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

SHEARWATER HOMEOWNERS ASSOCIATION, INC.

This document contains a compilation of the Declaration, as amended, including:

- 1. Declaration of Covenants, Conditions and Restrictions for Shearwater Homeowners Association, Inc. recorded in Official Records Book 4076, Page 680, Public Records of St. Johns County, Florida.**
- 2. First Amendment to Declaration of Covenants, Conditions and Restrictions for Shearwater recorded in Official Records Book 4149, Page 391, Public Records of St. Johns County, Florida.**
- 3. Supplemental Declaration of Covenants, Conditions and Restrictions for Shearwater Homeowners Association, Inc. recorded in Official Records Book 4149, Page 394, Public Records of St. Johns County, Florida.**
- 4. Second Amendment to Declaration of Covenants, Conditions and Restrictions for Shearwater recorded in Official Records Book 4174, Page 941, Public Records of St. Johns County, Florida.**

TABLE OF CONTENTS

PART ONE: INTRODUCTION TO THE COMMUNITY.....	1
ARTICLE I CREATION OF THE COMMUNITY	1
1.1. Purpose and Intent.....	1
1.2. Binding Effect.....	1
1.3. Governing Documents.	2
ARTICLE II CONCEPTS AND DEFINITIONS.....	3
PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS.....	6
ARTICLE III USE AND CONDUCT	6
3.1. Restrictions on Use, Occupancy and Alienation.....	6
3.2. Framework for Regulation.....	8
3.3. Owners' Acknowledgment and Notice to Purchasers.	8
3.4. Rule Making Authority.	8
3.5. Protection of Owners and Others.....	9
3.6. Sidewalks.	10
ARTICLE IV ARCHITECTURE AND LANDSCAPING	10
4.1. General.....	10
4.2. Architectural Review.	11
4.3. Guidelines and Procedures.....	12
4.4. No Waiver of Future Approvals	14
4.5. Variances.....	14
4.6. Limitation of Liability.....	15
4.7. Certificate of Compliance.	15
4.8. Enforcement.....	15
ARTICLE V MAINTENANCE AND REPAIR	16
5.1. Maintenance of Lots.	16
5.2. Responsibility for Repair and Replacement.	17
PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION	17
ARTICLE VI THE ASSOCIATION AND ITS MEMBERS.....	17
6.1. Function of Association.	17
6.2. Membership.	18

6.3.	Voting.	18
ARTICLE VII	ASSOCIATION POWERS AND RESPONSIBILITIES	18
7.1.	Acceptance and Control of Association Property.	18
7.2.	Maintenance of Common Maintenance Areas.....	19
7.3.	Insurance.	20
7.4.	Compliance and Enforcement.....	23
7.5.	Implied Rights; Board Authority.	25
7.6.	Indemnification of Officers, Directors and Others.	25
7.7.	Provision of Services, Activities and Programs.....	26
7.8.	Relationships with Other Properties.	26
7.9.	Facilities and Services Open to the Public.....	27
7.10.	Relationship with Governmental and Tax-Exempt Organizations.	27
7.11.	Right To Designate Sites for Governmental and Public Interests.	27
7.12.	Use of Technology.....	27
7.13.	Compliance with the Development Order and PUD.....	28
ARTICLE VIII	ASSOCIATION FINANCES	28
8.1.	Budgeting and Allocating Common Expenses.	28
8.2.	Budgeting for Reserves.....	29
8.3.	Special Assessments.	31
8.4.	Initial Assessment for Capital Improvements.....	31
8.5.	Benefited Assessments.....	31
8.6.	Commencement of Assessment Obligation; Time of Payment.	32
8.7.	Obligation for Assessments.	32
8.8.	Lien for Assessments.	33
8.9.	Exempt Property.	34
PART FOUR:	COMMUNITY DEVELOPMENT	34
ARTICLE IX	EXPANSION OF THE COMMUNITY	34
9.1.	Annexation.....	34
9.2.	Additional Covenants and Easements.....	34
9.3.	Effect of Filing Supplemental Declaration.	35
ARTICLE X	ADDITIONAL RIGHTS RESERVED TO DECLARANT	35
10.1.	Withdrawal of Property.....	35
10.2.	Marketing and Sales Activities.	35

10.3. Right to Develop.....	36
10.4. Right to Approve Changes in Shearwater Standards.....	36
10.5. Right to Transfer or Assign Declarant Rights.....	36
10.6. Rights To Use Names; License Agreements.	36
10.7. Right To Use Common Area for Special Events.	37
10.8. Easement to Inspect and Right to Correct.....	37
10.9. Right to Notice of Design or Construction Claims.....	37
10.10. Termination of Rights.	37
10.11. Exclusion of Declarant's Other Properties.	38
PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY	38
ARTICLE XI EASEMENTS	38
11.1. Easements in Common Area.....	38
11.2. Easements of Encroachment.	39
11.3. Easements for Utilities, Etc.....	39
11.4. Easements for Maintenance, Emergency and Enforcement.	40
11.5. Easements for Lake and Pond Maintenance and Flood Water.	40
11.6. Easements for Cross-Drainage.....	41
11.7. Rights to Stormwater Runoff, Effluent and Water Reclamation.	41
ARTICLE XII LIMITED COMMON AREAS.....	41
12.1. Purpose.....	41
12.2. Designation.	42
12.3. Use by Others.....	42
ARTICLE XIII PARTY WALLS AND OTHER SHARED STRUCTURES	43
13.1. General Rules of Law to Apply.	43
13.2. Maintenance; Damage and Destruction.	43
PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY	43
ARTICLE XIV DISPUTE RESOLUTION	43
14.1. In General.....	43
14.2. Disputes Between Association and Owners	43
14.3. Disputes Between Association/Owner and Declarant	43
14.4. Dispute Resolution.....	44
ARTICLE XV MORTGAGEE PROVISIONS.....	48
15.1. Notices of Action.	48

15.2. No Priority.	49
15.3. Notice to Association.	49
15.4. Failure of Mortgagee to Respond.	49
ARTICLE XVI DISCLOSURES AND WAIVERS.	49
16.1. Changes in Master Plan.	49
16.2. No Liability For Third Party Acts.	49
16.3. View Impairment.	50
16.4. Water Management.	50
16.5. Liability for Association Operations.	51
PART SEVEN: CHANGES IN THE COMMUNITY	51
ARTICLE XVII CHANGES IN COMMON AREA	51
17.1. Condemnation.	51
17.2. Partition.	52
17.3. Transfer or Dedication of Common Area.	52
ARTICLE XVIII AMENDMENT OF DECLARATION	52
18.1. By Declarant.	52
18.2. By the Members.	52
18.3. Validity and Effective Date.	52
18.4. Exhibits.	53

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SHEARWATER HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHEARWATER HOMEOWNERS ASSOCIATION, INC. (the “**Declaration**”) is made this ____ day of August, 2015, by WFC Ashford Mills Owner VII, L.L.C., a Delaware limited liability company (the “**Declarant**”).

PART ONE: INTRODUCTION TO THE COMMUNITY

Article I Creation of the Community

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in **Exhibit "A"**, is recording this Declaration to establish a general plan of development for Shearwater, a planned community. This Declaration provides for the Community's overall development, administration, maintenance and preservation and provides a flexible and reasonable procedure for its future expansion. An integral part of the development plan is the creation of the Shearwater Homeowners Association, Inc., an association comprised of all Shearwater property owners, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

This document does not and is not intended to create a condominium under Florida law.

Capitalized terms used in this Declaration are defined herein or in the related Articles of Incorporation for the Association.

1.2. Binding Effect.

This Declaration governs the property described in **Exhibit "A"** and any other property submitted to this Declaration in the future. This Declaration shall run with the title to such property and shall bind anyone having any right, title or interest in any portion of such property, their heirs, successors, successors-in-title and assigns.

Declarant, the Association, and their respective legal representatives, heirs, successors and assigns, may enforce this Declaration. This Declaration shall be effective for a minimum of twenty-five (25) years from the date it is recorded. After 25 years, this Declaration shall be extended automatically for successive ten (10) year periods unless at least seventy-five percent (75%) of the then-Owners sign a document stating that the Declaration is terminated and that document is recorded within the year before any extension. In such case, this Declaration shall expire on the date specified in the termination document.

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

In any event, if any provision of this Declaration would be invalid under the Florida Uniform Statutory Rule Against Perpetuities, that provision shall expire ninety (90) years after this Declaration is recorded. This Section does not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

The Governing Documents create a general development plan for Shearwater. The following diagram identifies and summarizes the Governing Documents, each as they may be amended:

Declaration (Recorded)	→	creates obligations which are binding upon the Association and all present and future owners of property in Shearwater
Supplemental Declaration (Recorded)	→	adds property to Shearwater; <i>may</i> impose additional obligations or restrictions on such property
Articles of Incorporation (filed with the Department of State)	→	establish the Association as a non-profit corporation under Florida law
By-Laws (Board adopts)	→	govern the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.
Design Guidelines (Declarant adopts)	→	establish architectural standards and guidelines for improvements and modifications to Lots, including structures, landscaping and other items on Lots
Use Restrictions (initial set attached as <u>Exhibit "B"</u>)	→	govern use of property and activities within Shearwater
Board Resolutions and Rules (Board adopts)	→	establish rules, policies and procedures for internal governance and Association activities; regulate operation and use of Common Area

Additional restrictions or provisions which are more restrictive than the provisions of this Declaration may be imposed on any portion of Shearwater, in which case, the more restrictive provisions will be controlling. However, no Person shall record any additional covenants, conditions or restrictions affecting any portion of Shearwater without Declarant's written consent, so long as Declarant or any Declarant Affiliate owns any property described in **Exhibit**

"A". Thereafter, Owners representing at least seventy-five percent (75%) of the Association's total Class "A" votes must consent. Any instrument recorded without the required consent is void and of no force and effect.

If there are conflicts between Florida law, the Declaration, the Articles and the By-Laws, then Florida law, the Declaration, the Articles and the By-Laws (in that order) shall prevail.

The Governing Documents apply to all Owners and any occupants of a Lot. They also apply to tenants, guests, visitors and invitees. All leases must require that tenants and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents; provided, the Governing Documents shall apply regardless of whether specifically set forth in the lease.

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or other applications of the provision.

Article II Concepts and Definitions

The terms used in the Governing Documents are given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms are defined as follows:

"Affiliate": Any Person which (either directly or indirectly, through one or more intermediaries) controls, is in common control with, or is controlled by, another Person, and any Person that is a director, trustee, officer, employee, independent contractor, shareholder, agent, co-venturer, subsidiary, personal representative or attorney of any of the foregoing. For the purposes of this definition, the term "control" means the direct or indirect power to direct or cause the direction of an entity's management or policies, whether through the ownership of voting securities, by contract or otherwise.

"Articles": The Articles of Incorporation of Shearwater Homeowners Association Inc. filed with Florida's Department of State and attached to this Declaration as **Exhibit "C"** as they may be amended.

"Association": Shearwater Homeowners Association, Inc., a Florida not-for-profit corporation, its successors or assigns.

"Benefited Assessment": Assessments charged against a particular Lot or particular Lots for Association expenses as described in Section 8.5.

"Board of Directors" or **"Board"**: The body responsible for the general governance and administration of the Association, selected as provided in the By-Laws.

"Builder": Anyone acquiring Lots for the purpose of constructing homes for later sale to consumers, or who purchases land within the Community for further subdivision, development and/or resale in the ordinary course of its business.

"By-Laws": The By-Laws of Shearwater Homeowners Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as **Exhibit "D"**.

"Class "B" Control Period": The time period during which the Class "B" Member may appoint a majority of the Board members. The Class "B" Control Period ends when any one of the following occurs:

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

(b) Such other percentage of the Lots have been conveyed to Members as determined by the Class "B" Member in its discretion; or

(c) Upon the occurrence of any other condition set forth in Section 720.307, Florida Statutes, or any other applicable section of Chapter 720, Florida Statutes.

"Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise has a right to possess or use for the common use and enjoyment of the Owners. Common Area includes the Limited Common Area, as defined below.

"Common Expenses": The actual and estimated expenses the Association incurs, or expects to incur, for the general benefit of all Owners. Common Expenses include any reserves the Board finds necessary or appropriate.

"Common Maintenance Areas": The Common Area, together with any other area for which the Association has or assumes maintenance or other responsibility.

"Community" or **"Shearwater"**: The real property described in **Exhibit "A"**, together with such additional property as is subjected to this Declaration in accordance with Article IX.

"Community-Wide Standard": The standard of conduct, maintenance or other activity generally prevailing throughout the Community, or the minimum standards established pursuant to the Design Guidelines, Use Restrictions and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard. The Community-Wide Standard may contain objective elements, such as specific lawn or house maintenance requirements, and subjective elements, such as matters subject to the Board's or the DRB's discretion. The Community-Wide Standard may or may not be set out in writing. The Community-Wide Standard may evolve as development progresses and as Shearwater changes.

"Community Development District": The Trout Creek Community Development District, a special purpose unit of local government established pursuant to Chapter 190, Florida Statutes.

"Declarant": WFC Ashford Mills Owner VII, L.L.C., a Delaware limited liability company Florida or any successor or assign as developer of all or Shearwater who is designated as Declarant in a recorded instrument the immediately preceding Declarant executes. On all matters, Declarant may act through its designated Affiliates.

"Design Guidelines": The Community's architectural, design and construction guidelines and review procedures adopted pursuant to Article IV.

"Design Review Board" or **"DRB"**: The committee established to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural controls described in Article IV.

"Development Order": Resolution No. 2014-241, adopting the Ashford Mills Development of Regional Impact Amended and Restated Development Order of St. Johns County, Florida, pursuant to Chapter 380, Florida Statutes, as may be amended from time to time.

"Limited Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Owners, as more particularly described in Article XII.

"Lot": A portion of the Community, whether improved or unimproved, which may be independently owned and conveyed. The term shall refer to the land, if any, which is part of the Lot as well as any improvements on the Lot. The term shall not apply to the Common Area. The boundaries of each Lot shall be shown, described or referenced on a Plat, recorded survey, restrictive covenants or deed.

A parcel shall be deemed to be a single Lot until such time as a Plat subdivides all or a portion of the parcel or otherwise creates, designates or describes Lots within a parcel. After a Plat is recorded, the parcel shall contain the number of Lots shown, created, designated or described on the Plat.

"Master Plan": The Ashford Mills Planned Unit Development Master Development Plan for Shearwater approved by St. Johns County, Florida, as it may be amended from time to time, which includes all of the property described in **Exhibit "A"**. Declarant is not obligated to submit property shown on the Master Plan to this Declaration. In addition, Declarant may submit property to this Declaration which is not shown on the Master Plan. The Master Plan is subject to change, in Declarant's discretion, without notice or consent except as may be required by law.

"Member": Each Lot Owner, as described in Section 6.2. There are two membership classes, Class "A" and Class "B."

"Mortgage": A mortgage, a deed of trust, a deed to secure debt or any other form of security instrument affecting title to any Lot. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Owner": The title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (*e.g.*, a Mortgagee). If a Lot 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.

"Person": An individual, a corporation, a partnership, a trustee or any other legal entity.

"Plat": Any recorded subdivision plat for all or any portion of Shearwater.

"PUD": The Ashford Mills Planned Unit Development zoning district, adopted by St. Johns County, Florida Ordinance No. 2014-40, as may be amended from time to time, approving a Planned Unit Development for single-family residential, multi-family residential, commercial, office, public school, recreation and other uses on the Property described in **Exhibit "A"**.

"Regular Assessment": Annual assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.1.

"Special Assessment": Assessments charged against all Owners in accordance with Section 8.3.

"Supplemental Declaration": A recorded instrument which subjects additional property to this Declaration, identifies Common Area and Limited Common Area, and/or imposes additional restrictions and obligations on the land described.

"Stormwater Management System": A system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapter 62-330, Florida Administrative Code.

"Use Restrictions": The initial use restrictions, rules, and regulations governing the use of and activities on the Lots and the Common Areas set forth in **Exhibit "B"**, as they may be changed in accordance with Article III or otherwise amended.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

Article III Use and Conduct

3.1. Restrictions on Use, Occupancy and Alienation.

The restrictions set forth in this Section may be amended only in accordance with Article XIX.

(a) **Residential and Related Uses.** Lots shall be used primarily for residential and related purposes. No business shall be conducted in, on, or from any Lot, except that an Owner or another resident of the Lot may conduct business activities on such Lot if the business activity:

- (i) is not apparent or detectable by sight, sound or smell from outside of a permitted structure;
- (ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees, or door-to-door solicitation within the Community; and

(iv) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Community, as determined in the Board's sole discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer 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 Board must approve the operation and location of each Business within the Community.

This Section shall not apply to restrict Declarant's activities, nor shall it restrict the activities of Persons Declarant approves with respect to the development and sale of property in the Community. This Section also shall not apply to Association activities related to the provision of services or to operating and maintaining the Community, including the Community's recreational and other amenities.

Leasing a residence is not a "business" within the meaning of this subsection.

(b) Leasing. For purposes of this Declaration, "leasing" is the regular, exclusive occupancy of a dwelling by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service or gratuity. The principal dwelling on the Lot may be leased only in its entirety (*e.g.*, separate rooms within the same dwelling may not be separately leased); provided, a detached "in-law suite" or "guest house" may be independently leased.

