

**AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
KELLY POINTE**

THIS DOCUMENT PREPARED BY:

The Kelly Pointe Homeowners Association

_____, _____ 2015

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FOR
KELLY POINTE

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DECLARATION
OF
COVENANTS AND RESTRICTIONS
FOR
KELLY POINTE

THIS DECLARATION is made this ____ day of _____, 2015, by the Kelly Pointe Homeowners Association, Inc. a Florida not for profit corporation, which declares that the developed real property the Association described on the attached Exhibit "A" shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, liens and all other matters set forth in this Declaration which shall be deemed to be covenants running with the title to the Property, as such term is defined by Section 2.8 of this Agreement, and shall be binding upon the Association and all parties having or acquiring any right, title or interest in the Property or any part thereof.

ARTICLE I
MUTUALITY OF BENEFIT AND OBLIGATION

Section 1.1 **Mutuality.** The covenants, restrictions, and agreements set forth in this Declaration are made for the mutual and reciprocal benefit of every parcel within the Property, and are intended to create mutual equitable servitudes upon each such parcel in favor of the other parcels, to create reciprocal rights among the respective Owners, and to create privity of contract and an estate between the grantees of each and every parcel within the Property, their heirs, successors and assigns.

Section 1.2 **Benefits and Burdens.** Every person who is an Owner does by reason of taking title to land located within the Property agree to all the terms and provisions of this Declaration and shall be entitled to its benefits and subject to its burdens.

ARTICLE II
DEFINITIONS

The following words, when used in this Declaration shall have the following meanings:

Section 2.1 **Association.** The Kelly Pointe Homeowners Association, Inc., a Florida corporation not-for-profit. This is the Declaration to which the Articles of Incorporation (the "Articles") attached hereto as Exhibit B, and Bylaws (the "Bylaws"), attached hereto as Exhibit C, of the Association make reference.

Section 2.2 **Board.** The Board of Directors of the Association.

Section 2.3 **Common Area.** All real property (including easements, licenses and rights to use real property) and personal property located within or adjacent to the Property, if any, which is owned by the Association, and which the Association has designated for the common use of the Owners by reference thereto in this Section 2.3, or by recording Supplementary Declarations,
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pursuant to the terms of Section 4.3 hereof. The Common Area initially designated by the Developer shall consist of the real property (and interests therein) more particularly described on Exhibit D attached hereto and made a part hereof together with all improvements constructed therein by Developer, but not owned or maintained by a public or private utility company.

Section 2.4 **Limited Common Area.** The Limited Common Area of a Lot shall consist of the portion of the Property between the front Lot line and the nearest edge of the paved road surface (as it may exist from time to time) and between the rear Lot line and the nearest shoreline of any lake contiguous to or within forty (40) feet of the Lot, within the area bounded by the extension of the side Lot lines, together with any portion of the Property contiguous to a Lot which, as a result of the natural configuration of the Property, is primarily of benefit to such Lot. Any question concerning the boundary of a limited common area shall be determined by the Board of Directors of the Association.

Section 2.5 **Lot.** Each platted lot located within the Property which was designated by the Developer by recorded covenant or deed restriction, for single family residential use. No Lot shall include any portion of the Common Area owned in fee simple by the Association.

Section 2.6 **Owner.** The record owner or owners of any Lot.

Section 2.7 **Property or Kelly Pointe.** The real property described on the attached Exhibit A and such additions and deletions thereto as may be made in accordance with the provisions of Sections 3.2 and 3.3 of this Declaration.

Section 2.8 **Residential Dwelling Unit.** Any improved portion of the Property located within a Lot and intended for use as a residential dwelling.

Section 2.9 **Surface Water or Stormwater Management System.** A system which is designed and constructed or implemented within the Property to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 4OC-4, 4OC-40, or 4OC-42, F.A.C. or regulations of similar import. For purposes of this Declaration, the Surface Water or Stormwater Management System shall be deemed to be a part of the Common Area.

ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION:
ADDITIONS AND DELETIONS

Section 3.1 **No Implied Extension of Covenants.** Each Owner of any improvements constructed on any Lot, by becoming an Owner, shall be deemed to have agreed that (a) the Property described on Exhibit A and such additional property as may be annexed pursuant to Section 3.2 hereof shall be the only Property subject to this Declaration, (b) that nothing contained in this Declaration or in any recorded or unrecorded plat, map, picture, drawing, brochure or other representation of a scheme of development, shall be construed as subjecting, or requiring the

Association to subject any other property now or hereafter owned by the Association to this Declaration, and (c) that the only manner in which additional land may be subjected to this Declaration is by the procedure set forth in Section 3.2 hereof.

Section 3.2 **Additional Lands.** The Association may, but shall not be obligated to, subject additional land to this Declaration (or to the assessment provisions of this Declaration) from time to time provided only that (a) any additional land subjected to this Declaration (or its assessment provisions) shall be contiguous to the Property then subject to this Declaration (for purposes of this Section 3.2, property separated only by public or private roads, water bodies, golf courses, or open space shall be deemed contiguous), and (b) the Owners of property within additional lands made subject to this Declaration (or its assessment provisions) shall be and become subject to this Declaration (or its assessment provisions), and shall be responsible for their pro rata share of common expenses for which assessments may be levied pursuant to the terms of Article VI of this Declaration. Addition of lands to this Declaration shall be made and evidenced by filing in the public records of St. Johns County, Florida, a Supplementary Declaration executed by the Association with respect to the lands to be added. Developer reserves the right to supplement this Declaration to add land to the scheme of this Declaration (or its assessment provisions) pursuant to the foregoing provisions without the consent or joinder of any Owner or mortgagee of land within the Property.

Section 3.3 **Withdrawal of Lands.** With the consent and joinder of Owners holding a majority of the votes in the Association, the Association may, but shall have no obligation to, withdraw at any time, or from time to time, portions of the Property from the terms and effect of this Declaration. Upon the Association's request, the consent and joinder of each and every Owner to such withdrawal shall not be unreasonably withheld. The withdrawal of lands as aforesaid shall be made and evidenced by filing in the public records of St. Johns County, Florida, a Supplementary Declaration executed by the Association with respect to the lands to be withdrawn.

ARTICLE IV **COMMON AREA RIGHTS**

Section 4.1 **Conveyance of Common Area.** As of October 2014, Developer has assigned all of the Common Area owned by Developer to the Association, subject to covenants, easements, restrictions and other matters of record, and the Association has been conclusively deemed to have accepted the conveyance evidenced by deed or deeds.

Section 4.2 **Owners' Easement of Enjoyment.** Each Owner shall have a nonexclusive, perpetual right and easement of enjoyment in and to the Common Area for its intended purpose, which shall be appurtenant to, and shall pass with, the title to the land of such Owner, subject to the following:

(a) The right of the owner of the Common Area, with the consent of the Association (if different from such owner) to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility;

(b) All provisions of this Declaration, any plat of all or any parts of the Property,

and all applicable governmental restrictions;

(c) Reasonable rules and regulations governing use and enjoyment of the Common Area adopted by the Association;

(d) The right of the Association to charge reasonable admission charges for the use of specific portions of the Common Area by Owners and other parties;

(e) The rights of the Association under Section 4.3 to add to or withdraw land from the Common Area;

(f) Easements, restrictions, agreements and other matters of record.

The foregoing easement of enjoyment in favor of the Owners shall not be construed to create or imply any other easements or rights not expressly created by this Declaration, it being the intent hereof to limit the Owners' rights of use of specific portions of the Common Area to only the intended purposes of such portions of the Common Area. For example, the creation of each Owner's right to drain such Owner's property into the portions of the Common Area included within the Surface Water or Stormwater Management System, does not create any right of access by any Owner to such portions of the Common Area over any other Owner's property or other privately owned portions of the Property.

