14-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 14 day period, the hearing shall be held before the Covenants Committee. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 10 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these By-Laws, or the rules of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) or, following compliance with the dispute resolution procedures set forth in Article XIV of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to

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recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

**Article IV**  
**Officers**

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Voting Members, to serve until their successors are elected.

4.3. Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

**Article V**  
**Committees**

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

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5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board shall appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of these By-Laws.

5.3. Neighborhood Committees. In addition to any other committees appointed as provided above, each Neighborhood which has no formal organizational structure or association may elect a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board. Such Neighborhood Committees, if elected, shall consist of three to five Members, as determined by the vote of at least 51% of the Owners of Units within the Neighborhood.

Neighborhood Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board of Directors from a Neighborhood shall be an ex officio member of the Neighborhood Committee. The Voting Member representing such Neighborhood shall be the chairperson of the Neighborhood Committee, shall preside at its meetings, and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.8, 3.9, 3.10, and 3.12. Meetings of a Neighborhood Committee shall be open to all Owners of Units in the Neighborhood and their representatives. Members of a Neighborhood Committee may act by unanimous written consent in lieu of a meeting.

**Article VI**  
**Miscellaneous**

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Florida law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. Conflicts. If there are conflicts between the provisions of Florida law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Florida law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board

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shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents for a reasonable purpose at the expense of the Association.

6.5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6. Amendment.

(a) By Class "B" Member. Until termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these By-Laws. Thereafter, the Class "B" Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 75% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon recordation in the Official Records, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority so to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

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Newman C. Brackin, Clerk, Okaloosa Cnty Fl