(c) Restrictions on Leasing. Excepting leases on Lots owned by Declarant or its Affiliates, all leases shall be in writing and shall have minimum terms of no less than 12 months. Contemporaneous with execution of any such lease, the Owner must give the tenant copies of the Governing Documents and must have each tenant sign a document stating that he or she has read and understands the Governing Documents.

Within ten (10) days of a lease being signed, an Owner shall notify the Board or the Association's managing agent of the lease, provide a copy of the lease to the Board and provide any additional information the Board may reasonably require. In addition to this sub-section (c), the Board may adopt reasonable Use Restrictions and rules regulating leasing and subleasing.

(d) Maximum Occupancy. No more than two (2) Persons per bedroom may occupy the same dwelling on or in a Lot on a regular and consistent basis (as the Board determines).

(e) Occupants Bound. Every Owner shall cause anyone occupying or visiting his or her Lot to comply with the Governing Documents and shall be responsible for all violations and Losses they cause to the Common Maintenance Areas, notwithstanding the fact that such Persons also are responsible for complying and may be sanctioned for any violation.

(f) Subdivision of a Lot. Lots may not be subdivided or their boundary lines changed except with the Board's prior written approval; provided, Declarant may subdivide, change the boundary line of, and replat any Lot it owns.

(g) Wetlands and Buffers. No Owner shall be permitted to disturb any wetlands or uplands buffers associated with such wetlands within any Lot or within the Property.

(h) Irrigation Wells Prohibited. No Owner shall be permitted to install, drill or otherwise provide an irrigation well upon any Lot or other parcel within Ashford Mills. All Owners must use reclaimed water for landscaping, lawn and other outdoor irrigation purposes.

(i) Water Conservation. Owners shall be required to use native vegetation and drought-resistant landscaping within their Lots and other parcels and low-flow plumbing fixtures within homes, businesses and other structures.

3.2. Framework for Regulation.

As part of the general plan of development, the Governing Documents establish a framework of covenants, easements and restrictions which govern the Community. This includes the initial Use Restrictions set forth in **Exhibit "B"**. Within that framework, the Board and the Members must be able to respond to unforeseen problems and changes affecting the Community. This Article establishes procedures for modifying and expanding the Use Restrictions to respond to such changes.

The procedures described in this Article are not intended to apply to reasonable rules and regulations relating to use and operation of the Common Area, which the Board may adopt by resolution, or other administrative rules, unless the Board chooses, in its discretion, to submit to such procedures. In addition, the Board shall have discretion, without the necessity of complying with the procedures set forth in this Article, to enact such rules and regulations as are necessary or appropriate to comply with the Development Order, PUD and any other governmental or quasi-governmental order, permit or approval applicable to the Community.

3.3. Owners' Acknowledgment and Notice to Purchasers.

Each Owner, by accepting a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Lot is limited and affected by the Use Restrictions and Board rules, which may change from time to time. All Lot purchasers are on notice that the Association may have adopted changes to the Use Restrictions and that such changes may not be set forth in a recorded document. Copies of the current Use Restrictions and Board rules may be obtained from the Association.

3.4. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and the Members, the Board may change (*i.e.*, modify, cancel, limit, create exceptions to or add to) the Use Restrictions. The Board shall send the Owners notice of any proposed change at least fourteen (14) days before the

Board meeting to consider the change. The Owners shall have a reasonable opportunity to be heard at such Board meeting.

The proposed change shall be approved unless disapproved by Owners representing a majority of the Association's Class "A" votes, and by the Class "B" Member, if any. The Board is not obligated to call a meeting of the Owners to consider disapproval unless it receives a petition which meets the By-Laws' requirements for special meetings. If the Board receives such a petition before the change's effective date, the change shall not become effective until after a meeting is held, and then subject to the outcome of the meeting.

(b) Before any Use Restriction change becomes effective, the Board shall send a copy of the new or changed Use Restriction to each Owner. The change does not become effective until thirty (30) days following distribution to the Owners. The Association shall provide to any requesting Member or Mortgagee, without cost, a copy of the Use Restrictions then in effect.

(c) At least once every three (3) years after the Class "B" Control Period ends, the Board shall present the then-current Use Restrictions to the Owners for review and advice as to continued viability or necessity within the Community.

(d) No action taken under this Article shall have the effect of modifying, repealing or expanding the Design Guidelines or any provision of this Declaration other than the initial Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control. In the event of a conflict between the Use Restrictions and any provision within this Declaration (exclusive of the Use Restrictions), the Declaration provision shall control.

3.5. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth in **Exhibit "B"**, the Association's actions with respect to Use Restrictions and rules must comply with the following:

(a) **Similar Treatment.** All Owners are similarly situated and must be treated as such.

(b) **Displays.** Owners' rights to display religious and holiday signs, symbols and decorations on their Lots of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place and manner restrictions with respect to such displays.

The Association shall not regulate the content of political signs; however, it may regulate the time, place and manner of posting such signs (including design criteria).

(c) **Household Composition.** The Association shall not interfere with any Owner's freedom to determine the composition of his/her household, except that it may enforce the occupancy limits set out in Section 3.1(c).

(d) **Activities Within Lots.** The Association shall not interfere with activities within a dwelling, except it may prohibit activities within Lots not normally associated with residential

property, and it may restrict or prohibit activities within any Lot that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, or that are an unreasonable source of annoyance.

(e) Alienation. The Association shall not prohibit leasing or transfer of any Lot, or require the Association's or the Board's consent prior to leasing or transferring a Lot. The Association may require that Owners use Association-approved lease forms (or include specific lease terms) and may impose a reasonable review or administrative fee on the lease or transfer of any Lot. In addition, pursuant to Section 3.1(b), the Board may impose minimum lease terms.

(f) Abridging Existing Rights. The Association may not require an Owner to dispose of personal property that was in or on a Lot in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

(g) Reasonable Rights to Develop. The Association may not impede Declarant's right to develop Shearwater.

(h) Compliance with Development Order and PUD. The Association may not enact any rule or take any action, including, without limitation, amending the Use Restrictions, which is in violation of, or which prevents actions required to comply with, the terms of the Development Order and PUD.

The limitations in subsections (a) through (f) of this Section shall not apply to amendments to this Declaration adopted in accordance with Article XIX.

3.6. Sidewalks. .

Any Owner of a Lot developing a single-family home 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.

Article IV Architecture and Landscaping

4.1. General.

Except for work done by or on behalf of Declarant or any Declarant Affiliate, no structure or thing shall be placed, erected or installed upon any Lot, and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations or planting or removal of landscaping) shall take place within Shearwater, except in compliance with this Article and the Design Guidelines.

Any Owner may remodel, paint or redecorate the interior of any structure on his or her Lot without approval. However, modifications to the interior of screened porches, patios and any other portions of a Lot visible from outside a structure are subject to approval.

Each dwelling shall be designed by and built in accordance with the plans and specifications approved by Declarant or the Design Review Board. The landscaping for each Lot shall be designed and installed in accordance with the plans and specifications of a licensed landscape architect acceptable to Declarant, unless Declarant, in its sole discretion, or its designee otherwise approves. Dwellings shall be constructed by licensed or certified Builders acceptable to Declarant, unless Declarant, in its sole discretion, or its designee otherwise approves.

Approval under this Article and the Design Guidelines is not a substitute for any approvals or reviews required by St. Johns County, the St. Johns River Water Management District or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

This Article does not apply to Declarant's activities or to the Association's activities during the Class "B" Control Period.

4.2. Architectural Review.

(a) By Declarant. Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for architectural and other improvements within the Community. Declarant's rights under this Article IV shall continue for as long as Declarant or any Declarant Affiliate owns any portion of the Community or has a unilateral right to annex property, unless Declarant earlier terminates its rights in a recorded instrument. Declarant may designate one or more Persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to any other Person or committee, including the Design Review Board. Any such delegation shall be in writing, shall specify the delegated responsibilities and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Design Review Board. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the DRB, shall assume jurisdiction over architectural matters. When appointed, the DRB shall consist of at least three (3), but not more than seven (7), persons. Members of the DRB need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. The DRB members shall be designated, shall serve and may be removed and replaced in the Board's discretion.

The Board may create and appoint subcommittees of the DRB. Subcommittees may be established to preside over particular areas of review (*e.g.*, landscape plans) and shall be

governed by procedures the Board or the DRB may establish. Any subcommittee's actions are subject to review and approval by Declarant, for as long as Declarant may review the DRB's decisions, and the DRB. Notwithstanding the above, neither the DRB nor Declarant shall be obligated to review all actions of any subcommittee, and the failure to take action in any instance shall not be a waiver of the right to act in the future.

Unless and until such time as Declarant delegates any of its reserved rights to the DRB or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

Declarant and the Association may employ architects, engineers or other Persons to perform the review required under this Article. In addition, a horticulturalist or landscape architect may be engaged by the entity performing the review under this Article to provide professional assistance in the review of landscape plans for individual Lots.

(c) Reviewer. The entity having jurisdiction in a particular case, whether Declarant or its designee or the DRB, shall be referred to as the "**Reviewer**."

(d) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Board may include the compensation of such Persons in the Association's annual operating budget.

4.3. Guidelines and Procedures

(a) Design Guidelines. Declarant shall prepare Design Guidelines for the Community, which shall contain general provisions applicable to all of Shearwater. Among other things, the Design Guidelines shall restrict the use of specified plant species and require the review and approval of all plant species in accordance with the Development Order and the PUD. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee an application's approval.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it or any Declarant Affiliate owns any portion of the Community or has a unilateral right to annex property. Declarant's right to amend shall continue even if its reviewing authority is delegated to the DRB, unless Declarant also delegates the power to amend to the DRB. Upon termination or delegation of Declarant's right to amend, the Board may amend the Design Guidelines in accordance with the same procedures for changing Use Restrictions described in Section 3.4.

Amendments to the Design Guidelines shall be prospective only. They shall not require modifications to or removal of structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. Subject to the Community-Wide Standard, there is no limit to the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within Shearwater. In Declarant's discretion, the Design Guidelines may be recorded, in which event the recorded version, as it may 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.

(b) Procedures. Unless the Design Guidelines provide otherwise, no construction activities or other activities described in Section 4.1 may begin on any Lot until a request is submitted to and approved by the Reviewer. The request must be in writing and be accompanied by plans and specifications and other information the Reviewer or the Design Guidelines require. Plans and specifications shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation and other features of proposed construction on the applicable Lot.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed exterior design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as they are made in good faith and in accordance with the required procedures.

The Reviewer shall make a determination on each application within thirty (30) days after receipt of a completed application and other information it requires. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

As long as Declarant or any Declarant Affiliate owns any portion of the Community or has the unilateral right to annex property, the DRB shall notify Declarant in writing within three (3) business days of any action (*i.e.*, approval, partial approval or disapproval) it intends to take under this Article. A copy of the application and any additional information that Declarant may require shall accompany the notice. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any DRB action; provided, Declarant's right to veto must be exercised within ten (10) business days after it receives notice of the DRB's action. The party submitting the plans for approval shall not be notified of the DRB's action until after Declarant's right to veto has been exercised or has expired.

The Reviewer shall notify the applicant in writing of a final determination on any application within (5) five days after such determination is made or, with respect to any DRB determination subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

Notice shall be deemed given at the time the envelope containing the response is deposited in U.S. mail. Personal or electronic delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

As part of any approval, the Reviewer may require that construction in accordance with approved plans commence within a specified time period. If construction does not commence within the required period, the approval shall expire and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All construction work shall be completed within one (1) year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action by the Association or Declarant.

Declarant or the Board, with Declarant's consent, 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. For example, Builders may be permitted to submit and receive pre-approval of landscaping or other plans for general application. Such pre-approved plans shall not require resubmission prior to use on a particular Lot.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, at which time, it may or may not be unreasonable to require that such objectionable features be changed. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval of similar applications, plans or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with the Design Guidelines and any 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. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires Declarant's written consent for so long as Declarant or any Declarant Affiliate

owns any portion of the Community or has the unilateral right to annex property, and, thereafter, requires the Board's written consent.

4.6. Limitation of Liability.

This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Shearwater. The standards and procedures do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that every dwelling is of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

Declarant, Declarant's Affiliates, the Association, its officers, the Board, the DRB, the Association's management agent, any committee or any member of any of the foregoing shall not be held liable for the approval of, disapproval of or failure to approve or disapprove any plans; soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any Loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a Builder in the Community; or any injury, damages or Loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify the Board, the DRB, the members of each and the Association officers as provided in Section 7.6.

4.7. Certificate of Compliance.

Any Owner may request in writing that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such written request within thirty (30) days after receipt and may charge a reasonable administrative fee. The issuance of a certificate of architectural compliance shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of the certificate.

4.8. Enforcement.

Any construction, alteration or other work done in violation of this Article or the Design Guidelines is subject to enforcement action. Upon written request from the Association or Declarant, an Owner shall, at his/her own cost and expense, and within a reasonable time frame identified in the request, cure the violation or restore the Lot to substantially the same condition as existed before the violation occurred. Should an Owner fail to cure the problem or otherwise restore the property as required, the Association, Declarant, or their designees shall have the right to enter the property, remove the violation and restore the property. All costs, together with interest at the rate the Board establishes (not to exceed the maximum rate then allowed by law), may be assessed against the benefited Lot and collected as a Benefited Assessment.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline imposed, Declarant or the Association may, after notifying the Owner and allowing an opportunity to be heard in accordance with the By-Laws, enter upon the Lot and remove or complete any incomplete work and assess all costs incurred against the Lot and its Owner as a Benefited Assessment.

Any act of any contractor, subcontractor, agent, employee or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. 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 from the Community, subject to the notice and hearing procedures contained in the By-Laws. Declarant, Declarant's Affiliates, the Association, and their respective officers and directors, shall not be held liable to any Person for exercising the rights granted by this paragraph.

The Association shall be primarily responsible for enforcing this Article. If, however, in Declarant's discretion, the Association fails to take appropriate enforcement action within a reasonable time period, Declarant, for so long as it or any Declarant Affiliate owns any portion of the Community or has the unilateral right to annex property, may, but shall not be obligated to, exercise the enforcement rights set forth above. In such event, Declarant may assess and collect Benefited Assessments against the violating Owner and assert the Association's lien rights pursuant to Article VIII. The Association hereby assigns to Declarant such rights and authority, including the right to all funds collected, and no further assignments shall be required.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the Reviewer's decisions. If the Association or Declarant prevail, they shall be entitled to recover all costs including, without limitation, attorneys' fees and court costs, reasonably incurred in such action. The alternative dispute resolution provisions set out in Article XIV shall not apply to actions by Declarant or the Association to enforce the provisions of this Article or the Reviewer's decisions.

Article V Maintenance and Repair

5.1. Maintenance of Lots.

Each Owner must maintain his or her Lot, including all structures, landscaping and other improvements comprising the Lot, in a manner consistent with the Governing Documents, the Community-Wide Standard and any other applicable covenants, unless such maintenance responsibility is otherwise assumed by the Association under any Supplemental Declaration or additional covenants applicable to such Lot. For any Lot contiguous to a pond, lake, wetland or other water body, the Owner's maintenance obligations shall extend to the waterline of such water body.

Each Owner must maintain the sidewalk and landscaping, including any street trees, located in the public right-of-way adjacent to his or her Lot unless the Association is assigned or

assumes all or part of such maintenance responsibility or it is assigned to or assumed by the Association pursuant to a Supplemental Declaration.

5.2. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless the Association carries such insurance (which it may, but is not obligated to do). If the Association assumes responsibility for insuring a Lot, the insurance premiums shall be levied as a Benefited Assessment against the benefited Lot and the Owner.

Within three (3) months of any damage to or destruction of a structure on a Lot, the Owner shall repair or reconstruct the structure in a manner consistent with the original construction or other plans and specifications approved in accordance with Article IV; provided, under special circumstances, the Board, in its discretion, may extend such time period. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs insurance proceeds do not cover.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

Article VI The Association and its Members

6.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation and control of the Common Maintenance Areas, including the Stormwater Management System. The Association also has primary responsibility for administering and enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Florida law. The Board shall be responsible for management for the Association and, as the Governing Documents permit, may contract with a property manager for such purposes. The Board is appointed or elected as provided in the By-Laws.

6.2. Membership.

Every Owner is a Member of the Association; provided, there is only one (1) membership per Lot. If a Lot is owned by more than one (1) Person, each co-Owner shares the privileges of the membership, subject to reasonable Board regulation and the voting restrictions described in Section 6.3 and in the By-Laws. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner which is not an individual (*e.g.*, a corporation) may be exercised by any officer, director, partner or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association's Secretary.

6.3. Voting.

The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members are all Owners except the Class "B" Member and, during the period of Class "B" membership, any Declarant Affiliate. Class "A" Members have one (1) equal vote for each Lot they own, except that there is only one (1) vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Section 8.10.

(b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member shall not vote, but may appoint a majority of the Board members during the Class "B" Control Period, as specified in the By-Laws, and may exercise the additional rights specified throughout the Governing Documents.