Section 4.3 **Right of the Association to Designate Property as Common Area or to Withdraw Property from the Common Area.** Notwithstanding anything to the contrary contained in this Declaration, the Association shall have the right, in its sole discretion, to designate land, easements, use rights and personal property owned by the Association as Common Area, provided only that such land shall be located within the Property or contiguous to the Property (for purposes of this Section 4.3, property separated only by public or private roads, water bodies, golf courses, or open space shall be deemed contiguous). For so long as the Association shall own any portion of the Property, the Association may, at any time, withdraw, or cause to be withdrawn, land from the Common Area in the Association's sole discretion. The prior sentence notwithstanding, in the event such withdrawal of Common Area shall materially and adversely affect any Lot or materially and adversely affect access, visibility, or drainage to or from any Lot, the Association shall not have the right to withdraw such Common Area without the consent and joinder of the Owner of the Lot which is so affected. Addition of land to and withdrawal of land from the Common Area shall be evidenced by recording a Supplementary Declaration in the public records of St. Johns County, Florida, which shall specifically reference such addition or withdrawal. Withdrawal of land from the Common Area by the Association shall terminate any and all easements and rights of use of the Owners in such land. No land owned by the Association shall be deemed to be Common Area unless such land is expressly referenced as such under Section 2.3 hereof, or subsequently designated as such by the Association pursuant to Section 2.3 hereof and this Section 4.3, even if the Association consents or acquiesces to the use of such land by the Owners. In the event any land, easements, use rights, or personal property owned by the Association shall be withdrawn from the Common Area pursuant to this Section 4.3, upon the Association's written request, the Association shall promptly execute and deliver to the Association any and all deeds, bills of sale, assignments or other conveyance documents as may be necessary or

appropriate to effectuate the withdrawal of such Common Area.

Section 4.4 **Maintenance of Common Area and Compliance with Applicable Permits.** The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Area and any improvements and landscaping (except utilities owned and maintained by public or private utility companies providing water, sewer, electrical, fire protection, cable television, telephone, or similar utilities to the Property, or any portion thereof) situated on the Common Area, if any. The Association shall maintain all lakes, drainage areas, drainage easements, and control structures, and shall preserve and protect all designated conservation areas and littoral zones located within, adjacent, or in near proximity to the Property, in accordance with all permit requirements and conditions contained in applicable dredge fill, consumptive use, surface water permits, or any other applicable permits issued by the United States Army Corps of Engineers (“ACOE”), Florida Department of Environmental Protection (“FDEP”), St. John’s River Water Management District (“SJRWMD”), and St. Johns County, Florida and all statutes, rules, regulations and requirements pertaining to surface water management, drainage and water quality promulgated by the SJRWMD, the FDEP, and all other local, state and federal authorities having jurisdiction. The Association shall maintain those portions of the Common Area designated by applicable permit as conservation tracts, storm water management tracts or similar designations, in accordance with all permit requirements, rules, and regulations promulgated by all local, state and federal authorities having jurisdiction. The Association shall be responsible for the maintenance, operation and repair of the Surface Water or Stormwater Management System. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance of other surface water, or storm water management capabilities as permitted by the SJRWMD. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted, or if modified, as approved by the SJRWMD. All maintenance obligations of the Association shall be performed as ordered by the Board of Directors of the Association, and all or any portion of the cost of such maintenance incurred by the Association pursuant to this Section 4.4, shall be a common expense of the Association to be collected and paid in the manner prescribed by this Declaration.

Section 4.5 **Easement for Maintenance, Access and Drainage Purposes.** The Association hereby grants to the Association and its successors, assigns, agents, and contractors, an easement in, on, over and upon those portions of the Property as may be reasonably necessary for the purpose of maintaining the Common Area, including the Surface Water or Stormwater Management System, or other portions of Property to be maintained by Association, in accordance with the requirements of this Declaration. The Association shall have a perpetual non-exclusive easement over all areas of the surface water or storm water management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any Lot which is a part of the Surface Water or Stormwater Management System, at reasonable times and in a reasonable manner, to operate, maintain or repair the Surface Water or Stormwater Management System as required by the SJRWMD permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water or Stormwater Management System. No person shall alter the drainage flow of the Surface Water or Stormwater Management System, including buffer areas or swales, without prior written

approval of the SJRWMD. The easement granted hereby shall not be exercised by any party in a manner which unreasonably interferes with the use, occupancy, or enjoyment of any improved portion of the Property. Further, in the event that any portion of the Property shall be damaged or altered in any way as the result of the exercise of the easement rights granted hereby, such portions of the Property shall be immediately restored to the condition that existed immediately prior to such damage or alteration by the party exercising such rights.

ARTICLE V **ARCHITECTURAL CONTROL**

Section 5.1 **Architectural Review and Approval.** No landscaping, improvement or structure of any kind, including without limitation, any building, house, fence, wall, pool, spa, ornamental statue, flag pole, play structure, satellite dish, screen enclosure, sewer, drain, disposal system, landscape device or object, driveway or other improvement shall be commenced, erected, placed or maintained upon any Lot, or upon the Common Area, nor shall any addition, change or alteration to the landscaping, improvement, or structure be made, unless and until the plans, specifications and location of the same have been submitted to, and approved in writing by the Association or the Association's designee. All plans and specifications shall be evaluated as to visual and acoustical privacy and as to the harmony of external design and location in relation to surrounding structures, topography, existing trees and other natural vegetation and as to specific conformance with Architectural Criteria, as such term is hereafter defined, which may be imposed from time to time by the Association. All plans and specifications submitted for review shall be evaluated for total effect and may be disapproved by the Association solely for aesthetic reasons, in the Association's sole and absolute discretion. No approval of plans and specifications for improvements constructed upon any Lot shall be construed to establish precedent or otherwise obligate the Association to approve applications involving similar designs proposed for other Lots. No plan or specification shall be deemed approved unless a written approval is granted by the Association to the Owner submitting same. Absent the need for extension, the Association or its designee shall issue an approval or initial partial or full disapproval of the plans and specifications properly submitted with a complete application within ten (10) business days of each submission. Any change or modification to an approved plan shall not be deemed approved unless a written approval is granted by the Association to the Owner submitting same. Any disapproval by a designee of the Association (i.e. the ARB) may be appealed to the Association. Any Association or designee approval will expire after 6 months from the date of approval, such that if the approved change is not completed, the homeowner must seek approval again from the ARB.

Section 5.2 **Review Procedures.** The Association shall have the following rights with respect to architectural review and approval conducted in accordance with this Article V:

(a) To promulgate, amend, eliminate or replace architectural criteria applicable to architectural review to be conducted by the Association which shall be applicable to all or any portions of the Property (the "Architectural Criteria"). Notice of any amendment to the Architectural Criteria, which shall include a verbatim copy of such amendment, shall be delivered to each member of the Association. The delivery to each member of the Association of notice and a copy of any amendment to the Architectural Criteria shall not, however, constitute a

condition precedent to the effectiveness or validity of such amendment. It shall not be necessary for the Architectural Criteria, or any amendment thereto, to be recorded.

(b) To require submission of a complete set of all plans and specifications for any improvement or structure of any kind requiring review and approval pursuant to this Article V. The Association may also require submission of samples of building materials proposed for use on any Lot, and may require tree surveys to show the effect of the proposed improvements on existing tree cover, and such additional information as reasonably may be necessary for the Association to completely evaluate the proposed structure or improvement in accordance with this Declaration and applicable Architectural Criteria.