The Class "B" membership terminates upon the earlier of:

(i) Three months after 90 percent of the Lots in all phases of the Community that will ultimately be operated by the Association have been conveyed to Members;

(ii) Such other percentage of Lots have been conveyed to Members as determined by the Class "B" Member in its discretion; or

(iii) Upon the occurrence of any other condition set forth in Section 720.307, Florida Statutes, or any other applicable section of Chapter 720, Florida Statutes.

(c) Upon termination of the Class "B" membership, Declarant and Declarant Affiliates shall be Class "A" Members entitled to one Class "A" vote for each Lot they own.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association may acquire, hold, mortgage or otherwise encumber, lease (as landlord or tenant), operate and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses or operating agreements, for payment or no payment, as the Board deems appropriate, permitting use of portions of the Common Area by others.

(b) Declarant or its designees may transfer to the Association, and the Association shall accept, personal property and/or fee title or other property interests in any improved or unimproved real property included within the property described in Exhibit "A". Upon Declarant's written request, the Association shall transfer back to Declarant any unimproved real property originally conveyed to the Association for no payment, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association is responsible for management, operation and control of the Common Area (including the Stormwater Management System), subject to any covenants, easements or restrictions set forth in the deed or other instrument transferring the property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate. The Association may enter into a property management agreement with any Person, including Declarant or any Declarant Affiliate.

7.2. Maintenance of Common Maintenance Areas.

The Association shall maintain the Common Maintenance Areas in accordance with the Community-Wide Standard. The Common Maintenance Areas shall include, but are not limited to:

- (a) the Common Area, including landscaping, structures and other improvements;
- (b) landscaping within public rights-of-way within or abutting Shearwater;
- (c) such portions of any additional property as may be dictated by Declarant, this Declaration, any Supplemental Declaration, any Plat or any contract, covenant or agreement for maintenance entered into by, or for the benefit of, the Association; and
- (d) the Stormwater Management System including, all ponds, streams and/or wetlands located within Shearwater which serve as part of the Community's stormwater drainage system, including associated improvements and equipment, but not including any such areas maintained by a community development district. The Association shall be responsible for the maintenance, operation and repair of the stormwater management system. Maintenance of the stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the St. Johns River Water Management District (the "**District**"). 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 District. The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Stormwater Management System.

Without limiting the generality of the foregoing, the Association shall assume all of Declarant's (and Declarant's Affiliates') responsibilities to the St. Johns River Water Management District, St. Johns County and its governmental or quasi-governmental subdivisions, any state and federal agencies, and similar entities of any kind with respect to the Common Area and the Stormwater Management System, and shall indemnify and hold Declarant and its Affiliates harmless with respect to such assumed responsibilities.

The Association may maintain other property which it does not own, including property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and the property owner consents.

The 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 performing its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Common Maintenance Areas in continuous operation, except for any periods necessary, as determined by the Board, to perform required maintenance or repairs, unless Owners representing seventy-five percent (75%) of the Class "A" votes in the Association agree in writing to discontinue such operation; provided, if the property is Limited Common Area, at least seventy-five percent (75%) of the Owners to which such Limited Common Area is assigned (or such higher percentage as may be set out in a Supplemental Declaration) also must agree in writing. Notwithstanding the above, the Common Maintenance Areas may not be reduced, nor shall operation of its facilities and equipment be discontinued, without Declarant's prior written approval as long as Declarant or any Declarant Affiliate owns any property described in Exhibit "A" to this Declaration.

The costs associated with maintenance, repair and replacement of the Common Maintenance Areas shall be a Common Expense. However, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Maintenance Areas pursuant to this Declaration, a Supplemental Declaration or other recorded covenants or agreements.

Unless Declarant expressly agrees in writing with the Association to pay the costs of maintaining any portion of the Common Maintenance Areas, Declarant shall have no such obligation, regardless of any inferences which may be drawn from promotional or other materials.

7.3. 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, 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 and within other portions of the Common Maintenance Areas to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All Association property insurance policies shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Common Maintenance Areas, 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, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence and in the aggregate with respect to bodily injury, personal injury and property damage;

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

(iv) Directors and officers liability coverage; and

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

Premiums for Common Maintenance Area insurance shall be a Common Expense. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the St. Johns County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured Loss, the deductible shall be treated as a Common 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 the By-Laws, that the Loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Benefited Assessment.

To the extent available upon reasonable cost and terms, all insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in Florida which satisfies the requirements of the Federal National Mortgage Association ("FNMA"), 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 benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by individual Owners, their Mortgagees, or any occupants of a Lot;

- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);
- (vii) include 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; and
- (viii) include an endorsement precluding cancellation, invalidation or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

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

- (i) a waiver of subrogation as to any claims against Declarant, Declarant's Affiliates, the Association, or their respective directors, officers, employees and agents, or the Owners and their tenants, servants, agents and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (iv) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (v) a cross liability provision; and
- (vi) a provision vesting in the Board exclusive authority to adjust Losses; provided, no Mortgagee having an interest in such Losses may be prohibited from participating in the settlement negotiations, if any, related to the Loss.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to maintain and/or insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of 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.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Owners representing at least one hundred percent (100 %) of the total Class "A" votes in the Association and the Class "B" Member, if any, decide within sixty (60) days after the Loss not to repair or reconstruct. If the damage is to Limited Common Area, repairs shall be made unless at least seventy-five (75%) of the Owners to which such Limited Common Area is assigned (or such higher percentage as may be set forth in a Supplemental Declaration) vote not to repair or reconstruct and the Class "B" Member, if any, consents. If either the insurance proceeds or estimates of the Loss, or both, are not available to the Association within such 60-day period, then the period may be extended until such funds or information are available. No Mortgagees 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 a decision is made not to restore the damaged improvements, 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 condition consistent with the Community-Wide Standard.

The Association shall retain in a reserve fund for capital items any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed-upon settlement, for the benefit of the Members, as appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

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

7.4. Compliance and Enforcement.

(a) The Board may impose sanctions for Governing Document violations, which sanctions include those listed below and any others described elsewhere in the Governing Documents. The Board may establish a range of penalties for different violations, with violations of the Declaration, unsafe conduct and harassment or intentionally malicious conduct treated more severely than other violations. The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws:

(i) imposing reasonable monetary fines, not to exceed the limit established for individual violations under Florida law, which limit is \$1,000.00 as of the effective date of this Declaration but may be revised by legislative action (or per day limitations in the case of a continuing violation), which shall constitute a lien upon the violator's Lot (fines may be imposed within a graduated range). There is no limit on the aggregate amount of any fine for a continuing violation;

(ii) suspending an Owner's right to vote (except that no notice or hearing is required if the Owner is more than ninety (90) days delinquent in paying any Regular Assessment);

(iii) suspending any Person's right to use Common Area amenities (except that no notice or hearing is required if the Owner is more than thirty (30) days delinquent in paying

any assessment or other charge owed the Association); provided, nothing shall authorize the Board to impair an Owner or occupant's access to his or her Lot;

(iv) suspending any services the Association provides (except that no notice or hearing is required if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association);

(v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Lot in a non-emergency situation (including removing personal property that violates the Governing Documents); and

(vi) levying Benefited Assessments to cover costs, including legal fees, the Association incurs to bring a Lot into compliance with the Governing Documents.

In addition, the Board may take the following enforcement actions to ensure compliance with the Governing Documents without the necessity of complying with the procedures set forth in the By-Laws:

(i) exercising self-help or taking action to abate a violation on a Lot in an emergency situation (including, without limitation, towing vehicles that are in violation of parking rules and regulations);

(ii) exercising self-help or taking action to abate a violation on the Common Area under any circumstances (including, without limitation, issuing citations for traffic violations); or

(iii) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

In addition to any other enforcement rights, if an Owner fails to perform his or her maintenance responsibility properly, in the Association's sole opinion, the Association may Record a notice of violation or perform the required maintenance and assess its costs (including reasonable attorneys' fees and costs, if any) against the Lot and the Owner as a Benefited Assessment. Except in an emergency situation, the Association shall provide the Owner with notice deemed reasonable by the Association and an opportunity to cure the problem prior to taking such enforcement action.

The above sanctions shall not apply to Declarant or any Declarant Affiliate or to any Lot owned by Declarant or any of its Affiliates. All sanctions and remedies set forth in the Governing Documents are in addition to any remedies available at law or in equity. In any action to enforce or resolve any dispute relating to this Declaration or any other Governing Document, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action, whether incurred prior to suit, in arbitration, mediation, at trial or in appeal.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking

enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

By contract or other agreement, the Association may enforce applicable city and county ordinances. In addition, St. Johns County may enforce its ordinances within Shearwater.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly or by reasonable implication by the Governing Documents, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, the Board may exercise all of the Association's rights and powers without a vote of the membership.

The Board may institute, defend, settle or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation or administrative proceedings in matters pertaining to the Common Maintenance Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation on behalf of or in the name of the Association or the Members.

In exercising the Association's rights and powers, making decisions on the Association's behalf, including, without limitation, deciding whether to file a lawsuit under any circumstances, and conducting the Association's affairs, Board members and the Association's officers are subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

7.6. Indemnification of Officers, Directors and Others.

The officers, directors and committee members, acting in such capacity, 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 for any contract or other commitment made or action taken in good faith on the Association's behalf.

Subject to Florida law, 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 the indemnitee's personal liability is limited under this Section.

This right to indemnification shall not be exclusive of any other rights which any present or former officer, director or committee member may have. 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.

7.7. Provision of Services, Activities and Programs.

The Association may provide, or provide for, services, activities and programs (collectively, "services") for all or any of the Members and their Lots, and may enter into contracts or agreements with other entities, including Declarant or its Affiliates, to provide such services. The Board may charge use or service fees for any such services, or may include the costs, including the cost of personnel employed to facilitate or administer such services, in the Association's budget as a Common Expense and assess it as part of the Regular Assessment, if provided to all Lots. If provided to less than all Lots, the Association may assess such costs as a Benefited Assessment, as applicable.

By way of example, such services might include, without limitation, landscape maintenance; pest control service; cable television service; telephone; internet access; security monitoring; caretaker; transportation; fire protection; utilities; trash collection and recycling; recreational and social activities or programs; educational programs; cultural, artistic and environmental programs; charter clubs and other similar services, activities or programs designed to further a sense of community among Owners, residents and occupants within Shearwater.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, subject to the contract terms, the Board may modify or cancel existing contracts for services, activities or programs in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.8. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with neighboring properties to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance, including but not limited to such covenants and obligations referenced in Section 1.4 above.

7.9. Facilities and Services Open to the Public.

Certain of the Common Maintenance Areas, including facilities, may be open for public use and enjoyment. Such facilities and areas may include, for example: greenbelts, bike and pedestrian trails and paths, parks, areas conducive to gathering and interaction, roads, sidewalks and medians. During Class "B" Control Period, Declarant may designate such facilities and areas as open to the public. Thereafter, except for Limited Common Areas, the Board, with the consent of Owners representing a majority of the Association's Class "A" votes, may designate facilities and areas as open for public use. In addition, certain areas within the Community are required by the Development Order and Community Development District documents to be open for public use. Public use of such areas shall not be terminated except as permitted under, and in accordance with, the Development Order and the PUD.

7.10. Relationship with Governmental and Tax-Exempt Organizations.

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, public utility providers and non-profit, tax-exempt organizations for the benefit of the Community, the Association and the Members. The Association may contribute money, real property (including Common Area), personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

7.11. Right To Designate Sites for Governmental and Public Interests.

For so long as Declarant or any Declarant Affiliate owns any property described in **Exhibit "A"**, Declarant may, but is not obligated to, designate sites within the Community for government, education or religious activities and interests, including without limitation, fire, police and utility facilities, schools and educational facilities, houses of worship, parks and other public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

7.12. Use of Technology.

In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, the Association may, as a Common Expense, provide for or offer services which make use of computers and other technological opportunities. For example, to the extent Florida law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send required notices by electronic means; hold Board or Association meetings and permit attendance and voting by electronic means; send and collect assessment and other invoices over the computer; sponsor a community cable television channel; create and maintain a community intranet or Internet home page offering interactive

participation opportunities for users; maintain an "online" newsletter or bulletin board; and provide funding for any of the above purposes.

7.13. Compliance with the Development Order and PUD.

The Association shall be responsible for complying with all applicable requirements of the Development Order and PUD; provided, to the extent the Development Order or PUD requires, Declarant shall fulfill the Association's obligations in this regard until termination of the Class "B" Control Period. Among other things, the Development Order and PUD assign to Declarant and the Association various responsibilities concerning preservation, management and maintenance of the Community's common open space and natural areas and the protection of the Community's existing environment and various indigenous plant and animal species. The Association shall be authorized to perform such responsibilities, whether directly assigned under the Development Order or the PUD, or delegated or assigned to the Association by Declarant, in the manner required under the Development Order or the PUD and as deemed appropriate in the Board's discretion. The costs incurred by the Association in carrying out its responsibilities under the Development Order and the PUD shall be assessed against all Owners as a Common Expense in accordance with Article VIII.

This Section may be amended only as permitted under, and in accordance with, the terms of the Development Order, the PUD and/or with St. Johns County's approval.

7.14 Gas Compliant Residence.

Each home constructed on a Lot within the Community shall be a gas compliant residence ("Gas Compliant Residence") equipped with the following: (a) a gas water heater; (b) a gas range, and (c) piping for a gas dryer. Each Gas Compliant Residence must be connected to central gas service provided by TECO People's Gas or such other gas company that serves the Community.

Article VIII Association Finances

8.1. Budgeting and Allocating Common Expenses.

The Association is authorized to levy Regular Assessments against all Lots subject to assessment under Section 8.5 to fund the Common Expenses. Such assessments shall be assessed against all Lots equally; provided, however, the Regular Assessments against any Lot owned by Declarant may be fixed annually by the Board in an amount not less than twenty-five percent (25%) of the amount of the Regular Assessment against Lots owned by Class A Members then in effect in recognition of the different level of services received by the applicable members. Regular Assessments shall be in addition to sub-association assessments, if any, against the Lots, which shall be levied in accordance with the governing documents of any sub-association.

While the Declarant is in control of the Association, it may be excused from payment of its share of the Common Expenses and Assessments related to Lots it owns for any period of time for which the Declarant has, in the Declaration, obligated itself to pay any operating

expenses incurred that exceed the assessments receivable from other Members and other income of the Association pursuant to Section 8.7(b) below.

Before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall separately reflect all fees for recreational amenities and shall reflect the sources and estimated amounts of funds to cover such expenses, including any prior year's surplus or deficit, any non-assessment income, and anticipated assessment income.

The Common Expenses shall include, without limitation, costs associated with the maintenance and repair of the Stormwater Management System, as required under this Declaration.

In determining the Regular Assessment, the Board may consider any assessment income expected to be generated from any property reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the final budget and notice of the amount of the Regular Assessment to each Owner at least thirty (30) days before the fiscal year begins. The budget shall not be subject to Owner approval and there shall be no obligation to call an Owners' meeting to consider the budget.

Declarant may, but shall not be obligated to, reduce the Regular Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.7(b)) which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue paying a subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

If the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Regular Assessment from time to time during the year, subject to the notice requirements set forth above and in Florida law.

The Board shall compute the assessments annually, and notice of the amount (including a summary of the computations) shall be sent to each Owner with its notice of assessment. Upon annexation of additional property into the jurisdiction of the Association, the Board shall recompute the assessment allocations and send a notice of recomputed percentages to each Owner; however, no adjustments of assessments previously levied or refunds of assessments paid shall be made within the fiscal year to reflect the recomputation.

8.2. Budgeting for Reserves.

Within ninety (90) days of the issuance of the first certificate of occupancy for a Lot, and at least every three (3) years thereafter, the Board may cause to be conducted a reasonably

competent and diligent visual inspection of the accessible areas of the major components that the Association is obligated to repair, replace, restore or maintain (“**Reserve Study**”)(which shall not include lands dedicated to the public or owned by the Community Development District). At a minimum, the Reserve Study may include:

(a) identification of the major components that the Association is obligated to repair, replace, restore or maintain that, as of the date of the study, have a remaining useful life of less than (thirty) 30 years;

(b) identification of the probable remaining useful life of the identified components as of the date of the Reserve Study;

(c) an estimate of the cost of repair, replacement, restoration or maintenance of the identified components;

(d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain the identified components during and at the end of their useful life, after subtracting total reserve funds as of the date of the Reserve Study; and

(e) a reserve funding plan (“**Funding Plan**”) that indicates how the Association plans to fund the contribution identified in paragraph (d) above, to meet the Association’s obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less. The Funding Plan may include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the Funding Plan. Any Funding Plan shall be consistent with the Association’s governing documents and applicable state law. If the Board determines that an assessment increase is necessary to fund the Funding Plan, such increase shall be approved in a separate action of the Board that is consistent with the Association’s governing documents and applicable state law.

The Board shall include in the Common Expense budget a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period as set forth in the Funding Plan.

A reserve account or accounts shall be established for the Association. Reserve account funds shall be segregated from the Association’s operating funds and deposited into an interest bearing account or accounts.

The Board shall review the Reserve Study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the Board’s analysis of the reserve account requirements as a result of that review.

As used in this section, “reserve accounts” means moneys that the Association’s Board has identified for use to defray the future repair or replacement of, or additions to, those major components that the Association is obligated to maintain pursuant to the Reserve Study.

The Board may adopt resolutions regarding the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. These policies may differ for general Association purposes. So long as Declarant or any

Declarant Affiliate owns any property described in **Exhibit “A”** neither the Association nor the Board shall adopt, modify, limit or expand such policies without Declarant’s prior written consent.

The Board may enter into agreements with Declarant, on negotiated terms, under which Declarant may obligate itself to provide or contribute to reserve funds as needed on a “cash basis” in lieu of funding reserves on an accrual basis. The Board has no duty to fund reserves during any period that Declarant is funding Association budget deficits.

8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments may be levied against the entire membership equally, if the Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least a majority of the total votes allocated to Lots which will be subject to the Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if any. 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.

8.4. Initial Assessment for Capital Improvements.

The Association shall levy an initial assessment due at the time the first Owner other than a Builder acquires a Lot from the Declarant, in the amount of \$350.00, to help pay or establish reserves for construction or repair of the improvements on the Common Area or within St. Johns County rights-of-way within the Community. Initial assessments for capital improvements may be transferred to the Trout Creek Community Development District for construction or repair of roads and sidewalks located within the Common Area or St. Johns County rights-of-way within the boundaries of the Community.

8.5. Benefited Assessments.

The Association may levy Benefited Assessments against one or more particular Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services which an Owner requests pursuant to any menu of special services which the Association may offer or which the Association otherwise provides in the Board's discretion. Benefited Assessments for special services may be levied in advance of the provision of the requested service;

(b) to cover costs incurred in bringing a Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Benefited Assessment under this subsection;

(c) to cover costs incurred to provide special services to a group of Lots in a particular neighborhood or neighborhoods within the Community; and

(d) notwithstanding the foregoing, Lots which Declarant owns are exempt from Benefited Assessments.

8.6. Commencement of Assessment Obligation; Time of Payment.

The obligation to pay assessments commences as to each Lot when (a) the Lot is conveyed to an Owner who is not the Declarant or a Declarant Affiliate; 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 Regular Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Owners shall pay assessments in the manner and on the dates the Board establishes. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in quarterly or monthly installments. Unless the Board otherwise provides, the Regular Assessment shall be due and payable in advance on the first day of each fiscal year. An administrative late fee may be established by the Board not to exceed the greater of \$25 or five percent (5%) of the amount of each installment that is paid past the due date. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

8.7. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a contract of sale for any Lot, covenants and agrees to pay all assessments authorized in the Governing Documents for each Lot owned. All assessments, together with interest (computed from the assessment's due date at a rate of at least eighteen percent (18%) per annum or such higher rate as the Board may establish, subject to Florida law), late charges as determined by Board resolution, costs and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure 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 Regular 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.

No Owner is exempt from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant by each Owner. No reduction 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 required function, or for inconvenience or discomfort arising from making repairs or improvements, or for any other reason.

Upon written request, the Association shall 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.

(b) Declarant's Option to Fund Budget Deficits. During the Class "B" Control Period, Declarant may satisfy the obligation for assessments on Lots which it or any Declarant Affiliate owns either by paying assessments in the same manner as any other Owner or by funding the budget deficit. The budget deficit is the difference between the amount of assessments levied on Class "A" Member-owned Lots, plus any other income received during the fiscal year, and the amount of the Association's actual expenditures during the fiscal year, but excluding expenses exclusively for capital improvement costs and reserves. Unless Declarant otherwise notifies the Board in writing at least thirty (30) days before the beginning of the fiscal year, Declarant shall continue paying on the same basis as during the previous fiscal year.

Regardless of Declarant's election, Declarant's assessment obligations 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, except with respect to Benefited Assessments, Declarant shall pay assessments on Lots which it or its Affiliates own in the same manner as any other Owner.

8.8. Lien for Assessments.

The Association shall have a lien against each Lot, including Declarant's Lots, to secure payment of delinquent assessments, as well as interest, late charges (subject to Florida law) and costs of collection (including attorneys' fees). The lien shall be effective from and shall relate back to the date on which this Declaration is recorded. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the Public Records of St. Johns County, Florida. The Association's lien may be enforced by suit, judgment and judicial or nonjudicial foreclosure.

At a foreclosure sale, the Association may bid for the Lot and acquire, hold, lease, mortgage and convey the Lot. The Association may sue for unpaid assessments and other charges without foreclosing or waiving its assessment lien.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. A subsequent Owner is jointly and severally liable with the previous Owner for all unpaid assessments that came due up to the time of transfer of title. However, the liability of any first Mortgagee, or its successor or assignee as a subsequent Owner who acquires the Lot by sale or transfer pursuant to foreclosure by the first Mortgagee is limited to the lesser of either: 1) the Lot's unpaid Common Expenses and Regular and Special Assessments that accrued or came due during the twelve (12) months immediately preceding the acquisition of title and that is not paid in full and received by the Association; or 2) one percent

(1%) of the original mortgage debt. If any unpaid assessments remain following sale or transfer pursuant to foreclosure, such unpaid assessments shall be a Common Expense collectible from Owners of all Lots subject to assessment under Section 8.5, including such purchaser, its successors and assigns.

Notwithstanding the above, while the Association owns a Lot: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association.

8.9. Exempt Property.

The following property shall be exempt from payment of Regular Assessments and Special Assessments:

- (a) All Common Area and other portions of the Community which are not Lots; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

PART FOUR: COMMUNITY DEVELOPMENT

Article IX Expansion of the Community

9.1. Annexation.

The Association also may annex property to the provisions of this Declaration by recording a Supplemental Declaration describing the additional property. Annexation by the Association shall require the affirmative vote or written consent of Owners representing more than fifty percent (50%) of the Class "A" votes and the consent of the property owner. In addition, so long as Declarant or any Declarant Affiliate owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent is required. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is required.

So long as Declarant or any Declarant Affiliate owns property subject to this Declaration, the Declarant may annex property to the provisions of this Declaration by providing a Supplement Declaration describing the additional property. No approval or consent by the Association or any Owner shall be required.

9.2. Additional Covenants and Easements.

By Supplemental Declaration, Declarant may impose additional covenants and easements on portions of the Community, including covenants obligating the Association to maintain and insure specific property and authorizing the Association to recover its costs through additional assessments. If someone other than Declarant owns the property, then such owner's consent and execution of the Supplemental Declaration is required. 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.

9.3. Effect of Filing Supplemental Declaration.

Unless otherwise specified, a Supplemental Declaration shall be effective upon the earlier of: (a) notice to the Persons who are affected by such Supplemental Declaration; or (b) recording. The Lots subjected to this Declaration by Supplemental Declaration shall have equal voting rights in the Association and equal pro rata liability for Regular Assessments with all other Lots.

Article X Additional Rights Reserved to Declarant

10.1. Withdrawal of Property.

Declarant reserves the right to amend this Declaration, so long as it has a right to annex property pursuant to Section 9.1, to remove any unimproved portion of Shearwater from the coverage of this Declaration. "Unimproved" means that no structure has yet been built on the property. Such amendment shall not require the consent of any Person other than the owner(s) of the property to be withdrawn, if not the Declarant. Except as provided in Section 7.1(b), if the property is Common Area, the Association's consent is required for such withdrawal.

In addition, until termination of the Class "B" Control Period, Declarant reserves the right to amend the Declaration and remove any property, regardless of whether Declarant owns all or any of the property, from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than Declarant. In addition, in such event, the Association shall reconvey to Declarant, or its designee, any of the property being withdrawn which it owns.

10.2. Marketing and Sales Activities.

Notwithstanding anything in the Governing Documents to the contrary, Declarant and its Affiliates, and their designees or assigns, may construct, use and maintain upon portions of the Common Area and other property they own, such facilities, activities and things as, in Declarant's opinion, may reasonably be required, convenient or incidental to the construction or sale of Lots. Such permitted facilities, activities and things shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events and exterior lighting features or displays. In addition, if reasonably required, convenient or incidental to construction or sales activities, Declarant and Declarant's Affiliates, and their employees, agents and designees, may park vehicles in areas other than garages or driveways, including on streets. The rights of any Declarant designee or assign under this Section are subject to Declarant's approval.

10.3. Right to Develop.

Declarant and its Affiliates, and their respective employees, agents and designees, shall have a right of access and use and an 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.

10.4. Right to Approve Changes in Shearwater Standards.

No amendment to or modification of any Use Restrictions, rules or the Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant or any Declarant Affiliate owns any portion of the Community or has a unilateral right to annex property in accordance with Section 9.1.

10.5. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, 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 recorded instrument signed by Declarant. Declarant may allow other Persons to exercise, on a one-time or limited basis, any Declarant right without transferring the entire right. In such case, a recorded instrument is not required.

10.6. Rights To Use Names; License Agreements.

The names "Shearwater Homeowners Association, Inc.," "Shearwater" and "WFC Ashford Mills Owner VII, L.L.C." and all similar or derivative names, along with all associated logos, are the proprietary trade names and service marks of WFC Ashford Mills Owner VII, L.L.C. or its Affiliates. No Person shall use such trade names or service marks for advertising or any other purpose in any promotional material, whether printed, audio, video, or otherwise, in any signage, or in any logo or depiction without the prior written consent of the Person who owns such mark. In addition, due to the integrated nature of Shearwater as a planned community, and the public identification of the Lots with Shearwater, any name or "logo" to be used in connection with or displayed on any Lot, and any sales or other materials or documentation related to the use of the Lot, shall be subject to Declarant's prior written consent. Such approval may be given or withheld in Declarant's discretion and may be subject to such terms and conditions as Declarant deems appropriate.

Notwithstanding the above, Owners may use the name "Shearwater" where such term is used solely to specify that particular property is located within "the Shearwater Community" (subject, however, to such terms and conditions as Declarant may impose in order to protect its trade names and service marks) and the Association may use the word "Shearwater" in its name. Other use by the Association or any Owner is subject to the restrictions set out in this Section.

10.7. Right To Use Common Area for Special Events.

As long as Declarant or any Declarant Affiliate owns any property described in **Exhibit "A"**, Declarant may use the Common Area to sponsor special events for charitable, philanthropic, political or marketing purposes, subject to the following conditions:

- (a) the availability of the facilities at the time requested;
- (b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any Loss or damage resulting from the special event; and
- (c) Declarant shall return the facilities and personal property used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

Declarant shall have the right to assign its rights to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

10.8. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign and correct any structure, improvement or condition which may exist on any portion of Shearwater, including Lots, and a nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling or other structure on a Lot shall be permitted without the Owner's consent, which consent shall not unreasonably be withheld, conditioned or delayed. The failure or refusal to permit reasonable access to the Lot for the purposes contemplated under this paragraph shall excuse Declarant or its designee from responsibility for repairs or damages relating to defective workmanship or materials. The Person exercising this easement shall promptly repair, and pay for, any resulting damage.

10.9. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Shearwater in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the property Owner and conduct an inspection.

10.10. Termination of Rights.

Rights granted under this Article shall terminate upon the earlier of: (a) the period specified in the particular Section; (b) forty (40) years from the date this Declaration is recorded; or (c) Declarant's recording of a statement that all sales activity has ceased. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common

Areas. Notwithstanding the above, Declarant reserves for itself and its Affiliates a perpetual, non-exclusive easement of access to and use of the Common Areas in connection with the marketing and sale of other properties in order to show the Community as an example of Declarant's projects. This Article shall not be amended without Declarant's written consent.

10.11. Exclusion of Declarant's Other Properties.

By accepting a deed to a Lot, each Owner specifically acknowledges that nothing contained in this Declaration shall in any way, either expressly or by implication, restrict, limit or otherwise affect the use or disposition by Declarant or any Declarant Affiliate of any property either of them owns, whether contained within or contiguous to Shearwater. Declarant and its Affiliates shall have full, free and unrestricted use of its other lands, notwithstanding any incompatibility of such use with restrictions this Declaration imposes upon the Lots. By accepting a deed to a Lot, each Owner specifically and expressly disclaims any reciprocal negative easement in any property Declarant or any Declarant Affiliate owns.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

Article XI Easements

11.1. Easements in Common Area.

Declarant grants to each Owner a right and easement of use, access and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying the property to the Association;
- (c) The Board's right to:
 - (i) adopt rules regulating Common Area use, including rules limiting the number of guests who may use the Common Area, and charge use fees for such use;
 - (ii) suspend the right of an Owner to use any Common Area amenity (A) for any period during which any assessment or other charge against the Owner's Lot remains delinquent, and (B) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;
 - (iv) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
 - (v) permit use by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and

(vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred; and

(d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII.

Any Owner may extend his or her right to use the Common Area to the members of his or her family, tenants and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the tenants of such Lot for the lease term.

Any Person's use and enjoyment of the Common Area is subject to the Board's authority to promulgate and enforce Use Restrictions and reasonable rules and regulations governing such use and to charge use, consumption, or membership fees as provided for in this Declaration. The rules and regulations and fees may be different for different classifications of users, including, but not limited to, Owners of Lots, guests or social invitees unaccompanied by Owners, or otherwise. The posting of rules and regulations and fees in a conspicuous manner and location within Shearwater or the publication in a community newsletter of general circulation within Shearwater shall be deemed sufficient notice to all permitted users; provided, the Board, in its discretion, may provide notice of rules, regulations and fees by other means or methods.

11.2. Easements of Encroachment.

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. A permitted encroachment is a structure or fixture which extends unintentionally from one person's property on to another's a distance of less than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant or any Declarant Affiliate owns any property described in **Exhibit "A"**, and grants to the Association and utility providers, perpetual, non-exclusive easements throughout Shearwater (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and infrastructure to serve Shearwater, cable and other systems for sending and receiving data and/or other electronic signals, drainage systems, and security and similar systems;

(ii) install walkways, pathways and trails, street lights, and signage on property which Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a Plat;

(iii) inspect, maintain, repair and replace the utilities, infrastructure and other improvements described above; and

(iv) access and read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in Declarant's sole discretion, to develop the property described in **Exhibit "A"**. The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the work. The exercise of these easements shall not extend to permitting entry into structures on a Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements for Maintenance, Emergency and Enforcement

Declarant grants to the Association easements over Shearwater as necessary for the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Any member of the Board, and its duly authorized agents and assignees, including committee members, and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Declarant grants to the Association, subject to any required notice, an easement and right to enter a Lot to abate a Governing Document violation and/or to remove any structure, thing or condition which violates the Governing Documents. Any costs incurred, including reasonable attorneys' fees, shall be assessed against the Lot Owner as a Benefited Assessment.

11.5. Easements for Lake and Pond Maintenance and Flood Water

Declarant reserves for itself, the Association, and their successors, assigns and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Maintenance Areas to (a) install, operate, maintain and replace pumps to supply irrigation water to the Common Maintenance Areas; (b) construct, maintain and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any

portion of the Community which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not inside a dwelling or other structure) adjacent to or within 100 feet of bodies of water and wetlands within Shearwater, in order to (a) temporarily flood and back water upon and maintain water over such portions of Shearwater; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Maintenance Areas; and (c) maintain and landscape the slopes and banks pertaining to such areas. Anyone exercising these easements shall use reasonable care in and repair any damage resulting from their intentional exercise of the easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences or other occurrences not reasonably foreseeable or under the control of Declarant or such other Person.

11.6. Easements for Cross-Drainage.

All portions of the Community shall be burdened with easements for natural drainage of stormwater runoff from other portions of the Community; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Community without the consent of the owner(s) of the affected property, the Board, and Declarant as long as it or any Declarant Affiliate owns any property described in **Exhibit "A"** to the Declaration.

11.7. Rights to Stormwater Runoff, Effluent and Water Reclamation.

Declarant reserves for itself and its designees all rights to groundwater, surface water, stormwater runoff, and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent. This Section may not be amended without Declarant's consent, and the rights created in this Section shall survive termination of this Declaration.

Article XII Limited Common Areas

12.1. Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular portion or neighborhood of Shearwater. For example, Limited Common Areas may include portions of a building, entry features, recreational facilities, landscaped medians and cul-de-sacs, ponds, and other portions of the Common Area within a particular neighborhood. All costs associated with maintenance, repair, replacement and insurance of a Limited Common Area shall be an expense allocated among the Owners to which the Limited Common Areas are assigned.

12.2. Designation.

Initially, any Limited Common Area shall be designated as such in a Supplemental Declaration, the deed conveying such area to the Association or on a Plat; provided, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

12.3. Use by Others.

If a majority of Owners of Lots to which any Limited Common Area is assigned approve, the Association may permit Owners of other Lots or others to use all or a portion of such Limited Common Area and may require payment of reasonable user fees for such use. Any such fees shall be used to offset the expenses attributable to such Limited Common Area.

Article XIII Party Walls and Other Shared Structures

13.1. General Rules of Law to Apply.

Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two (2) adjoining Lots 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 to party structures. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

13.2. Maintenance; Damage and Destruction.

Unless otherwise specifically provided in additional covenants relating to such Lots, the Owners sharing the party structure shall share the cost of necessary or appropriate party structure repairs and maintenance equally.