(c) To approve or disapprove in accordance with the provisions of this Article V, any improvements or structures of any kind, or any change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Lot, and to approve or disapprove any exterior additions, changes, modifications or alterations therein or thereon.

(d) To adopt a schedule of reasonable fees for processing requests for architectural approval of proposed improvements. Such fees, if any, shall be payable to the Association, in cash, at the time that plans and specifications are submitted to the Association.

(e) To require each Owner to deposit a reasonable sum (the "Construction Deposit") with the Association to secure such Owner's compliance with the terms of this Declaration and all plans and specifications approved in accordance with this Article V.

Section 5.3 **Variance.** The Association, in its sole and absolute discretion, may (but shall not be obligated to) authorize variances from compliance with any architectural provisions of this Declaration or applicable Architectural Criteria when deemed appropriate by the Association, such as, without limitation, topography, natural obstructions, hardships, or aesthetic or environmental considerations require same. Such a variance must be evidenced by a document signed by an authorized representative of the Association and no such variance shall be deemed approved or otherwise implied unless and until such written evidence shall have been delivered to the applicable Owner. If such a variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variance is granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and particular provisions of this Declaration or applicable Architectural Criteria covered by the variance, nor shall it affect in any way an Owner's obligation to comply with all governmental laws and regulations, including but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

Section 5.4 **Architectural Review Board.** The Association shall be authorized to form an Architectural Review Board ("ARB"), who shall serve at the pleasure of the Association's Board of Directors. The ARB shall thereafter be authorized to exercise all rights of architectural control that are assigned by the Association to the Association and authorized by this Article V.

Section 5.5 **Limited Liability.** In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Association as contemplated by this Article V, the Association and the ARB shall not be liable to any Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way related to the subject matter of any such reviews, acceptances, inspections, permissions, consents, variances, or required approvals, whether given, granted or withheld by the Association or the ARB.

ARTICLE VI **COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 6.1 **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of a Lot within the Property hereby covenants, and by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual and special assessments established and levied pursuant to the terms of this Declaration. All such assessments, together with interest thereon from the due date at the highest lawful rate and costs of collection thereof (including reasonable attorneys' fees), shall be a charge and continuing lien upon each Lot against which each such assessment is made, and shall also be the personal obligation of the Owner. No Owner may avoid liability for the assessments by waiver of rights to use, or by non-use of, the Common Areas or by abandonment.

Section 6.2 **Purpose of Assessments.**

(a) The annual assessments levied by the Association against all Owners shall be used for the purposes of management and accounting fees, taxes, insurance, and utility charges relating to the Common Area, to fund the obligations of the Association set forth in Section 4.4, and for all other purposes reasonably contemplated by this Declaration, the Articles, the Bylaws, or any cost sharing or similar agreement to which the Association is or may become a party. Assessments shall also be used for the maintenance and repair of the surface water or stormwater management systems including, but not limited to, work within retention areas, drainage structures, and drainage easements. Further, such annual assessments may be levied to fund reasonable reserves for deferred maintenance of, or non-recurring expenses related to, the Common Area including, without limitation, the Surface Water or Stormwater Management System. The maintenance responsibilities of the Association payable through assessment of the Owners shall specifically include, but not be limited to, the perpetual maintenance of all retention ponds, drainage swales, and all other drainage and storm water management structures and improvements. Assessments collected by the Association to fund reserves shall be separately accounted for, it being the requirement of this Declaration that such funds shall be used exclusively for deferred maintenance of, or non-recurring expenses related to, the Common Area including the Surface Water or Stormwater Management System.

(b) The Board of Directors may levy special assessments for any purpose relating to permissible or required activities of the Association pursuant to this Declaration, the Articles, or any cost sharing or similar agreement to which the Association is or may become party.

Special assessments shall be allocated among the Owners as provided in Section 6.3 hereof.

(c) **"Capital Contribution Assessment"**: Upon transfer of title to a Lot after the recording of this amendment, a capital contribution is due in the amount equal to one-sixth (1/6) of the annual per Lot assessment levied by the Association pursuant to Section 6.2. This amount shall be in addition to, not in lieu of, the annual assessments levied by the Association on the Owner of the Lot. This amount shall be deposited into the purchase and sales, escrow and disbursed therefrom to the Association at the closing of the purchase of the Lot/Residential Dwelling Unit by such purchaser. Conveyance between spouses; conveyance to a trust in which the grantor is the trustee or a partnership, corporation or other entity so long as such entity is and remains wholly owned by the Owner or by such Owner and the Owner's spouse and/or children or is created for their benefit; conveyance of a Lot/Residential Dwelling Unit by an Owner or such Owner's estate to the Owner's spouse and/children; and conveyance by the estate of an Owner to a family member shall be exempt from payment of the Capital Contribution.

Section 6.3 **Calculation and Collection of Assessments**. Annual assessments shall be established by the Board of Directors based upon an annual budget. Each Owner's pro rata share of the total annual assessment or any special assessment shall be based upon the following calculations:

(a) Owners of Lots shall pay a pro rata share of annual and special assessments based upon assessment equivalents allocated among the Owners as provided in subparagraph (b) hereof (the "Assessment Equivalents"). The annual assessment may be decreased, or increased by an amount not to exceed ten percent (10%) of the prior year's annual assessment amount per Assessment Equivalent, which 10% may be cumulative. For example, if the annual assessment has no increase or decrease in a given year, or years, any subsequent increase may include the maximum assessment that could have been made in prior years. For example, if no increase is made in year 1 or year 2, then an increase in year 3 is only capped at 10% of year 1's possible assessment, plus 10% of year 2's possible assessment, and 10% of year three's assessment. In no event may the Annual Assessment be increased in one year more than 25% of the prior year's assessment except by a vote of at least three-fifths of the members of a quorum of the Association members at a properly noticed meeting. The total amount of each special assessment shall be divided by the total Assessment Equivalents attributable to Property as of the date of authorization of such special assessment by the Board of Directors.

(b) The share of the total annual assessment and any special assessments imposed by the Board of Directors pursuant to this Declaration shall be allocated among the Owners on the basis of one (1) Assessment Equivalent per Lot, provided however, if any Lots shall be combined, the Owner of such Lots shall pay annual and special assessments on the basis of one (1) Assessment Equivalent for each Residential Dwelling Unit located on such combined Lots.

(c) The assessment obligations of each Owner shall commence upon issuance of a Certificate of Occupancy for a completed residence located on such Lot to such Owner. Annual Assessments may be paid annually or on a quarterly basis by each owner, but if an Owner opts to pay quarterly and is late in making a quarterly payment, the Association can require immediate payment of the remainder of the annual dues. Annual Assessments shall be collectable in advance

on a periodic basis as established by the Board of Directors from time to time. Special assessments shall be collectible in advance in the manner established by the Board of Directors at the time such special assessments are authorized.

Section 6.4 **Effect of Non-Payment of Assessment: Lien, Personal Obligation, and Remedies of Association.** The lien of the Association shall be effective from and after recording in the public records of St. Johns County, Florida, a claim of lien stating the description of the Lot encumbered thereby, the name of the Owner, the amount and the due date. Such claim of lien shall include assessments which are due and payable when the claim of lien is recorded as well as assessments which may accrue thereafter, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record, and the affected Owner shall pay the cost of such satisfaction. If the assessment is not paid within fifteen (15) days after the due date, the assessment shall bear interest from the due date up to the highest lawful rate, the Association has the option, but not the obligation, to assess late fees or fines permissible by law, and the Association may at any time thereafter bring an action to enforce the lien authorized hereby by appropriate foreclosure proceedings and/or a suit on the personal obligation against the Owner. In the event the Association shall fail to bring such an action for collection of such delinquent assessment within thirty (30) days following receipt of written notice from any Owner demanding that such proceedings be commenced, such Owner shall be authorized to institute such proceedings. There shall be added to the amount of such delinquent assessment the costs of collection incurred by the Association, or such Owner, which shall specifically include without limitation reasonable attorneys' fees for trial and appeal. Upon receipt of a written request therefor from any Owner, the Association shall provide such Owner with a written statement of all assessments and other charges due or to become due from such Owner to the Association, which shall be binding on the Association through the date indicated on the Association's written statement. The Association may charge a reasonable fee for providing this written statement.

Section 6.5 **Subordination of Lien to Mortgages.** The lien of the assessments provided for by this Declaration shall be subordinate to the lien of any bona fide mortgage which is perfected by recording prior to the recording of the claim of lien for any such unpaid assessments. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of the Lot by deed in lieu of foreclosure, pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure of such mortgage. The total amount of assessment which remains unpaid as a result of a mortgagee obtaining title to the Lot shall be added to the total budget for Common Expenses and shall be paid by all Owners including the mortgagee on a pro rata basis. If a third party, excluding the Association or the foreclosing mortgagee, obtains title to a Lot pursuant to a mortgagee foreclosure sale, the third party is obligated to pay for the unpaid assessments, fines, interest, late fees, collection and other costs, and attorneys' fees that became due and payable on the Lot prior to the foreclosure sale. No sale or other transfer shall relieve any Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments. A written statement of the Association that the lien is subordinate to a mortgage, shall be dispositive of any question of subordination.

ARTICLE VII
UTILITY PROVISIONS

Section 7.1 **Water System.** The central water supply system provided for the service of the Property shall be used as sole source of potable water for all water spigots and outlets located within or on all buildings and improvements located within the Property. Each Owner shall pay water meter charges of the supplier thereof and shall maintain and repair all portions of the water lines which are located within, or which serve, the portions of the Property owned by such Owners. No individual potable water supply system or well for consumptive or irrigation purposes shall be permitted on any Lot without the prior written consent of the Association.

Section 7.2 **Sewage System.** The central sewage system provided for the service of the Property shall be used as the sole sewage system for all buildings and improvements located within the Property. Each Owner shall maintain and repair all portions of the sewer lines located within, or which serve, the portions of the Property owned by such Owner, and shall pay when due the periodic charges or rates for the furnishing of such sewage collection and disposal services made by the operator thereof. No sewage shall be discharged onto the open ground or into any wetland, lake, pond, park, ravine, drainage ditch or canal or roadway and no septic tank or drain field shall be placed or allowed within the Property.

Section 7.3 **Solid Waste Recycling.** Each Owner shall participate in any available solid waste recycling program instituted by the Association, St. Johns County, Florida, or the solid waste collection provider. Solid waste collection receptacle pads constructed within the Property shall be designed so as to include space for recycling bins compatible with the applicable recycling program collection equipment.

Section 7.4 **Utility Services.** It shall be the responsibility of each Owner to make direct arrangements with the suppliers of electricity, water, sewer, irrigation reuse water and any other utility services for service to the portions of the Property owned by such Owner.

ARTICLE VIII
USE RESTRICTIONS AND RIGHTS AND EASEMENTS
RESERVED BY DEVELOPER

Section 8.1 **Residential Use.** The Lots subject to this Declaration must be used primarily for the purpose of residential dwellings. Owners or lawful residents of the dwellings may seek approval in writing from the Board to conduct a business in, on, or out of the dwelling or Lot and to identify their physical address with the business, provided no business use may interfere with or detract from the residential purpose of the dwellings or Lots, such as the causation of increased non-residential traffic, the erection of any non-residential structure, or the display of any marketing materials in, on, or around the property, including signs, or painted or wrap logos on vehicles. Board permission for any non-residential, business use of any dwelling or Lot may be withdrawn by the Board for any lawful reason upon 10 business days' written notice, after which, the dwelling and Lot may no longer be used for the business purpose. No Lot shall be divided, subdivided or reduced in size without the prior written consent of the Association. Nothing in this paragraph prohibits, or requires HOA approval for, an Owner or

lawful resident to telecommute from his or her residence for his or her employer.

Section 8.2 **Leasing, Rent Demand and Eviction.** For purposes of this Declaration, "leasing" is defined as regular, exclusive occupancy of a Residential Dwelling Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit. All leases for Residential Dwelling Units shall (i) be in writing, (ii) have a term of at least seven months, (iii) lease the Residential Dwelling Unit in its entirety (e.g. separate rooms within the same Residential Dwelling Unit may not be separately leased), and (iv) include a provision by which the lessee agrees to be bound by the terms and conditions of this Declaration and any rules and regulations of the Association. Any Owner leasing its Residential Dwelling Unit shall remain responsible for the terms and conditions of this Declaration and any rules and regulations of the Association. The Owner shall provide a copy of this Declaration, the by-laws, the Architectural Criteria and all other governing documents to the lessee. Pursuant to Florida Statute 720.3085(8), the Association has the authority to obtain rents from any tenant if the Owner/ landlord is delinquent in any monetary obligations due to the Association. If the tenant fails to comply with Association's demand, pursuant to Florida Statute 720.3085(8), Association shall be authorized to file a notice of eviction and an eviction action against the tenant under Florida Statutes ss. 83.59-83.625,

Section 8.3 **No Detached Buildings or Structures.** No garages, tool or storage sheds, tents, trailers, tanks, temporary or accessory buildings, pergolas, fire pits, patios, or other structures shall be erected or permitted to remain on any Lot without the prior written approval of the Association.

Section 8.4 **Insurance and Casualty Damages.** Each Owner shall be required to obtain and maintain in force and effect a policy of fire and other casualty insurance with coverage adequate to cover the full replacement cost of the dwelling and other improvements located on the Owner's Lot. In the event of damage or destruction by fire or other casualty to the improvements on any Lot, the Owner shall commence reconstruction of the improvements within six (6) months from date of casualty and shall repair or rebuild such damaged or destroyed improvements in a good workmanlike manner, within a reasonable time not to exceed one year and in accordance with the provisions of this Declaration. The improvements shall be reconstructed in accordance with the original plans and specifications including color scheme, placement on Lot and materials, except with prior approval by the Association for variances. All debris must be removed immediately and the Lot shall be restored to an orderly condition within a reasonable time not to exceed sixty (60) days from the date of such damage or destruction.

Section 8.5 **Compliance with Laws.** All Owners and other occupants of the Property shall at all times comply with all zoning, environmental, land use, marketing and consumer protection ordinances, statutes and regulations applicable to the Property or to any improvements constructed thereon, as well as all governmental rules, regulations, statutes and ordinances applicable to each Owner in connection with operation of improvements located within the Property. Without limiting the generality of the foregoing, no approval granted pursuant to the provisions of this Declaration shall excuse any Owner from complying with any and all applicable zoning or land use laws.

Section 8.6 **Motor Vehicles, Buses, Trailers, and Boats.** No buses, boats, recreation vehicles, trailers, or other motor vehicles, except properly tagged and registered four wheel passenger automobiles, shall be placed, parked or stored upon any Lot, nor shall any extended (exceeding 48 hours in any 30 day period) maintenance or repair be performed upon any boat or motor vehicle upon any Lot, except within a building, or otherwise screened, so as to be totally isolated from public view. Commercial vehicles shall not be parked within the Property within public view on a regular basis. Construction trailers may be parked only with the prior written consent of the Association and in an area designated by the Association. Notwithstanding any provision of this Section 8.7 to the contrary, the Board of Directors shall have the authority to grant permission for the temporary parking of recreational vehicles on a case by case basis, provided that in no event shall any recreational vehicle be parked on any Lot for more than seven (7) consecutive days.