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 sharing the structure may restore it and be entitled to contribution for the restoration cost in equal proportions from other sharing owners. 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.

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.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Article XIV Dispute Resolution

14.1. In General. This Article XIV contains procedures concerning disputes between an Owner and the Association, as well as between (i) an Owner and/or Declarant and (ii) the Association and Declarant, related to the Community or each other. Regarding disputes between an Owner and Declarant, the procedures in this Article XIV do not replace Declarant's customer or warranty service procedures, and Owners are encouraged to resolve disputes through those procedures prior to initiating any procedures hereunder.

14.2. Disputes Between Association and Owners. All disputes, controversies, claims and demands between the Association and any Owner pertaining to the subject areas described in Section 14.4 shall be governed by the procedures set forth in Section 14.4.

14.3. Disputes Between Association/Owner and Declarant. Any and all claims, disputes and/or other controversy between the Association or any Owner and Declarant (or any affiliated general contractor or affiliated contractor, or any officer, director, member, shareholder, partner, employee or agent thereof, individually and collectively referred to as "Declarant" for purposes of this Article) or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer,

design professional or any other person or entity that provided materials, labor or other services to the Lot or a home constructed on such Lot (a "Home") on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation, budgeting and/or performance of any improvements in the Common Area or the Home, whether based in contract, tort or statutory violation, shall be subject to the provisions set forth in Section 14.4 of this Article XIV of the Declaration, and/or, with respect to any such disputes between an Owner and Declarant, the provisions of the purchase agreement between such Owner and Declarant and/or the provisions of any warranty provided by Declarant to such Owner.

14.4. Dispute Resolution. ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES OR DISPUTES BY OR BETWEEN ANY OWNER AND THE ASSOCIATION AND/OR DECLARANT (COLLECTIVELY REFERRED TO AS THE "BOUND PARTIES" AND INDIVIDUALLY AS A "BOUND PARTY"), ARISING OUT OF OR RELATED TO THE LOT, THE COMMUNITY OF WHICH THE LOT IS A PART, THE SALE OF THE LOT BY DECLARANT, OR ANY TRANSACTION RELATED THERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE OR EQUITY, INCLUDING WITHOUT LIMITATION, ANY DISPUTE OVER (a) BREACH OF CONTRACT, (b) NEGLIGENT OR INTENTIONAL MISREPRESENTATION OR FRAUD, (c) NONDISCLOSURE, (d) BREACH OF ANY ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING, (e) ALLEGATIONS OF LATENT OR PATENT DESIGN OR CONSTRUCTION DEFECTS, INCLUDING WITHOUT LIMITATION, PURSUANT TO THE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES, (f) THE LOT, INCLUDING WITHOUT LIMITATION, THE PLANNING, SURVEYING, DESIGN, ENGINEERING, GRADING, SPECIFICATIONS, CONSTRUCTION OR OTHER DEVELOPMENT OF THE LOT, THE PARCEL/TRACT OR THE COMMUNITY OF WHICH THE LOT IS A PART, (g) DECEPTIVE TRADE PRACTICES, OR (h) ANY OTHER MATTER ARISING OUT OF OR RELATED TO THE INTERPRETATION OF ANY TERM OR PROVISION OF THIS DECLARATION, OR ANY DEFENSE GOING TO THE FORMATION OR VALIDITY OF THIS DECLARATION, OR ANY PROVISION OF THIS DECLARATION OR ANY EXHIBITS HERETO (EACH A "DISPUTE"), SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES SET FORTH AS FOLLOWS:

(a) THIS AGREEMENT TO ARBITRATION SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS ARBITRATION AGREEMENT, INCLUDING WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OF THIS ARBITRATION AGREEMENT, OR THE SCOPE OF ARBITRABLE ISSUES UNDER THIS ARBITRATION AGREEMENT, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS ARBITRATION AGREEMENT, INCLUDING WITHOUT LIMITATION, WAIVER, ESTOPPEL OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS ARBITRATION AGREEMENT AND NOT BY A COURT OF LAW.

(b) IN THE EVENT THAT A DISPUTE ARISES BETWEEN THE BOUND PARTIES, SUCH DISPUTE SHALL BE RESOLVED BY AND PURSUANT TO THE ARBITRATION RULES AND PROCEDURES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES ("JAMS") IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED. IN THE EVENT JAMS IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE, THE BOUND PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE. IF THE BOUND PARTIES ARE UNABLE TO AGREE ON AN ALTERNATIVE SERVICE, THEN EITHER BOUND PARTY MAY PETITION ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE LOT IS LOCATED TO APPOINT SUCH AN ALTERNATIVE SERVICE, WHICH SHALL BE BINDING ON THE BOUND PARTIES. THE RULES AND PROCEDURES OF SUCH ALTERNATIVE SERVICE IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED SHALL BE FOLLOWED.

(c) The Bound Parties expressly agree and acknowledge that this Declaration involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1 et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation or judicial rule. Accordingly, any and all Disputes shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the Federal Arbitration Act.

(d) This arbitration agreement shall inure to the benefit of, and be enforceable by, each Owner, Declarant and Declarant's affiliated and related entities, the Association, and each of their respective employees, officers, directors, agents, representatives, contractors, subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom any Owner or the Association contends is responsible for any alleged defect in or to the Lot or any improvement or appurtenance thereto. The Bound Parties contemplate the inclusion of such Bound Parties in any arbitration of a Dispute and agree that the inclusion of such Bound Parties will not affect the enforceability of this arbitration agreement.

(e) In the event any Dispute arises under the terms of this Declaration or in the event of the bringing of any arbitration action by a Bound Party hereto against another Bound Party hereunder by reason of any breach of any of the covenants, agreements or provisions on the Bound Party of the other Bound Party arising out of this Declaration, then in that event, the prevailing party shall be awarded from the other party all costs and expenses in any way related to the Dispute, including actual attorney and paralegal's fees, accounting and engineering fees, and any other professional fees resulting there from as awarded by court or arbitrator.

(f) The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration.

(g) The decision of the arbitrator shall be final and binding. The Bound Parties expressly agree that an application to confirm, vacate, modify or correct an award

rendered by the arbitrator shall be filed in any court of competent jurisdiction in the County in which the Lot is located.

(h) To the extent that any state or local law, ordinance, regulation or judicial rule is inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

(i) The participation by any party, or any party whom the Association or any Owner contends is responsible for a Dispute, in any judicial proceeding concerning this arbitration agreement or any matter arbitratable hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in arbitration, or to refuse to compel arbitration, including instances in which the judicial proceeding involves parties not subject to this arbitration agreement and/or who cannot otherwise be compelled to arbitrate.

(j) Fees and costs of the arbitration and/or the arbitrator shall be borne equally by the Bound Parties to the arbitration; provided, however, that the fees and costs of the arbitration and/or the arbitrator ultimately shall be allocated and borne as determined by the arbitrator. Notwithstanding the foregoing, the Bound Parties shall each be solely responsible for their own attorney fees and expert witness costs.

(k) The arbitrator appointed to serve shall be a neutral and impartial individual.

(l) The venue of the arbitration shall be in the County where the Lot is located unless the parties agree in writing to another location.

(m) If any provision of this arbitration agreement shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(n) The parties to the arbitration shall have the right to conduct a reasonable amount of discovery, including written discovery, depositions and inspections and testing, all as approved and coordinated by the arbitrator.

(o) Any and all Disputes between Declarant and the Association arising from or related to the Community, this Declaration or any other agreements between Declarant and the Association shall be resolved in accordance with this Declaration.

(p) Pre-Arbitration Dispute Resolution Provision: For all Disputes, the Bound Parties agree to follow the pre-arbitration procedures set forth below. The Dispute resolution provisions of this Declaration are intended to grant certain rights to Declarant and/or the Association which are in addition to those rights provided in Chapter 558, Florida Statutes ("Chapter 558 Notice of Claim"), as it exists at the time this Declaration is recorded. If a court of law should determine that any of the terms of this Declaration conflict with any of the terms of Chapter 558 Notice of Claim, the terms of Chapter 558 Notice of Claim shall supersede and control to the extent of such conflict.

i. Notification. The Association and all Owners agree to provide Declarant with written notice of any matters relating to a Dispute as soon as is reasonably possible after the Association or any Owner becomes aware, or should have become aware, of such matters and Dispute. Additionally, in accordance with the requirements of Chapter 558 Notice of Claim, the Association and all Owners must comply with and is hereby advised of the following:

ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

ii. Cooperation; Access; Repair. The Association and each Owner agree to provide Declarant and its representatives, contractors and others as Declarant may request, with prompt, reasonable cooperation, which may, for example, include access to all portions of the Lot and Home, in order to facilitate Declarant's investigation regarding a Dispute including, without limitation, for purposes of inspecting, testing, repairing, replacing, correcting or otherwise addressing matters related to the Dispute. If the Dispute arises out of or relates to the planning, surveying, design, engineering, grading, specifications, construction or other development of the Lot or Home, Declarant is hereby granted the irrevocable right, but is under no obligation, to inspect, repair and/or replace any and all affected parts of the Lot or Home.

NOTICE: THE BOUND PARTIES AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS ARBITRATION AGREEMENT (ARTICLE XIV OF THIS DECLARATION) ENTITLED "DISPUTE RESOLUTION - ARBITRATION" DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT, AND THE BOUND PARTIES ARE GIVING UP ANY RIGHTS THE BOUND PARTIES MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. THE BOUND PARTIES ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION AGREEMENT. IF ANY OWNER OR DECLARANT AND/OR THE ASSOCIATION REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THE OWNER OR DECLARANT AND/OR THE ASSOCIATION MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT. THE BOUND PARTIES' AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

THIS DECLARATION PROVIDES THAT ALL DISPUTES BETWEEN THE BOUND PARTIES WILL BE RESOLVED BY ARBITRATION IN ACCORDANCE WITH THE PROVISIONS SET FORTH ABOVE. THIS MEANS THAT THE BOUND PARTIES EACH GIVE UP THE RIGHT TO GO TO COURT OR TO A JURY TO ASSERT OR DEFEND RIGHTS UNDER THIS DECLARATION. THE BOUND PARTIES RIGHTS WILL BE DETERMINED BY A NEUTRAL ARBITRATOR AND NOT BY A JUDGE OR JURY. THE BOUND PARTIES ARE ENTITLED TO A FAIR HEARING, BUT THE ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN THE RULES FOLLOWED IN A COURT. ARBITRATOR DECISIONS ARE AS

ENFORCEABLE AS ANY COURT ORDER AND ARE SUBJECT TO VERY LIMITED REVIEW BY A COURT.

THE BOUND PARTIES UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT ALL DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS ARTICLE ENTITLED "DISPUTE RESOLUTION - ARBITRATION" TO NEUTRAL, BINDING ARBITRATION.

Article XV Mortgage Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

15.1. Notices of Action.

An institutional holder, insurer or guarantor of a first Mortgage which provides a 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 Lot to which its Mortgage relates) (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 Community or which affects any Lot 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 Lot 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 Governing Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days;

(c) Any lapse, cancellation or material modification of any Association insurance policy;

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders; or

(e) If the U.S. Department of Housing and Urban Development is insuring or the U.S. Department of Veterans Affairs is guaranteeing the Mortgage on any Lot, material amendment to the Governing Documents or extraordinary action of the Association, as defined under VA Pamphlet 26-7.

15.2. 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 Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for Losses to or a taking of the Common Area.

15.3. 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 the Owner's Lot.

15.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Article XVI Disclosures and Waivers.

16.1. Changes in Master Plan.

Each Owner acknowledges that Shearwater is a master planned community, the development of which is likely to extend over many years, and agrees and consents to all changes in (a) uses or density of Lots or dwellings within Shearwater, or (b) changes in the Master Plan.

Each Owner further acknowledges and agrees that the Master Plan and the present plans and themes for Shearwater' development may change in Declarant's discretion and that no notice or consent is required for such changes except as may be required by law. No representations, warranties or assurances are made by any Person, and none shall be relied upon by any Owner (a) that any Lots, or other property or facilities will be added, modified or eliminated within Shearwater; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that he or she is not entitled to rely upon and has not received or relied upon any representations, warranties or guarantees whatsoever as to: (a) the design, construction, completion, development, use, benefits or value of Shearwater; or (b) the number, types, sizes, prices or designs of any residential or non-residential structures or improvements built or to be built in any part of Shearwater.

16.2. No Liability For Third Party Acts.

Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and for their property in Shearwater. The Association may, but is not obligated to, maintain or support certain activities within the Community which promote or enhance safety or security within the Community. However, the Association, and Declarant shall not in any way be considered insurers or

guarantors of safety or security within the Community, nor shall they 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 systems or measures, including fire protection, burglar alarm or other security monitoring systems, or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or 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 shall be responsible for informing its tenants and all occupants of its Lot that the Association, the Board and Association committees and Declarant are not insurers or guarantors of security or safety and that each Person within Shearwater assumes all risks of personal injury and Loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

16.3. View Impairment.

Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, any open space within the Community, wetlands or ponds, or any other body of water, will be preserved without impairment. Neither Declarant nor the Association shall be obligated to relocate, prune or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Common Area) has the right to add trees and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

16.4. Water Management.

Each Owner acknowledges that Declarant and its Affiliates are not related to the local permitting authority for surface water permits. Each Owner further acknowledges and agrees that any ponds, lakes or wetlands within Shearwater are designed as water management areas and are not designed as aesthetic features. Due to fluctuations in ground water elevations within the immediate area, the water level of lakes will rise and fall and Declarant has no control over such elevations. Therefore, each Owner agrees to release and discharge Declarant and its Affiliates from and against any and all Losses, claims, demands, damages, costs and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claims relating to such fluctuations in the water elevations (including the absence of water). Owners shall not alter, modify, expand or fill any lakes or wetlands located within or in the vicinity of Shearwater without the prior written approval of the local permitting authority, Declarant, the St. Johns River Water Management District and such other local, state and federal authorities as may have relevant jurisdiction over such matters.

16.5. Liability for Association Operations.

The Association shall, to the fullest extent permitted by law, indemnify, defend and hold harmless Declarant (including its successors and assigns) from and against any and all Losses, claims, demands, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended and held harmless pursuant hereto) which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance and operation of amenities and other portions of the Common Maintenance Areas and the collection of assessments.

16.6 Community Development District.

Each Owner acknowledges that his or her Lot is located within the boundaries of the Trout Creek Community Development District. In addition to paying the Association assessments set forth in this Declaration, each Owner will be obligated to pay annual assessments to the Community Development District for construction, operation, maintenance, repair and replacement of certain roads, parks, recreational facilities and other improvements within the Community.

PART SEVEN: CHANGES IN THE COMMUNITY

Article XVII Changes in Common Area

17.1. Condemnation.

Whenever any part of the Common Area is taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner is entitled to 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 practicable, unless, within sixty (60) days after such taking, Declarant, so long as Declarant owns any property described in **Exhibit "A"** of this Declaration, and Owners representing at least seventy-five percent (75%) of the total Class "A" votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans the Board approves. The provisions of Section 7.3 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any Common Area improvements, 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.

17.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section 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.

17.3. Transfer or Dedication of Common Area.

The Association may convey, dedicate or otherwise transfer portions of the Common Area to St. Johns County or to any other local, state or federal governmental or quasi-governmental entity.

Article XVIII Amendment of Declaration

18.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, during the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose.

Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA, to make, purchase, insure or guarantee mortgage loans on the Lots; or (d) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

18.2. By the 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 Owners representing at least seventy-five percent (75%) of the Association's total Class "A" votes. In addition, so long as Declarant or any Declarant Affiliate, owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's written consent is required for any amendment.

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.

18.3. Validity and Effective Date.

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

respectively (or the assignee of such right or privilege). No amendment may specifically remove, revoke or materially adversely affect the application of, or compliance with, the Development Order, the PUD or any governmental development permit, without the written consent of the entity or entities whose approval is required to amend or to issue such documents.

Any amendment to this Declaration which alters the Stormwater Management System, beyond maintenance in its original condition, including the mitigation or preservation areas and the water management portions of the Common Area, must have the prior approval of the St. Johns River Water Management District.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that the 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 the earliest of (a) actual notice; (b) recording; or (c) later effective date specified in the amendment. Any procedural challenge to an amendment must be made within six (6) 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.

18.4. Exhibits.

Exhibit "A", "C" and "D" attached to this Declaration are incorporated by this reference and this Article shall govern amendment of such exhibits. **Exhibit "B"** is incorporated by reference and may be amended as provided in Article III or pursuant to Sections 19.1 and 19.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

DECLARANT: WFC ASHFORD MILLS OWNER VII,
L.L.C., a Delaware limited liability company

By: _____
Name: _____
Its: _____

The foregoing instrument was acknowledged before me this ____ day of August, 2015, by _____, as authorized representative of WFC Ashford Mills Owner VII, L.L.C., a Delaware limited liability company, on behalf of the company. He/She is personally known to me or has produced _____ as identification.