No commercial vehicles, or personal or commercial campers, mobile homes, motor homes, house trailers or trailers of every description, recreational vehicles (including golf carts), buses, boats, boat trailers, house trailer or vans (other than passenger vans) shall be permitted to be parked or stored at any place within the Lots, except the garage with the garage door closed at all times except for entering and exiting the garage, or when the garage is in active use. No Owner shall keep any vehicle on the Common Areas, which is deemed a nuisance by the Board. No parking on lawns shall be permitted.

For purposes of this Section, "commercial vehicles" shall mean those that are not designed and used primarily for customary personal/family purposes, and those vehicles that contain commercial lettering, including wraps, paint or magnetic signage unless such is removed while parked at the residence. The absence of commercial-type lettering, magnets or graphics shall not be dispositive as to whether it is a commercial vehicle. The determination of the Board as to the commercial nature of a vehicle shall be binding on an Owner. The prohibitions on parking contained above in this Section shall not apply to temporary (less than 10 hours) parking of commercial vehicles not owned or driven by the resident, such as for construction use, home repair, or providing pick-up and delivery, nor to any vehicles of Developers. For purposes of this section, a vehicle owned by a law enforcement agency shall not be considered a commercial vehicle.

Section 8.7 **Air Conditioning Units.** No window air conditioning units may be installed on any Lot. All air conditioning units shall be installed in accordance with the units originally installed by the builders unless a variance is obtained from the ARB.

Section 8.8 **On-Site Fuel Storage.** No on-site storage of gasoline or other fuels shall be permitted on any Lot, except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment.

Section 8.9 **Play Equipment.** All bicycles, tricycles, scooters, skateboards and other portable play equipment, wading pools, baby strollers and similar items shall be stored so as not to be visible from streets or property adjacent to a Lot unless in active use. No such items shall be allowed to remain on Lots so as to be visible from adjacent property or from the street when not in use. Storage of portable basketball nets when not in use will be determined under the

ARB guidelines. Permanent play equipment is considered a structure which must be pre-approved by the ARB.

Section 8.10 **Window Coverings.** All windows on any structure which are visible from the street or dwellings on other Lots shall not have tinted glass, or have visible window coverings other than blinds, curtains, shutters, or pre-approved exterior shutters. Bright colors or patterned window coverings must have plain or light colored backing. No material shall be affixed, or appear to be affixed, to the interior or exterior of the window pane including reflective window coverings, flags, posters, tape, canvas, or plastic. Any broken window panes should be fixed within a reasonable time period, not to exceed 4 weeks. No awnings, canopies or shutters shall be permanently installed on the exterior of any building, unless first approved in accordance with Article V. Temporary storm shutters are permitted but should not be installed more than forty-eight (48) hours before hurricane warnings for the County of St. Johns are issued. The temporary storm shutters shall be removed either: (1) within three (3) calendar days after hurricane warnings for the County of St. Johns are lifted, or (2) if damage is incurred, the latter of (a) fifteen (15) days after a hurricane hits the Lot, or (b) immediately after hurricane damage repairs have been made to the structure. Permanent storm shutters are permitted only when incorporated into the design of the home and approved by the Association in accordance with Article V.

Section 8.11 **Animals.** Dogs shall be kept under control by each Owner at all times and leashed when outside the boundaries of the Owner's Lot. Animals shall be kept for the pleasure of Owners only and not for any commercial or breeding use or purposes. If, in the discretion of the Board, any animal shall become dangerous or an annoyance or nuisance to other Owners, or destructive of wildlife or property, such animal may not thereafter be kept on a Lot. Further, in the event any group of animals shall collectively become dangerous or an annoyance or nuisance to other Owners, or destructive to wildlife or property, the Board shall have the right to require the applicable Owner to reduce the number of animals kept on the Lot, or to take such other remedial action as the Board shall specify. The Board shall have the right to adopt rules governing the ownership and maintenance of pets.

Section 8.12 **Hazardous Materials.** Hazardous materials shall only be stored on the Lot if reasonably necessary to the maintenance of the Lots or operation of any permitted business within the Lots. All hazardous materials shall be stored, utilized and accounted for in accordance with all governmental requirements.

Section 8.13 **Recreational Facilities.** The playground and other recreation areas furnished by the Association, or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any person for any claim, damage, or injury occurring on the playground or recreational areas, or related to use thereof. No child under the age of 9 years old shall be permitted to use the playground without adult supervision. Each Owner agrees to indemnify, defend and hold harmless the Association, and their respective partners, shareholders, directors officers, employees and agents for any claims, demands, losses, costs, fees and expenses related to, or in any way pertaining to, use of any recreational facilities furnished by Developer or the Association by the Owner, Owner's family, members, guests, lessees, and invitees.

Section 8.14 **Insurance Rates.** Nothing shall be done or kept in the Common Area which will increase the rate of insurance on any property insured by the Association without the Approval of the Board, nor shall anything be done or kept on any Lot or the Common Areas which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

Section 8.15 **Drainage Flow.** Drainage flow shall not be obstructed or diverted from drainage easements. The Association may, but shall not be required to, cut drainways for surface water wherever and whenever such action may appear to be necessary to maintain reasonable aesthetic standards relative to the Property and surrounding properties. These easements include the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other reasonable action necessary to install utilities and to maintain reasonable aesthetic standards, but shall not include the right to disturb any permanent improvements erected upon a Lot which are not located within the specific easement area designated on the plat or otherwise reserved in this Declaration. All Lots shall at all times be graded so as to comply with the Neighborhood Grading Plan approved by St. Johns County, Florida and all permits issued by the St. Johns River Water Management District.

Section 8.16 **Easement Areas.** No dwelling shall be erected within any easement area shown on any plat of all or any portion of the Property.

Section 8.17 **Easements for Ingress, Egress, Utilities and Drainage.** The Association reserves for itself, its successors, assigns and designees, a right-of-way and perpetual, nonexclusive easement for ingress and egress and to construct, maintain and use utilities, electric, telephone and street lighting poles, wires, cables, conduits, storm sewers, sanitary sewers, water mains, gas, sewer, water lines, drainage ways and structures, or other public conveniences or utilities, on, in and over, (i) any portion of the Common Area; and (ii) any area designated as an easement, private street or right-of-way area on any plat of all or any portion of the Property.

Section 8.18 **Easements for Maintenance Purposes.** The Association reserves for itself, the Association, and their respective agents, employees, successors or assigns, easements, in, on, over and upon each Lot and the Common Area as may be reasonably necessary for the purpose of preserving, maintaining or improving roadways, landscaped areas, wetland areas, lakes, ponds, hammocks, wildlife preserves or other Common Areas, the maintenance of which may be required to be performed by the Association.

Section 8.19 **Setbacks.** Front, rear and side building setbacks for all dwellings and related structures shall be as established by, and measured in accordance with the Planned Unit Development (“PUD”) on record with the County, and the Architectural Criteria established by the Board of Directors.

Section 8.20 **Mailboxes.** A mailbox shall be constructed on each Lot in compliance with the applicable Architectural Criteria, and such mailbox shall constitute the sole location for the delivery of mail to the occupants of such Lot. Owners shall keep their mailboxes in operable condition.

Section 8.21 **Sidewalks.** Any Developer of a Lot developing a Residential Dwelling Unit on such Lot shall construct any sidewalk on or in front of such Lot, in accordance with the subdivision construction plans submitted to and approved by St. Johns County. Such sidewalk shall be completed prior to the issuance of a certificate of occupancy for such Lot. Owners are required to maintain sidewalks in good, and safe condition.

Section 8.22 **Maintenance of Driveways.** Each Lot Owner shall be responsible for maintenance of the driveway serving his Lot.

Section 8.23 **Trash.** No trash or other waste material shall be kept or permitted on the Lots, except in proper trash or recycling containers, and the contents of such containers must be removed regularly through public trash or recycling collection or through other proper and lawful disposal. All trash or recycling containers must be hidden from view by fencing, landscaping, or in a closed garage such that they are not be visible from any of the other Lots or the street, except for the minimum time necessary for its collection. Trash shall be placed curbside no earlier than dusk the day prior to collection, and empty receptacles shall be removed from curbside by dusk on the day of collection. These restrictions shall not apply when construction is occurring on a lot. No odor from trash or other waste shall be permitted so as to render the Lots, or any other property, unsanitary, unsightly, offensive or detrimental to any other Lots in the vicinity or its occupants. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Lots.

Section 8.24 **Clothing Lines.** No clothing lines, clothing or other household fabrics shall be hung, dried or aired in a manner which is visible from Common Areas or other Lots.

Section 8.25 **Signs.** No sign of any kind shall be displayed to the public view on any Lot except as may be approved as to size and design and in accordance with criteria established by the Association.

Section 8.26 **Lighting.** No lighting shall be permitted which alters the residential character of the Subdivision.

Section 8.27 **Cable Television, Radio or Other Communication Lines.** The Association reserves for itself, and its successors and assigns, a perpetual, easement for the installation, maintenance and operation of cables for the transmission of cable television, radio, or other electronic communications of any form, on, in, and over (i) any area designated as an easement, private street, or right of way on any plat of all or any portion of the Property, and (ii) any portion of the Common Area. All cables located within the Property shall be installed and maintained underground. For purposes of this Section 8.26, the term “cables” shall include without limitation, all wire, coaxial, fiber optic, or other cable types intended for the transmission of electronic communications.

Section 8.28 **Antenna and Satellite Dishes.** The installation of all aerials, antennae or satellite dishes shall be subject to the approval of the Association in accordance with Architectural Criteria imposed by the Association or the Association from time to time. After appropriate submission to and approval from the Board, Owners must install all satellite dishes

on the rear portion of the Owner's residence unless the Owner can provide evidence to the Association that the installation of a satellite dish on the rear portion of the Owner's residence will cause the Owner unreasonable delay or prevention of use of the satellite dish, unreasonable increase in the cost for installation or use of the satellite dish, or precludes/the Owner from receiving or transmitting an acceptable quality signal from satellite dish.

Section 8.29 **Nuisances.** Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to any party. Any activity on a Lot which interferes with television, cable or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. If a dispute or question arises as to what may be or become a nuisance, the issue shall be submitted to the Association's Board of Directors, whose decision shall be dispositive of such dispute or question. No immoral, improper or unlawful use shall be made of any portion of the Property and all valid laws, zoning ordinances and regulations of governmental agencies having jurisdiction thereof shall be complied with.

Section 8.30 **Sight Distance at Intersections.** All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem, as the same is determined by the Board of Directors.

Section 8.31 **Fences.** Except as approved by the Association pursuant to Article V hereof no fence, wall or other barrier shall be constructed upon any Lot or any other portion of the Property.

Section 8.32 **Pools.** No above-ground pools shall be erected, constructed or installed on any Lot, except above-ground spas or Jacuzzis may be permitted, if approved in accordance with Article V. Screened pool enclosures shall comply with the Architectural Review Criteria. Screen enclosures shall be subject to design and approval of appearance (color, style, etc.) pursuant to Article V.

Section 8.33 **Landscaping and Irrigation.** Landscaping and irrigation shall be installed on each Lot in accordance with the requirements of the Architectural Criteria.

Section 8.34 **Trees.** No tree or shrub, the trunk of which exceeds six (6) inches in diameter one (1) foot above the ground, shall be cut down, destroyed or removed from a Lot without the prior express written consent of the Association.

Section 8.35 **Artificial Vegetation.** No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Association.

Section 8.36 **Lakes.** Only the Association shall have the right to pump or otherwise remove any water from any lake adjacent to or near to the Subdivision for the purpose of irrigation or other use, or to place any refuse in such lake or lakes. The Association shall have the sole and absolute right (but no obligation) to control the water level of such lake or lakes and to control the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in or on any

such lake. No gas or diesel driven boat shall be permitted to be operated on any lake. Lots which now or may hereafter be adjacent to or include a portion of a lake (the "lake parcels") shall be maintained so that such grass, planting or other lateral support to prevent erosion of the embankment adjacent to the lake and the height, grade and contour of the embankment shall not be changed without the prior written consent of the Association. Further, all shoreline vegetation, including cattails and the like, shall be maintained and controlled by the Owner of any lake parcel pursuant to the requirements of Section 8.37 hereof. If the Owner of any lake parcel fails to maintain the embankment or shoreline vegetation as part of its landscape maintenance obligations in accordance with the foregoing, the Association shall have the right, but no obligation, to enter upon any such lake parcel to perform such maintenance work which may be reasonably required, all at the expense of the Owner of such lake parcel pursuant to the provisions of Article IX of this Declaration. Title to any lake parcel shall not include ownership of any riparian rights associated therewith. No docks, bulkheads or other structures shall be constructed on such embankments unless and until same shall have been approved by the Association. The Association shall have the right to adopt reasonable rules and regulations from time to time in connection with use of the surface waters of any lake adjacent to or nearby the Subdivision. The Association shall have the right to deny such use to any person who in the opinion of the Association may create or participate in the disturbance or nuisance on any part of the surface waters of any such lake. The use of the surface waters of any such lake shall be subject to rights granted to other persons pursuant to the rules and regulations of the Association.

Section 8.37 **Maintenance of Lots and Limited Common Areas, and Avoidance of Unsafe, Unightly or Unkempt Conditions.** It shall be the responsibility of each Owner to prevent the development or maintenance of any unsafe, unclean, unhealthy, unsightly, or unkempt condition on his or her Lot or limited common area, any improvement thereon, including but not limited to, the following:

- (a) roofs, gutters, downspouts;
- (b) lawns, shrubs, trees, and landscaping (each owner is required to sod and weed his or her property, as appropriate);
- (c) walks, sidewalks, leave walks, driveways, mailboxes, lighting fixtures, and fencing (including the side of the fence or wall for the common area which is located on the Owner's property);
- (d) windows, doors, and trim;
- (e) exterior paint condition;
- (f) any other exterior improvements, structures, and attachments from time to time situated on Owner's property; and
- (g) any of the above that may be located in the area between the lot boundary and adjacent street

No building or landscaping materials may be stored in the front or sides of a house for more than 48 hours.

No weeds, underbrush or other unsightly vegetation or lack of vegetation shall be permitted to grow or remain upon any Lot or Limited Common Area, and no refuse pile or unsightly objects shall be allowed to be placed or allowed to remain anywhere within a Lot or Limited Common Area. All landscaping on lot and limited common areas shall be maintained in

a neat, attractive and orderly manner, including maintenance of grass, plants, plant beds, trees, turf, proper irrigation and lake edge maintenance, all in a manner with such frequency as is consistent with good property management. The "Limited Common Area" is the area between edge of the sidewalk furthest from the road, and the curb.