Signature of Notary Public

My Commission Expires

EXHIBIT "A"

Land Submitted

PARCEL 'A'

A PORTION OF SECTIONS 26 AND 27, TOWNSHIP 5 SOUTH, RANGE 27 EAST, ST. JOHNS COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID SECTION 26, ALSO BEING THE SOUTHWEST CORNER OF THE PLAT OF TROUT CREEK, AS RECORDED IN MAP BOOK 14, PAGES 64 THROUGH 65, INCLUSIVE OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE SOUTH 89°14'47" EAST, ALONG THE NORTHERLY LINE OF SAID SECTION 26 AND ALONG THE SOUTHERLY LINE OF SAID TROUT CREEK, A DISTANCE OF 655.90 FEET, TO THE WESTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS 2314, PAGE 685, OF SAID PUBLIC RECORDS; THENCE SOUTH 03°29'33" EAST, ALONG LAST SAID LINE, 1154.78 FEET, TO THE SOUTHERLY LINE OF LAST SAID LANDS; THENCE SOUTHEASTERLY AND NORTHEASTERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING (2) TWO COURSES AND DISTANCES: COURSE NO. 1: SOUTH 85°09'00" EAST, 145.03 FEET; COURSE NO. 2: NORTH 78°33'54" EAST, 500.12 FEET, TO THE SOUTHEASTERLY LINE OF SAID LANDS; THENCE NORTHEASTERLY, SOUTHEASTERLY, NORTHWESTERLY, AND NORTHERLY, ALONG LAST SAID LINE, RUN THE FOLLOWING (29) TWENTY-NINE COURSES AND DISTANCES: COURSE NO. 1: NORTH 52°40'27" EAST, 41.22 FEET; COURSE NO. 2: NORTH 53°33'31" EAST, 31.02 FEET; COURSE NO. 3: SOUTH 38°57'33" EAST, 25.33 FEET; COURSE NO. 4: NORTH 42°53'04" EAST, 35.19 FEET; COURSE NO. 5: NORTH 53°47'33" EAST, 38.47 FEET; COURSE NO. 6: NORTH 22°26'56" EAST, 24.36 FEET; COURSE NO. 7: NORTH 70°31'09" EAST, 39.22 FEET; COURSE NO. 8: NORTH 46°25'09" EAST, 36.60 FEET; COURSE NO. 9: NORTH 03°28'56" EAST, 24.13 FEET; COURSE NO. 10: NORTH 49°07'30" EAST, 42.38 FEET; COURSE NO. 11: NORTH 03°20'08" WEST, 42.33 FEET; COURSE NO. 12: NORTH 54°51'39" EAST, 45.82 FEET; COURSE NO. 13: NORTH 47°34'29" EAST, 45.48 FEET; COURSE NO. 14: NORTH 08°03'50" EAST, 45.24 FEET; COURSE NO. 15: NORTH 67°26'37" EAST, 43.71 FEET; COURSE NO. 16: NORTH 15°52'53" WEST, 36.12 FEET; COURSE NO. 17: NORTH 37°16'53" EAST, 35.86 FEET; COURSE NO. 18: NORTH 39°01'54" EAST, 50.17 FEET; COURSE NO. 19: NORTH 36°48'06" EAST, 40.28 FEET; COURSE NO. 20: NORTH 68°01'38" EAST, 35.50 FEET; COURSE NO. 21: NORTH 56°58'44" EAST, 46.70 FEET; COURSE NO. 22: NORTH 68°57'51" EAST, 40.12 FEET; COURSE NO. 23: NORTH 84°37'30" EAST, 48.86 FEET; COURSE NO. 24: NORTH 33°35'57" EAST, 49.48 FEET; COURSE NO. 25: NORTH 28°53'34" EAST, 96.82 FEET; COURSE NO. 26: NORTH 19°45'36" EAST, 55.57 FEET; COURSE NO. 27: NORTH 19°12'00" EAST, 50.71 FEET; COURSE NO. 28: NORTH 30°02'18" EAST, 47.91 FEET; COURSE NO. 29: NORTH 58°23'25" EAST, 44.64 FEET; THENCE SOUTH 59°12'32" EAST, 49.69 FEET; THENCE SOUTH 81°36'48" EAST, 87.53 FEET, TO THE ARC OF A CURVE LEADING EASTERLY; THENCE EASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 77.00 FEET, AN ARC DISTANCE OF 141.44 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING

AND DISTANCE OF NORTH 81°28'02" EAST, 122.37 FEET; THENCE NORTH 44°05'18" EAST, 5.00 FEET; THENCE NORTH 87°40'48" EAST, 113.60 FEET, TO THE ARC OF A CURVE LEADING SOUTHERLY; THENCE SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 182.00 FEET, AN ARC DISTANCE OF 164.54 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 05°28'51" WEST, 159.00 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 31°22'51" WEST, 112.99 FEET; THENCE SOUTH 58°37'09" EAST, 48.13 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHERLY; THENCE SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 65.00 FEET, AN ARC DISTANCE OF 92.84 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 17°42'04" EAST, 85.15 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 23°13'00" WEST, 45.45 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHERLY; THENCE SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 25.00 FEET, AN ARC DISTANCE OF 13.54 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 07°41'50" WEST, 13.38 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 07°49'19" EAST, 50.35 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHWESTERLY; THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 75.00 FEET, AN ARC DISTANCE OF 106.37 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 32°48'36" WEST, 97.68 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 73°26'30" WEST, 27.85 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHWESTERLY; THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 25.00 FEET, AN ARC DISTANCE OF 26.46 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 43°06'56" WEST, 25.25 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 12°47'22" WEST, 136.16 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHERLY; THENCE SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 25.00 FEET, AN ARC DISTANCE OF 10.09 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 01°13'29" WEST, 10.02 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 10°20'24" EAST, 54.54 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHERLY; THENCE SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 75.00 FEET, AN ARC DISTANCE OF 53.83 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 10°13'16" WEST, 52.68 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 30°46'55" WEST, 85.20 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHWESTERLY; THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 75.00 FEET, AN ARC DISTANCE OF 57.36 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 52°41'24" WEST, 55.97 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 74°35'54" WEST, 55.56 FEET, TO THE

ARC OF A CURVE LEADING NORTHWESTERLY; THENCE NORTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 575.00 FEET, AN ARC DISTANCE OF 315.22 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 31°06'24" WEST, 311.29 FEET; THENCE SOUTH 42°55'17" WEST, 309.99 FEET; THENCE SOUTH 47°04'43" EAST, 70.81 FEET; THENCE SOUTH 58°27'38" WEST, 335.91 FEET; THENCE SOUTH 58°46'58" WEST, 730.02 FEET; THENCE SOUTH 29°52'56" EAST, 94.44 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING EASTERLY; THENCE EASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 25.00 FEET, AN ARC DISTANCE OF 39.85 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 75°32'59" EAST, 35.76 FEET; THENCE SOUTH 28°46'15" EAST, 60.05 FEET, TO THE ARC OF A CURVE LEADING SOUTHERLY; THENCE SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 25.00 FEET, AN ARC DISTANCE OF 38.69 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 14°27'02" WEST, 34.94 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 29°52'56" EAST, 83.73 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHEASTERLY; THENCE SOUTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 530.00 FEET, AN ARC DISTANCE OF 11.88 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 29°14'24" EAST, 11.88 FEET; THENCE NORTH 58°46'58" EAST, 790.44 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING EASTERLY; THENCE EASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 325.00 FEET, AN ARC DISTANCE OF 148.00 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 71°49'43" EAST, 146.72 FEET; THENCE SOUTH 03°26'58" EAST, 129.37 FEET; THENCE NORTH 86°33'02" EAST, 300.00 FEET; THENCE NORTH 82°43'47" EAST, 22.03 FEET; THENCE SOUTH 13°31'58" EAST, 24.28 FEET; THENCE SOUTH 80°58'30" WEST, 26.36 FEET; THENCE SOUTH 86°33'02" WEST, 300.00 FEET; THENCE SOUTH 03°26'58" EAST, 33.61 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHERLY; THENCE SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 445.00 FEET, AN ARC DISTANCE OF 81.05 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 01°46'06" WEST, 80.94 FEET, TO THE ARC OF A CURVE LEADING SOUTHWESTERLY; THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 512.35 FEET, AN ARC DISTANCE OF 436.59 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 63°31'24" WEST, 423.50 FEET, TO THE POINT OF REVERSE CURVATURE OF A CURVE LEADING SOUTHWESTERLY; THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 355.00 FEET, AN ARC DISTANCE OF 118.11 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 48°38'34" WEST, 117.56 FEET; THENCE SOUTH 31°49'34" EAST, 120.00 FEET; THENCE SOUTH 31°02'08" EAST, 60.01 FEET; THENCE SOUTH 31°44'15" EAST, 120.00 FEET, TO THE ARC OF A CURVE LEADING SOUTHWESTERLY;

THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 655.00 FEET, AN ARC DISTANCE OF 7.51 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 58°35'28" WEST, 7.51 FEET; THENCE SOUTH 11°27'55" EAST, 135.34 FEET; THENCE SOUTH 05°14'13" EAST, 326.42 FEET; THENCE NORTH 76°52'18" EAST, 126.06 FEET, TO THE ARC OF A CURVE LEADING EASTERLY; THENCE EASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 62.00 FEET, AN ARC DISTANCE OF 142.16 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 86°12'07" EAST, 113.00 FEET; THENCE SOUTH 69°29'11" EAST, 161.22 FEET; THENCE SOUTH 14°51'51" EAST, 95.38 FEET; THENCE SOUTH 51°14'19" EAST, 14.28 FEET; THENCE NORTH 75°08'09" EAST, 111.53 FEET; THENCE SOUTH 14°51'51" EAST, 14.27 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHERLY; THENCE SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 25.00 FEET, AN ARC DISTANCE OF 22.16 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 10°31'48" WEST, 21.44 FEET, TO THE POINT OF REVERSE CURVATURE OF A CURVE LEADING SOUTHEASTERLY; THENCE SOUTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 62.00 FEET, AN ARC DISTANCE OF 225.15 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 68°06'28" EAST, 120.30 FEET; THENCE NORTH 75°08'09" EAST, 137.15 FEET; THENCE SOUTH 54°57'40" EAST, 254.73 FEET; THENCE SOUTH 00°00'00" EAST, 182.01 FEET; THENCE NORTH 90°00'00" WEST, 300.07 FEET; THENCE NORTH 55°25'11" WEST, 627.06 FEET; THENCE SOUTH 77°38'44" WEST, 1111.98 FEET; THENCE NORTH 61°12'29" WEST, 278.75 FEET; THENCE NORTH 69°28'25" WEST, 292.03 FEET; THENCE NORTH 85°29'10" WEST, 94.77 FEET; THENCE SOUTH 37°08'52" WEST, 117.10 FEET; THENCE SOUTH 55°28'59" WEST, 166.28 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHWESTERLY; THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 400.00 FEET, AN ARC DISTANCE OF 97.83 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 62°29'21" WEST, 97.58 FEET; THENCE SOUTH 61°34'10" WEST, 87.32 FEET; THENCE SOUTH 77°31'40" WEST, 6.00 FEET; THENCE SOUTH 12°28'20" EAST, 156.26 FEET; THENCE SOUTH 77°31'40" WEST, 364.00 FEET; THENCE NORTH 12°28'20" WEST, 186.63 FEET; THENCE SOUTH 57°52'40" WEST, 264.21 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHWESTERLY; THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 50.00 FEET, AN ARC DISTANCE OF 19.54 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 46°41'01" WEST, 19.41 FEET, TO THE POINT OF REVERSE CURVATURE OF A CURVE LEADING SOUTHWESTERLY; THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 400.00 FEET, AN ARC DISTANCE OF 379.68 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 62°40'55" WEST, 365.58 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 89°52'27" WEST, 17.70 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING

WESTERLY; THENCE WESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 739.49 FEET, AN ARC DISTANCE OF 197.89 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 82°27'34" WEST, 197.30 FEET, TO THE POINT OF COMPOUND CURVATURE OF A CURVE LEADING NORTHWESTERLY; THENCE NORTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 245.00 FEET, AN ARC DISTANCE OF 130.50 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 59°32'00" WEST, 128.97 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE NORTH 45°55'54" WEST, 163.66 FEET; THENCE NORTH 32°59'28" WEST, 90.00 FEET; THENCE NORTH 57°00'32" EAST, 114.59 FEET, TO THE ARC OF A CURVE LEADING NORTHEASTERLY; THENCE NORTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 72.00 FEET, AN ARC DISTANCE OF 137.26 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 42°22'58" EAST, 117.40 FEET; THENCE NORTH 06°59'55" EAST, 10.00 FEET; THENCE NORTH 57°00'32" EAST, 153.64 FEET, TO THE ARC OF A CURVE LEADING NORTHEASTERLY; THENCE NORTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 75.00 FEET, AN ARC DISTANCE OF 36.11 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 42°24'33" EAST, 35.76 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE NORTH 56°12'08" EAST, 150.79 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING EASTERLY; THENCE EASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 75.00 FEET, AN ARC DISTANCE OF 69.81 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 82°51'59" EAST, 67.31 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 70°28'09" EAST, 81.41 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING EASTERLY; THENCE EASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 25.00 FEET, AN ARC DISTANCE OF 16.23 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 89°03'42" EAST, 15.94 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE NORTH 72°20'45" EAST, 41.47 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING SOUTHEASTERLY; THENCE SOUTHEASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 75.00 FEET, AN ARC DISTANCE OF 98.87 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 69°53'18" EAST, 91.87 FEET, TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 32°07'20" EAST, 98.74 FEET; THENCE NORTH 57°52'40" EAST, 156.21 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING EASTERLY; THENCE EASTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 645.00 FEET, AN ARC DISTANCE OF 387.01 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 75°04'01" EAST, 381.23 FEET; THENCE NORTH 74°05'55" EAST, 123.99 FEET; THENCE NORTH 37°08'52" EAST, 140.00 FEET; THENCE NORTH 33°27'24" EAST, 33.84 FEET; THENCE NORTH 43°18'31" WEST, 80.60 FEET, TO THE POINT OF CURVATURE OF A CURVE LEADING NORTHWESTERLY; THENCE

NORTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 470.00 FEET, AN ARC DISTANCE OF 100.07 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 49°24'31" WEST, 99.88 FEET; THENCE NORTH 34°29'30" EAST, 77.70 FEET; THENCE NORTH 76°31'59" EAST, 85.96 FEET; THENCE NORTH 00°00'00" EAST, 289.04 FEET; THENCE NORTH 37°38'14" WEST, 1304.21 FEET; THENCE NORTH 01°45'25" WEST, 1145.24 FEET, TO THE NORTHERLY LINE OF SAID SECTION 27, TOWNSHIP 5 SOUTH, RANGE 27 EAST, ST. JOHNS COUNTY, FLORIDA; THENCE NORTH 88°14'35" EAST, ALONG LAST SAID LINE, 974.37 FEET, TO THE POINT OF BEGINNING.

PARCEL 'B'

A PORTION OF LOT 10, AND THAT PARTICULAR 60 FOOT ROAD EASEMENT, AS SHOWN ON THE PLAT OF TROUT CREEK, AS RECORDED IN MAP BOOK 14, PAGES 64 AND 65 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, LYING IN SECTION 23, TOWNSHIP 5 SOUTH, RANGE 27 EAST, ST. JOHNS COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF SAID SECTION 23, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID PLAT OF TROUT CREEK; THENCE SOUTH 89°14'47" EAST, ALONG THE SOUTHERLY LINE OF SAID SECTION 23, ALSO BEING THE SOUTHERLY LINE OF SAID PLAT OF TROUT CREEK, A DISTANCE OF 122.33 FEET, TO THE EASTERLY LINE OF A 62 FOOT EASEMENT DESIGNATED 'PARCEL 1,' AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 2199, PAGE 588, OF SAID PUBLIC RECORDS; THENCE NORTH 03°28'43" WEST, ALONG LAST SAID LINE, 696.53 FEET, TO THE SOUTHERLY RIGHT OF WAY LINE OF COUNTY ROAD NO. 210 WEST (A 100 FOOT RIGHT-OF-WAY, AS NOW ESTABLISHED), SAID POINT LYING ON THE ARC OF A CURVE LEADING WESTERLY; THENCE WESTERLY, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, AND ALONG AND AROUND ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 1482.40 FEET, AN ARC DISTANCE 122.80 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 87°06'25" WEST, 122.76 FEET, TO THE WESTERLY LINE OF SAID SECTION 23, ALSO BEING THE WESTERLY LINE OF SAID PLAT OF TROUT CREEK; THENCE SOUTH 03°28'43" EAST, ALONG LAST SAID LINE, 701.12 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

Initial Use Restrictions

The purpose of Design Guidelines and Use Restrictions is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities which fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article IV, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Lot under one set of circumstances, the same thing may be disapproved for another Lot under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it estop the Board from taking enforcement action in any appropriate circumstances.

Subject to the above, the following restrictions shall apply to all of Shearwater until such time as they are amended, modified, repealed, or limited pursuant to the Declaration.

1. **ANIMALS AND PETS.** No animals of any kind, including livestock and poultry, shall be raised, bred or kept on any portion of the Community, except that three (3) or fewer usual and common household pets (not otherwise prohibited herein) may be kept on a Lot.

Dogs and cats shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside a structure. Upon the Board's request, an Owner, at his or her expense, shall remove any pet which is permitted to roam free, or, in the Board's sole discretion, endangers health, makes objectionable noise, or constitutes a nuisance or inconvenience to other Owners or residents of any portion of the Community. If the Owner fails to honor such request, the Board may cause the pet to be removed at the Owner's expense. No pets shall be kept, bred or maintained for any commercial purpose.

Owners are responsible for immediate pet waste cleanup (pickup) each and every time, without exception.

In addition to complying with the above paragraphs regarding animals and pets, Owners shall be required to comply with all applicable local, state and federal laws, rules and regulations regarding animals and pets.

2. **WILDLIFE.** Capturing, killing or trapping wildlife is prohibited within the Community, except in circumstances imposing an imminent threat to the safety of Persons or pets, or as permitted under section (a) of this **Exhibit "B"**.

3. **FIREARMS; FIREWORKS.** The use and discharge of firearms within the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size. The use and discharge of fireworks is prohibited except by license granted by the Association.

4. **NUISANCES.** No Owner shall engage in any activity which constitutes a nuisance (meaning offensive or detrimental activity, as determined by the Board), or which materially disturbs or destroys the vegetation, wildlife or air quality within the Community, or which results in unreasonable levels of sound or light pollution.

5. **GARAGES.** Garage doors shall remain closed at all times except when entering, exiting or otherwise actively using the garage. A garage or carport may not be converted to finished space for use as an apartment, an integral part of the Lot's living area, or for purposes other than parking vehicles and ancillary storage, without prior approval pursuant to Article IV.

6. **FENCING.** All fences must be approved in writing by the DRB prior to installation. See Design Guidelines for fencing specifications.

7. **MAILBOXES.** Mailboxes shall be cluster boxes installed in the manner and location approved by the DRB.

8. **WINDOW TREATMENTS/SLIDING GLASS DOOR TREATMENTS.** No foil or other reflective materials shall be used on any windows for sun screens, blinds, shades or for any other purpose. All draperies, curtains, shades or other window coverings should have a neutral backing. Screen doors visible from the exterior of the home shall be approved by the DRB.

9. **SWIMMING POOLS, POOL SCREENING/ENCLOSURES AND POOL EQUIPMENT.** No swimming pool shall be constructed, erected or maintained upon any Lot without the prior written consent of the DRB; provided, however, that Declarant need not obtain DRB approval. Pool construction shall be in accordance with applicable governing agency codes. In no event shall any above-ground swimming pool be permitted. All pool equipment stored on any Lot shall be screened from view from outside the Lot. Pool security fencing and screen enclosures shall be installed subject to applicable hurricane standards within the Florida Building Code or other applicable jurisdictional codes. Security fencing and screen enclosures are subject to approval by DRB.

10. **EXTERIOR PAINTING.** Any change to the exterior color, finish or texture of any improvement located on a Lot, including, without limitation, the dwelling, the roof on any dwelling or any fence, must be approved by DRB.

11. **EXTERIOR LIGHTING.** Excessive exterior lighting on any Lot is prohibited. The Board, in its sole discretion, shall determine whether any exterior lighting is excessive. Lighting requirements may differ between Lots in different locations. Any exterior lighting shall require DRB approval.

12. **EXTERIOR AIR CONDITIONERS.** Individual air conditioning units mounted through windows or walls are prohibited. Plants or opaque fencing shall screen exterior air conditioning units or heat pumps. The screening must encompass the entire height of the air conditioning unit or heat pump so as to obscure view from the street. The DRB shall approve location and screening of air conditioning units and heat pumps.

13. **HURRICANE SHUTTERS.** The DRB must approve all hurricane shutters. Hurricane shutters may be put up or closed no more than 48 hours prior to the expected arrival of a named hurricane and must be removed or opened within 72 hours after the hurricane watch or warning has expired or as the Board may determine.

14. **STORAGE OF GOODS.** Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment or other goods and chattels on the Common Area (except by the Association), or, if not in active use, any portion of a Lot which is visible from outside the Lot is prohibited.

15. **PROHIBITED CONDITIONS.** The following conditions, structures or activities are prohibited on any Lot:

(a) **Dog runs and animal pens of any kind, unless properly screened and approved in advance in accordance with Article IV;**

(b) **Shacks or other structures of a temporary nature on any Lot except as may be authorized by Declarant during the initial construction of improvements within the Community.** Temporary structures used during the construction or repair of a dwelling or other improvements shall be removed immediately after the completion of construction or repair;

(c) **Permanent basketball goals, basketball standards or backboards which are or would be visible from any street or Common Area; provided, portable basketball goals may be used on a Lot without prior approval, but must be stored so as not to be visible from any street or Common Area overnight or otherwise when not in use;**

(d) **Any Owner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than four and one-half feet (4.5) by six (6) feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag.**

(e) **Any Owner may erect a freestanding flagpole no more than twenty (20) feet high on any portion of the Lot if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The Owner may further display in a respectful manner from that flagpole, one official United States flag, not larger than four and one-half (4.5) feet by six (6) feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, applicable county or municipal noise and lighting ordinances.**

(f) **Outdoor athletic and recreational facilities such as playscapes, swing sets and sport courts unless properly screened and approved in advance in accordance with Article IV;**

(g) **Outside clotheslines or other outside facilities for drying or airing clothes unless properly screened and approved in advance in accordance with Article IV;**

(h) **Individual septic systems serving any Lot; and**

(i) **Private wells.**

In any event, and notwithstanding the above list of prohibited conditions, any structure, improvement, or thing proposed for construction, erection, installation or placement on a Lot requires prior Reviewer approval in accordance with Article IV, unless specifically made exempt under the Design Guidelines.

16. **QUIET ENJOYMENT.** Nothing shall be done or maintained on any part of a Lot which, in the Board's reasonable discretion, emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort or serenity of the occupants and invitees of other Lots.

No noxious, illegal or offensive activity shall be carried on upon any portion of the Community which, in the Board's reasonable determination, tends to cause embarrassment, discomfort, annoyance, or nuisance to others.

17. **SIGNS.** No sign shall be erected within the Community except those required by law, including posters, circulars and billboards; provided, the following types of signs may be erected on a Lot without the Board's written consent: (i) residential identification signs for identification of the occupant and its address, in a style designated by the Design Guidelines or approved by the Reviewer; (ii) security signs in a style and location designated by the Design Guidelines or approved by the Reviewer; and (iii) signs advertising a Lot as being for sale or rent in a style designated by the Design Guidelines or approved by the Reviewer. This restriction shall not apply to entry, directional and marketing signs installed by Declarant or any Declarant Affiliate, or a Builder, acting with Declarant's specific consent. The Association, with the Board's approval, shall have the right to erect signs on the Common Area.

18. **HOLIDAY DECORATIONS.** Owners may display holiday decorations on their Lots if the decorations are of the kinds normally displayed in similar neighborhoods for such holiday, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Permitted decorations may be displayed no earlier than 45 days prior to the date of the holiday and must be removed within 15 days after the date of the holiday.

19. **ANTENNAS AND SATELLITE DISHES.** No antenna, satellite dish or other device for the transmission or reception of television or radio (including amateur or ham radios) signals is permitted outside the dwelling on a Lot, except those devices whose installation and use is protected under federal law or regulations (generally, certain antennae under one meter in diameter). Notwithstanding such protection, an application for such an antenna or other device must be submitted to the Reviewer for approval and approval will be granted only if:

(a) **First, the antenna or other device is designed for minimal visual intrusion (i.e., is located in a manner that minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and**

(b) **Second, the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (i.e., without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device).**

The Reviewer shall consider any such application on an expedited basis.

Notwithstanding the above, Declarant and/or the Association may erect an antenna, satellite dish, or other apparatus for a master antenna, cable or other communication system for the benefit of all or a portion of Shearwater, should any master system or systems be used by the Association and require such exterior apparatus.

20. TRASH CONTAINERS AND COLLECTION. No garbage or trash shall be placed or kept on any Lot except as kept in a garage, as pre-approved by the Reviewer, as specifically permitted under the Design Guidelines, or as required by the applicable governing jurisdiction. Such containers shall be screened from view outside of the Lot except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. Rubbish, trash and garbage must be removed from the Lots and may not accumulate on any Lot. Outdoor incinerators may not be kept or maintained on any Lot. The Board may enact such other rules and regulations concerning litter and trash control as may be necessary or appropriate to comply with the Development Order.

21. UNSIGHTLY OR UNKEMPT CONDITIONS. All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot in a manner which is unsanitary, unsightly, offensive or detrimental to any other portion of the Community, as the Board may determine.

Woodpiles or other material shall be properly screened and stored in such a manner so as not to attract rodents, snakes and other animals and or create a fire hazard, as the Board determines. No activities shall be conducted upon or adjacent to any Lot or within any structure on a Lot which are or might be unsafe or hazardous to any Person or property. Open fires are prohibited within the Community, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes.

22. VEHICLES AND PARKING. AS USED IN THIS SECTION, THE TERM "VEHICLES" INCLUDES, WITHOUT LIMITATION, AUTOMOBILES, TRUCKS, BOATS, TRAILERS, MOTORCYCLES, CAMPERS, VANS AND RECREATIONAL VEHICLES.

No vehicle may be left upon any portion of the Community except in a garage, driveway or other area the Board designates. No vehicle may park or be left on any street of the

Community. Common Community parking spaces cannot be occupied by the same vehicle for more than forty-eight (48) consecutive hours. No vehicle may obstruct or partially obstruct a sidewalk or other designated right-of-way. No person shall park any pick-up truck with a camper top or other raised enclosure or commercial lettering or logos, or any recreational vehicle, mobile home, trailer, camper, stored vehicle, commercial vehicle (including all vehicles with commercial lettering or logos), or any unlicensed or inoperable vehicle within the Community other than in an enclosed garage. "Sports utility vehicles" and "mini-vans" (as such vehicles are commonly referred to, as determined in the Board's discretion) and pick-up trucks without raised enclosures or commercial writing or logos shall be treated as automobiles and may be parked in driveways outside of enclosed garages. Boats or other watercraft may be kept or stored on a Lot only so long as they are screened from view from outside of the Lot. This Section shall not apply to emergency vehicle repairs or to construction, service, and delivery vehicles for periods necessary to perform the services or make a delivery.

Notwithstanding the above, for purposes of cleaning, loading, unloading and short-term parking, recreational vehicles may be parked outside of an enclosed garage for up to one hour within each calendar month.

No vehicle may exceed the posted speed limit on any street within the Community.

23. **SOLAR EQUIPMENT.** No solar heating equipment or device is permitted outside the dwelling or other structures on the Lot except such devices whose installation and use is protected by federal or Florida law. Notwithstanding such protection, an application for such equipment or device must be submitted for approval under Article IV prior to installation and approval will be granted only if:

(a) **First, such equipment or device is designed for minimal visual intrusion when installed (i.e., is located in a manner which minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and**

(b) **Second, the equipment or device complies, to the maximum extent feasible, with the Design Guidelines within the confines of the applicable governmental regulations.**

24. **INVASIVE OR EXOTIC SPECIES.** No Person shall use on the Lots or the Common Areas such plant species as are listed in or referenced by the Development Order as prohibited within Shearwater. Notwithstanding the foregoing, the Design Guidelines may set forth additional prohibitions on the use of plant species. The use in landscaping of any plant species shall be subject to approval in accordance with Article IV and the Design Guidelines. In addition, the import into Shearwater of any plant species used in landscaping, other than those transplanted from within the Community, shall be subject to approval in accordance with Article IV and the Design Guidelines.

25. **OUTDOOR FURNITURE; LAWN ORNAMENTS.** Outdoor furniture and accessories (including but not limited to umbrellas) used on porches, decks or patios shall be high-quality furniture made of metal, wood or other high-quality material; in black, white or

muted colors. The DRB may require removal of furniture and accessories on front and side decks, terraces or porches if such appears to be incongruous with the house or the neighborhood. Outdoor furniture is not approved on front lawns. Exterior decorative objects including, but not limited to, sculptures, fountains, lawn art, trellises and the like, shall not be placed or installed on the Lot without prior approval by the DRB.

(z) Use of Skateboards and Off-Road Vehicles. The use of skateboards, motorized scooters, off-road motorcycles, all-terrain vehicles, mini-bikes or other similar recreational off-road vehicles shall be permitted within Shearwater as long as such use complies with local, state and federal laws, rules and regulations.

(aa) Off-Road Vehicles. The use of off-road motorcycles, all-terrain vehicles, mini-bikes or other similar recreational off-road vehicles shall not be permitted within Shearwater unless such use complies with local, state and federal laws, rules and regulations. Except for authorized maintenance vehicles, motorized vehicles are not allowed on any trail or sidewalk within Shearwater, other than golf carts on designated golf cart paths/trails.

EXHIBIT "C"

Articles of Incorporation of Shearwater Homeowners Association, Inc.

Florida Department of State
Division of Corporations
Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

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To:

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

From:

Account Name : ROGERS, TOWERS, BAILEY, ET AL
Account Number : 076666002273
Phone : (904) 398-3911
Fax Number : (904) 396-0663

****Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.****

Email Address: _____

FLORIDA PROFIT/NON PROFIT CORPORATION
Shearwater Homeowners Association, Inc.

Certificate of Status	0
Certified Copy	0
Page Count	08
Estimated Charge	\$70.00

**ARTICLES OF INCORPORATION
FOR
SHEARWATER HOMEOWNERS ASSOCIATION, INC.**

**A Corporation Not-for-Profit
Under the Laws of the State of Florida**

The undersigned incorporator, for the purpose of forming a corporation not-for-profit pursuant to the laws of the State of Florida, hereby adopts the following Articles of Incorporation:

**1
NAME**

The name of the corporation is **SHEARWATER HOMEOWNERS ASSOCIATION, INC.** For convenience, the corporation shall be referred to in this instrument as the "Association," these Articles of Incorporation as the "Articles" and the By-Laws of the Association as the "By-Laws." The terms used in these Articles shall have the meanings set forth in the Declaration of Covenants and Restrictions for the Shearwater Homeowners Association, Inc. recorded in the Public Records of St. Johns County Florida, as amended and/or supplemented from time to time.

**2
OFFICE**

The principal office and mailing address of the Association shall be at 352 Pasco Reyes Drive, Saint Augustine, Florida 32095 or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office or at such other place as may be permitted by the Act.

**3
REGISTERED AGENT**

The initial registered agent is Rogers Towers, P.A., whose address is 100 Whetstone Place, Suite 100, St. Augustine, Florida 32086, or at such other place as the Board of Directors may from time to time designate.

**4
PURPOSE**

The objects and purposes of the Association are those objects and purposes as are authorized by the Declaration of Covenants, Conditions and Restrictions for the Shearwater Homeowners Association, Inc. recorded in the Public Records of St. Johns County Florida, as hereafter amended and/or supplemented from time to time (the "Declaration"). The further objects and purposes of the Association are to preserve the values in the Property and to maintain the Common Area thereof for the benefit of the Owners who become members of the Association.

5
POWERS

The powers of the Association shall include and be governed by the following:

- 5.1 General. The Association shall have all of the common law and statutory powers of a corporation not-for-profit under the Laws of Florida (which are in effect at the time of filing of these Articles) except as expressly limited or restricted by applicable law, the terms of these Articles, the Declaration or the By-Laws.
- 5.2 Enumeration. In addition to the powers set forth in Section 5.1 above, the Association shall have all of the powers and duties reasonably necessary to operate the Property pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:
- (a) To make and collect Assessments and other charges against members as Owners (whether or not such sums are due and payable to the Association), and to use the proceeds thereof in the exercise of its powers and duties, including without limitation for the maintenance and operation of the Surface Water Management System, including but not limited to work within the retention areas, drainage structures or drainage easements.
 - (b) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the provisions of the Declaration; provided, however, the Common Area may not be mortgaged without the consent of the Owners with voting power representing two-thirds (2/3^{rds}) of the votes.
 - (c) To maintain, repair, replace, reconstruct, add to and operate the Common Area and other property to be maintained by the Association pursuant to the Declaration.
 - (d) To purchase insurance upon the Common Area, insurance for the protection of the Association, its officers, directors and Owners, and other insurance required or permitted by the Declaration.
 - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Property and for the health, comfort, safety and welfare of the Owners.
 - (f) To enforce by legal means the provisions of the Declaration, these Articles, the By-Laws, the rules and regulations for the use of the Common Area and applicable law.
 - (g) To contract for the management and maintenance of the Common Area and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules, and maintenance, repair and replacement of the Common Area with such funds as shall be made available by the Association for such purposes. The Association and its officers

shall, however, retain at all times the powers and duties to make assessments, promulgate rules and execute contracts on behalf of the Association.

- (h) To employ personnel to perform the services required for the proper operation and maintenance of the Common Area.
- (i) To execute all documents or consents, on behalf of all Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit or Lot and each Mortgagee of an Owner by acceptance of a lien on said Unit or Lot, appoints and designates the President of the Association as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
- (j) To operate, maintain and manage the Stormwater Management System(s) in a manner consistent with the requirements of any and all St. Johns River Water Management District permits for the Property and applicable District rules, and shall assist in the enforcement of the restrictions and covenants contained herein.
- (k) To levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the Stormwater Management System.
- (l) Such assessments, as set forth in Section 5.2(k) above, shall be used for the maintenance and repair of the Stormwater Management Systems and mitigation or preservation areas, including but not limited to work within retention areas, drainage structures and drainage easements.