Each Owner must make all necessary repairs and maintain the lot and its landscaping and structures in a reasonably attractive condition, and if unable or unwilling to repair, the owner must replace or remove unsafe, unsanitary, or unsightly conditions, structures, and attachments. Owners of lots abutting lakes are responsible for the property up to the water line of the lake.

If the Owner fails to perform his or her responsibilities as required by this provision after reasonable efforts by the Association to obtain compliance pursuant to Article IX, the Association, its agents and assigns, shall have the right to enter upon any Lot for the purpose of mowing, pruning, removing, clearing, or cutting underbrush, weeds or other unsightly growth, trash, unsightly or unsafe structures, which in the opinion of the Board distracts from the overall beauty of the property and the Association may also levy an assessment against Lot pursuant to Article IX.

Section 8.38 **Reservation of Right to Release Restrictions.** If a building or other improvement has been or is proposed to be erected within the Property in such a manner as to constitute a violation of, variance from, or encroachment into, the covenants and restrictions set forth in, or easements granted or reserved by, this Declaration, the Association shall have the right to waive or release the violation, variance or encroachment without the consent or joinder of any person so long as the Association, in the exercise of its sole discretion, determines in good faith that such waiver or release will not materially and adversely affect the health and safety of Owners, the value of adjacent portions of the Property, and the overall appearance of the Property.

Section 8.39 **Solicitation.** No soliciting will be allowed at any time within the Property.

Section 8.40 **Fines.** If an Owner, an Owner's family, tenants, or guests, violates any of the bylaws or provisions of this Declaration including the Architectural Guidelines the Association may levy fines, up to \$100.00 per day, against the Owner as determined by the Board of Directors. Fines for violation of the provisions of this Declaration may exceed \$1,000.00 in the aggregate. The Association shall not impose a fine without providing the person sought to be fined fourteen (14) days' notice. The notice shall provide the person sought to be fined an opportunity for a hearing before a committee of at least three (3) members appointed by the Board, as provided in Chapter 720.305(2) (b), Florida Statutes.

Section 8.41 **Occupants Bound.** All provision of the Declaration and Bylaws or other documents which govern the conduct of Owners and which provide sanctions against Owners shall also apply to all occupants, guests, invitees and lessees of any Owner. Every Owner shall cause his or her occupants to comply with the Declaration, Bylaws and other documents which govern the conduct of Owners and shall be responsible for all violations and losses to the Lots, Properties and/or Common Areas caused by such occupants, guests, invitees and lessees, notwithstanding the fact that such occupants are fully liable and may be sanctioned for any

violation of the Declaration, Bylaws, and Rules and Regulations adopted pursuant thereto.

ARTICLE IX
EXTERIOR MAINTENANCE ASSESSMENT

Section 9.1 **Exterior Maintenance.** In accordance with this Declaration all maintenance of a Lot and all structures, parking areas, and other improvements within a Lot shall be the sole responsibility of the Owner who shall perform such maintenance in a timely manner consistent with this Declaration and the Architectural Criteria. In the event the Owner fails to timely maintain his or her Lot and all structures, parking areas, and other improvements within the Lot, the Association may provide maintenance upon any Lot or Limited Common Area requiring same, when necessary in the opinion of the Association's Board of Directors to preserve the beauty, quality, or value of any or all portions of the Property. Such maintenance shall include but not be limited to painting, roof repair and replacement, repair of gutters, downspouts, and exterior building surfaces, exterior structures, yard clean-up and yard maintenance. Each non-compliant Owner shall have twenty (20) days within which to perform the required maintenance after being notified in writing by the Association that such maintenance is necessary before the Association undertakes the maintenance.

Section 9.2 **Assessments of Costs.** The cost of any maintenance undertaken by the Association under the provisions of Section 9.1 shall be assessed against each Lot upon which such maintenance is performed or, in opinion of the Board, benefiting from same. Exterior maintenance assessments shall not be considered a part of the annual or special assessments imposed upon the Property pursuant to Article VI hereof. Any exterior maintenance assessment shall be a lien upon each Lot assessed and the personal obligation of the Owner of each such Lot and shall become due and payable in all respects, together with interest, attorneys' fees, and costs of collection, as provided for in Article VI, and shall be subordinate to mortgage liens to the extent provided by Article VI.

Section 9.3 **Access.** For the purpose of performing the maintenance authorized by this Article IX, the Association, through its duly authorized agents or employees, shall have the right, after the notice to the Owner provided under Section 9.1, to enter upon any Lot at reasonable hours on any day except Sunday. In the case of emergency repairs, access will be permitted at any time with only such notice as under the circumstances is practically affordable.

ARTICLE X
NOTICE OF PERMIT REQUIREMENTS AND OTHER MATTERS

Section 10.1 **Jurisdictional Areas and Permits.** THE PROPERTY HAS BEEN DEVELOPED IN ACCORDANCE WITH REQUIREMENTS OF SAINT JOHNS RIVERWATER MANAGEMENT DISTRICT PERMIT NUMBER 40-109-87432-39, AS AMENDED BY 40-109-87432-65, AS MAY BE AMENDED (THE "PERMIT"). THE PERMIT IS OR WILL BE OWNED BY THE ASSOCIATION AND THE ASSOCIATION HAS THE OBLIGATION TO ASSURE THAT ALL TERMS AND CONDITIONS THEREOF ARE ENFORCED. THE ASSOCIATION SHALL HAVE THE RIGHT TO BRING AN ACTION, AT LAW OR IN EQUITY, AGAINST ANY OWNER VIOLATING ANY PROVISION OF THE

PERMIT. THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT SHALL HAVE THE RIGHT TO ENFORCE, BY A PROCEEDING AT LAW OR IN EQUITY, THE PROVISIONS CONTAINED IN THE COVENANTS AND RESTRICTIONS WHICH RELATE TO THE MAINTENANCE, OPERATION AND REPAIR OF THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM.

FURTHER, ANY OWNER OWNING A LOT WHICH CONTAINS OR IS ADJACENT TO JURISDICTIONAL WETLANDS OR CONSERVATION AREAS AS ESTABLISHED BY THE ACOE OR SJRWMD OR BY ANY APPLICABLE CONSERVATION EASEMENT SHALL BY ACCEPTANCE OF TITLE TO THE LOT, BE DEEMED TO HAVE ASSUMED THE OBLIGATION TO COMPLY WITH THE REQUIREMENTS OF THE PERMIT AS THE SAME RELATE TO SUCH OWNER'S LOT AND SHALL AGREE TO MAINTAIN SUCH JURISDICTIONAL WETLANDS AND CONSERVATION AREAS IN THE CONDITION REQUIRED UNDER THE PERMIT. IN THE EVENT THAT AN OWNER VIOLATES THE TERMS AND CONDITIONS OF THE PERMIT AND FOR ANY REASON THE ASSOCIATION OR THE ASSOCIATION IS CITED THEREFORE, THE OWNER AGREES TO INDEMNIFY AND HOLD THE ASSOCIATION AND THE ASSOCIATION HARMLESS FROM ALL COSTS ARISING IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION ALL COST AND ATTORNEYS' FEES, AS WELL AS ALL COSTS OF CURING SUCH VIOLATION. NO PERSON SHALL ALTER THE DRAINAGE FLOW OF THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM OR ANY PORTION OF THE JURISDICTIONAL WETLANDS OR CONSERVATION AREAS, INCLUDING WITHOUT LIMITATION, ANY BUFFER AREAS, SWALES, TREATMENT BERMS OR SWALES, WITHOUT THE PRIOR WRITTEN APPROVAL OF THE SJRWMD OR ACOE, AS APPLICABLE.

Section 10.2 **Gopher Tortoises.** Certain Lots within the Property may be located adjacent to a Gopher Tortoise conservation area which is protected by a Conservation Easement in favor the Florida Fish and Wildlife Conservation Commission and the St. Johns River Water Management District recorded in Official Records Book 2538, Page 1195 of the public records of St. Johns County, Florida (the "Conservation Easement"). The land encumbered by the Conservation Easement may be shown on certain plats of the Property. Owners are strictly prohibited from entering the land subjected to the Conservation Easement. The Owners acknowledge that certain maintenance activities may be undertaken within the Conservation Easement land, such as thinning of vegetation and controlled burns. The Owners consent to any such activities and agree to hold harmless any parties which may undertake any activities within the Conservation Easement land.

ARTICLE XI **GENERAL PROVISIONS**

Section 11.1 **Developer's Reserved Rights re: Easements.** Notwithstanding any provision of this Declaration to the contrary, the Association shall have the right to specifically define or amend the boundaries or extent of any easement, license, or use right reserved or granted pursuant to the terms hereof. At any time, the Association shall have the right to execute and record an instrument which shall specifically define or amend the boundary and extent of any such

easement, license or use right, or the Association may specifically define or amend such boundaries by the designation thereof on one or more recorded plats of portions of the Property. The Association's determination of the boundary and extent of any easement, license or use right reserved or granted pursuant to this Declaration in accordance with this Section 11.1, shall be dispositive for all purposes; provided nothing contained in this Section 11.1 shall authorize the Association to take any action that would have a material and adverse affect on any improved portion of the Property.

Section 11.2 **Remedies for Violations.** If any Owner or other person shall violate or attempt to violate any of these covenants or restrictions, it shall be lawful for the Association, or any Owner (i) to prosecute proceedings at law for the recovery of damages against those so violating or attempting to violate any such covenant; or (ii) to maintain any proceeding against those violating or attempting to violate any such covenant for the purpose of preventing or enjoining all or any such violations, including mandatory injunctions requiring compliance with the provisions of this Declaration. The ACOE and the SJRWMD shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System and/or jurisdictional wetlands or conservation areas subject to the control of the ACOE or SJRWMD. In the event litigation shall be brought by any party to enforce any provisions of this Declaration, the prevailing party in such proceedings shall be entitled to recover from the non-prevailing party or parties, reasonable attorneys' fees for pre-trial preparation, trial, and appellate proceedings. The remedies in this section shall be construed as cumulative of all other remedies now or hereafter provided or made available elsewhere in this Declaration, or by law.

Section 11.3 **Severability.** Invalidation of any of the provisions of this Declaration by judgment or court order shall not affect or modify any of the other provisions, which shall remain in full force and effect.

Section 11.4 **Additional Restrictions.** No Owner, without the prior written consent of the Association, may impose any additional covenants or restrictions on any part of the Property, but the Association may include in any contract or deed hereafter made and covering all or any part of the Property, any additional covenants or restrictions applicable to the Property so covered which are not inconsistent with and which do not lower standards established by this Declaration.

Section 11.5 **Titles.** The addition of titles to the various sections of this Declaration are for convenience and identification only and the use of such titles shall not be construed to limit, enlarge, change, or otherwise modify any of the provisions hereof, each and all of which shall be construed as if not entitled.

Section 11.6 **Termination or Amendment.** The covenants, restrictions, easements and other matters set forth herein shall run with the title to the Property and be binding upon each Owner, the Association, and their respective successors and assigns for a period of fifty (50) years, and shall be automatically renewed for successive ten (10) year periods unless terminated as herein provided. These covenants may be altered, amended or terminated only: 1) upon the recorded vote of the Board, and 2) upon receiving 2/3 vote of all Owners present plus properly executed proxies presented at a properly noticed Association meeting, provided all Owners and proxies presented

make up a quorum which is defined as 30% of all Owners. Any amendment to this Declaration which alters any provision relating to the Surface Water or Stormwater Management System, beyond maintenance in its original condition, including the water management portion of the Common Areas, must have the prior written approval of the SJRWMD. Any amendment to this Declaration which amends the responsibilities or obligations of the parties with respect to the ACOE Permit, must have prior written approval of ACOE. This Declaration may not be terminated unless adequate provision for transferring perpetual maintenance responsibility for the Surface Water or Stormwater Management System obligation to the then Owners of the Lots is made, and said transfer obligation is permitted under the then existing requirements of the SJRWMD or its successors and the County or any other governmental body that may have authority over such transfer. In the event that the Association is dissolved, prior to such dissolution, all responsibility relating to the Surface Water or Stormwater Management System and the Permits must be assigned to and accepted by an entity approved by the ACOE and SJRWMD. Any amendment to this Declaration shall be executed by the Association and Developer, if applicable, and shall be recorded in the current public records of St. Johns County, Florida.

Section 11.7 **Enforcement by SJRWMD.** The SJRWMD shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration that relate to the maintenance, operation, and repair of the surface water or Stormwater Management System.

Section 11.8 **Conflict or Ambiguity in Documents.** To the extent of any conflict, ambiguity, or inconsistency between this Declaration, the Articles, or the Bylaws, the terms of this Declaration shall control both the Articles and Bylaws.

Section 11.9 **Usage.** Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 11.10 **Effective Date.** This Declaration shall become effective upon its recordation in the public records of St. Johns County, Florida.

Section 11.11 **Disclaimers as to Water Bodies.** NEITHER THE ASSOCIATION, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUB-CONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY ADJACENT TO OR WITHIN THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS, POISONOUS SNAKES, AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES AND NATURAL AREAS WITHIN THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT OR OTHER PORTION OF THE PROPERTY, ALL OWNERS OR USERS OF SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES, OR LAKE BOTTOMS LOCATED THEREIN.

Section 11.12 **Disclaimer of Liability of Association.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

(A) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;

(B) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, ANY LOCAL GOVERNMENT, AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

(C) ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF

ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS LOT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS ARTICLE AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS ARTICLE.

AS USED IN THIS ARTICLE, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF THE ASSOCIATION AND ALL PARTIES RELATED THERETO, ALL OF WHICH SHALL BE FULLY PROTECTED HEREBY.

IN WITNESS WHEREOF, the Association and the Association have caused this instrument to be executed under seal this ___ day of _____, 2015.

**KELLY POINTE HOMEOWNERS
ASSOCIATION, INC.**, a Florida nonprofit
corporation

By: _____
Name: _____
Its: President

STATE OF FLORIDA }
 } SS
COUNTY OF _____}

The foregoing instrument was acknowledged before me this ____ day of _____,
2015, by _____, as President of **KELLY POINTE HOMEOWNERS
ASSOCIATION, INC.**, on behalf of the corporation.

Print: _____
NOTARY PUBLIC
State of Florida at Large
Commission # _____
My Commission Expires:
Personally Known _____
or Produced I.D. _____
[check one of the above]
Type of Identification Produced

EXHIBIT A

Legal Description of the Property

All of Kelly Pointe at Nocatee Phase 1 recorded in Plat Book 65, page 100, Phase 2, recorded in Plat Book 66, page 72, Phase 3, recorded in Plat Book 67, page 76, and Phase 4, recorded in Plat Book 68 on page 84 of the public records of St. Johns County, Florida.

EXHIBIT B

Articles of Incorporation

EXHIBIT C

Bylaws

EXHIBIT D

Common Area

Tracts A, B, C, F and H as shown on the Plat of Kelly Pointe at Nocatee Phase 1, as recorded in Map Book 65, Page 101 of the public records of St. Johns County, Florida.