5.3 Association Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws. The Association shall have the power to transfer title to the Common Areas to another not-for-profit corporation in which the members of this Association are also the members.

5.4 Distribution of Income. The Association shall not pay a dividend to its members and shall make no distribution of income to its members, directors or officers.

5.5 Dissolution. In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the stormwater management system must be transferred to and accepted by an entity which complies with Rule 62-330.310, Florida Administrative Code, and Applicant's Handbook Volume I, Section 12.3, and be approved by the Agency prior to such termination, dissolution or liquidation.

5.6 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and applicable law, provided that in the event of conflict, the provisions of applicable law shall control over those of the Declaration and By-Laws. The provisions of the Declaration shall

control over those of the Articles and By-Laws; the provisions of the Articles shall control over the provisions of the By-Laws.

6

MEMBERS

- 6.1 Membership. The members of the Association shall consist of the record title owners of Lots or Units within the Property from time to time, which membership shall be appurtenant to and inseparable from ownership of the Lot or Unit.
- 6.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Lot or Unit for which that share is held.
- 6.3 Classes of Memberships and Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A Members shall be all Owners, with the exception of the "Declarant" (as long as the Class B Membership shall exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify). Each Class A Member shall have one (1) vote for each Lot owned by such member.

(b) Class B Member. The Class B Member shall be **WFC Ashford Mills Owner VII, L.L.C.**, a Delaware limited liability company (the "Declarant"), who shall be entitled to three (3) votes for each Lot owned by the Declarant. The Class B Member will also include any successors or assigns of the named Class B Member if the Declarant's rights are expressly assigned to such successor or assign. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events: ("Turnover"):

(1) When the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership;

(2) Three (3) months after ninety percent (90%) of the Lots have been conveyed to members of the Association other than the Declarant;

(3) In accordance with the turnover rules or requirements of the Act (if sooner than (2) above); or

(4) Such earlier date as the Declarant may choose to terminate the Class B Membership upon notice to the Association.

All votes shall be exercised or cast in the manner provided by the Declaration and By-Laws. After Turnover, the Class A Members may vote to elect the majority of the members of the Board. For the purposes of this Article, builders, contractors or others who purchase a Lot for the purpose of the constructing improvements thereon for resale shall not be deemed to be Class A Members. After Turnover, for so long as the Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots within the Property, the Declarant may elect at least one (1) Director. After Turnover, the Declarant will be a Class A Member with

respect to the Lots which it owns and shall have all rights and obligations of a Class A Member, except that it may not cast its votes for the purpose of reacquiring control of the Association.

7

INCORPORATOR

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

Ellen Avery-Smith

100 Whetstone Place, Suite 100
St. Augustine, Florida 32086

8

TERM OF EXISTENCE

Existence of the Association shall commence with the filing of these Articles of Incorporation with the Secretary of State, Tallahassee, Florida. The Association shall exist in perpetuity.

9

OFFICERS

The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties and qualifications of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

NAME:	ADDRESS:
President: Thomas C. Tischer	352 Paseo Reyes Drive St. Augustine, Florida 32095
Vice President: Stanley Brown	352 Paseo Reyes Drive St. Augustine, Florida 32095
Secretary/Treasurer: Andrew Smith	352 Paseo Reyes Drive St. Augustine, Florida 32095

10
DIRECTORS

- 10.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. Prior to Turnover, Directors need not be members of the Association.
- 10.2 Duties and Powers. All of the duties and powers of the Association existing under the law, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Owners when such approval is specifically required.
- 10.3 Election and Removal. Directors of the Association shall be elected at the annual meeting of the Members in the manner determined by and subject to the qualifications set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.
- 10.4 Term of Declarant's Directors. The Declarant shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the By-Laws.
- 10.5 First Directors. The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have taken office, as provided in the By-Laws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Thomas C. Tischer	352 Paseo Reyes Drive St. Augustine, Florida 32095
Stanley Brown	352 Paseo Reyes Drive St. Augustine, Florida 32095
Andrew Smith	352 Paseo Reyes Drive St. Augustine, Florida 32095

- 10.6 Standards. A director shall discharge his duties as a director, including any duties as a member of a Committee: in good faith; with the care an ordinary prudent person in a like position would exercise under similar circumstances; and in a manner reasonably believed to be in the best interests of the Association. Unless a director has knowledge concerning a matter in question that makes reliance unwarranted, a director, in discharging his duties, may rely on information, opinions, reports or statements, including financial statements and other data, if prepared or presented by: one or more officers or employees of the Association whom the director reasonably believes to be reasonable and competent in the manners presented; legal counsel, public accountants or other persons as

to matters the director reasonably believes are within the persons' professional or expert competence; or a Committee of which the director is not a member if the director reasonably believes the Committee merits confidence. A director is not liable for any action taken as a director, or any failure to take action, if he performed the duties of his office in compliance with the foregoing standards.

11

INDEMNIFICATION PROVISIONS

- 11.1 Except as provided in Section 617.0834, Florida Statutes, the indemnification provisions of Section 607.0831 Florida Statutes and Section 607.0850, Florida Statutes shall apply to this Association pursuant to the provisions of Section 617.0831, Florida Statutes. However, for purposes of indemnification, the term "Director" does not include a director appointed by the Declarant to the board of directors of this Association.

12

BYLAWS

The first By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided in the By-Laws and the Declaration.

13

AMENDMENTS

Amendments to these Articles shall be proposed and adopted in the following manner:

- 13.1 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapters 617 and 720, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.
- 13.2 Adoption. Amendments shall be proposed and adopted in the manner provided in Chapters 617 and 720, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act); provided that in all events such amendments shall be approved by the Owners representing two thirds (2/3rds) of the votes of the members of the Association who have voting power at the time of such amendment.
- 13.3 Declarant Amendments. Notwithstanding anything herein contained to the contrary, to the extent lawful, the Declarant may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Declarant alone.
- 13.4 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the Public Records of St. Johns County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration are recorded which contains, as an exhibit, the initial recording of these Articles.

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

The initial registered office of this corporation shall be at 100 Whetstone Place, Suite 100, St. Augustine, Florida 32086 with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be Rogers Towers, P.A.

IN WITNESS WHEREOF, the Incorporator has affixed her signature the day and year set forth below.


Incorporator

Dated this 2nd day of July, 2014.

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

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

That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing Articles of Incorporation, in the County of St. Johns, State of Florida, the Association named in the said articles has named Rogers Towers, P.A., whose address is 100 Whetstone Place, Suite 100, St. Augustine, Florida 32086 as its statutory registered agent.

Having been named the statutory agent of said Association at the place designated in this certificate, I am familiar with the obligations of that position, and hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.


Rogers Towers, P.A., Registered Agent
By: Ellen Avery-Smith, Esq.

Dated this 2nd day of July, 2014.

EXHIBIT “D”
BY-LAWS
OF
SHEARWATER HOMEOWNERS ASSOCIATION, INC.

A Corporation Not-for-Profit
Under the Laws of the State of Florida

DEFINITIONS

All terms in these By-Laws shall have the meanings as set forth in the Declaration of Covenants, Conditions and Restrictions for SHEARWATER HOMEOWNERS ASSOCIATION, INC.

BOOKS AND PAPERS

The books, records and papers of the Association shall, at all times, during reasonable business hours, be subject to the inspection of any Member of the Association.

MEMBERSHIP

Membership of the Association is as set forth in Article 6 of the Articles of Incorporation of the Association.

The rights of membership are subject to the payment of annual and special Assessments levied by the Association, the obligation of which Assessments is imposed against each Owner of, and becomes a lien upon, that portion of the Property against which such Assessments are made as provided in the Declaration.

BOARD OF DIRECTORS

After Turnover or Transition (as defined in Section 720.307, Florida Statutes), the Directors of the Association shall be elected at the annual meeting of the Members except as otherwise specified in the Articles of Incorporation. The election shall be decided by a majority of votes cast either by Members present in person or by written ballots cast prior to or at the annual meeting. The election shall be valid notwithstanding whether there was a quorum at the meeting.

Any director (other than a director designated by the Declarant) may be removed from office at any time with or without cause by the affirmative majority vote of the Association membership cast at a meeting at which a quorum is present.

After Turnover, the first meeting of the duly elected Board of Directors, for the purposes of organization, shall be held immediately after the annual meeting of Members, provided the majority of the members of the Board elected be present. Any action taken at such meeting shall be by a majority of the whole Board. If the majority of the members of the Board elected shall

not be present at that time, or if the directors shall fail to elect officers, the meeting of the Board to elect officers shall then be held within thirty (30) days after the annual meeting of Members upon three (3) days' notice in writing to each member of the Board so elected, stating the time, place and object of such meeting.

Subject to the provisions of Section 4.6 below, regular meetings of the Board of Directors may be held at any place or places in Florida as designated by the Board, on such days and at such hours as the Board of Directors may, by resolution, designate.

Subject to the provisions of Section 4.6 below, special meetings of the Board of Directors may be called at any time by the President or by any two (2) members of the Board and may be held any place or places within Florida as designated by the Board, and at any time.

Except only for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be protected by the attorney-client privilege, regular and/or special meetings of the Board of Directors shall be open to all Owners, and notices of Board meetings shall be posted in a conspicuous place on the property governed by the Association at least forty eight (48) hours prior to the meeting, except in the event of an emergency. In the alternative, if notice is not conspicuously posted, notice of the Board meeting must be mailed or delivered to each Member at least seven (7) days before the meeting, except in an emergency. Notwithstanding this general notice requirement, notice of any meeting in which Assessments against Lots or Units are to be considered shall specifically contain a statement to that effect as well as a statement of the nature of such Assessments and shall be provided to each Owner not less than fourteen (14) days prior to the meeting.

Directors (including affiliates of the Declarant) shall have the absolute right to resign at any time and the remaining directors in office shall then fill the vacancies, provided that if all directors resign, a special meeting of Members shall be called as soon as possible for the purpose of electing new directors and the resignations of such directors shall not be effective until such election is held and new directors are elected, except that if no meeting is held or no directors are elected after two (2) attempts to call and hold such meeting, the resignations shall become effective simultaneously with the date and time of the scheduled second meeting, whether held or not or whether new directors are elected or not. Notwithstanding anything herein contained to the contrary, in the event that a Director appointed by the Declarant resigns, said seat shall be filled by a replacement designated by the Declarant rather than by the remaining directors.

Directors may not vote by proxy or secret ballot; provided, however, that secret ballots may be used for the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of Association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

The Directors of the Association have a fiduciary duty to the Owners of Lots or Units governed by the Association.

Members have the right to attend all meetings of the Board and to speak on any matter placed on the agenda by petition of the voting interests for at least three (3) minutes. The Association may adopt written reasonable rules expanding the right of Members to speak and governing the frequency, duration and other manner of Member statements, which rules must be consistent with this paragraph and may include a sign-up sheet for Members wishing to speak. Notwithstanding any other law, the requirement that Board meetings and committee meetings be open to the Members is inapplicable to meetings between the Board or a committee and the Association's attorney, with respect to meetings of the Board held for the purpose of discussing personnel matters.

If 20 percent of the total voting interests petition the Board to address an item of business, the Board shall, at its next regular Board meeting, or at a special meeting of the Board, but not later than 60 days after the receipt of the petition, take the petitioned item up on an agenda. The Board shall give all Members 14 days' notice of the meeting at which the petitioned item shall be addressed. Each Member shall have the right to speak for at least three (3) minutes on each matter placed on the agenda by petition, provided that the Member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the Board is not obligated to take any other action requested by the petition.

RECALL OF DIRECTORS

Subject to the provisions of Section 720.307, Florida Statutes, regarding transition of Association control, any member of the Board or Directors may be recalled and removed from office with or without cause by a majority of the total voting interests in accordance with the provisions of Section 720.303 (10), Florida Statutes.

OFFICERS

Any officer may be removed at any time by the affirmative vote of a majority of the Board of Directors at any duly called regular or special meeting of the Board.

The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Members of the Association and of the Board of Directors. He shall have the general powers and duties of supervision and management of the Association which usually pertain to his office and shall perform all such duties as are properly required of him by the Board of Directors. The Board of Directors shall elect at least one (1) Vice President, who shall have such powers and perform such duties as usually pertain to such office or as are properly required of him by the Board of Directors. In the absence or disability of the President, any Vice President shall perform the duties and exercise the powers of the President. If more than one (1) Vice President is elected, the Board shall designate which Vice President is to perform which duties. The Secretary shall issue notices of all meetings of the membership of the Association and the directors where notices of such meetings are required by law or in these Bylaws. He shall keep the minutes of the meetings of the membership and of the Board of Directors. The Treasurer shall have the care and custody of all the monies and securities of the Association. He shall enter on the books of the Association, to be kept by him for that purpose, full and accurate accounts of all monies received by him and paid by him on account of the

Association. He shall sign such instruments as require his signature and shall perform all such duties as usually pertain to his office or as are properly required of him by the Board of Directors.

Vacancies in any office arising from any cause may be filled by the Board of Directors at any regular or special meeting.

The officers of the Association have a fiduciary duty to the Owners of Lots governed by the Association.

MEETINGS OF MEMBERS

The regular annual meeting of the Members shall be held in the month of November in each year at such time and place as shall be determined by the Board of Directors. The election of directors shall be held at, or in conjunction with, the annual meeting.

Special meetings of the Members for any purpose may be called at any time by the President, the Vice President, the Secretary or the Treasurer, or by any two (2) or more members of the Board of Directors, or upon written request of the Members who have a right to vote 10 percent of all the votes of the entire membership, or who have a right to vote 10 percent of the votes of the Class A membership. Business conducted at a special meeting shall be limited to the purposes set forth in the notice of meeting.

Notice may be given to the Members either personally, or by sending a copy of the notice through the mail, postage thereon fully paid, to the addresses appearing on the records of the Association. Each Member shall register his address with the Secretary, and notices of meetings shall be mailed to him at such address. Notice of any meeting, regular or special, shall be mailed or personally delivered at least fourteen (14) days in advance of the meeting and shall set forth the general nature of the business to be transacted; provided, however, that if any business of any meeting shall involve any action governed by the Articles of Incorporation, notice of such meeting shall be given or sent as therein provided.

The presence in person or by proxy at the meeting of Members entitled to cast at least 30 percent of the votes of the membership shall constitute a quorum for any action governed by these By-Laws. Unless a greater percentage is expressly required, decisions of the Members shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

Members have the right to vote in person or by proxy. To be valid, a proxy must be in writing and be signed by the Member and the proxy must state the date, time and place of the meeting for which it was given. A proxy is effective only for the meeting for which it was given, as the meeting may be legally adjourned and reconvened from time to time, and automatically expires ninety (90) days following the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form so provides, the proxy holder may appoint, in writing, a substitute to act in the proxy holder's place.

Any Owner may tape record or videotape meetings of the Members, subject, however, to the rules established from time to time by the Board regarding such tapings.

Except when specifically or impliedly waived by the chairman of a meeting (either of Members or Directors), Roberts' Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Declaration, the Articles or these By-Laws; provided, however, that a strict or technical reading of said Roberts' Rules of Order shall not be made as to frustrate the will of the persons participating in said meeting.

AMENDMENTS

These By-Laws may be amended, at a regular or special meeting of the Board, by a vote of two-thirds ($\frac{2}{3}$ rds) of the votes of the Directors, provided that the notice to the Members of the meeting discloses the information that the amendment of the By-Laws is to be considered; provided, however, the provisions which are governed by the Articles of Incorporation of this Association may not be amended except as provided in the Articles of Incorporation or applicable law, and provided further, that any matters stated herein to be or which are in fact governed by the Declaration may not be amended except as provided in such Declaration. Anything to the contrary herein notwithstanding, the Declarant shall have the absolute right to amend these By-Laws and the Articles of Incorporation prior to the Turnover or Transition of control to the Members as provided in Section 720.307, Florida Statutes.

In case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

OFFICIAL RECORDS

From the inception of the Association, the Association shall maintain each of the following, where applicable, which shall constitute the official records of the Association:

A photocopy of any plans, specifications, permits and warranties related to improvements constructed on the Common Property or other property that the Association is obligated to maintain, repair or replace;

A photocopy of the By-Laws of the Association and all amendments thereto;

A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;

A photocopy of the Declaration and all amendments thereto;

A copy of the current Rules and Regulations of the Association;

The minutes of all meetings of the Association, of the Board of Directors, and of Members, which minutes shall be retained for a period of not less than seven (7) years;

A current roster of all Owners, their mailing addresses and Lot or Unit identifications;

All current insurance policies of the Association or a copy of each such policy, which policies shall be retained for a period of not less than seven (7) years;

A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease or other contract under which the Association has an obligation or responsibility;

Bids received by the Association for any work to be performed on behalf of the Association, which bids shall be retained for a period of not less than one (1) year;

All other written records of the Association not specifically included in the foregoing which are related to the operation of the Association; and

Financial and accounting records for the Association maintained in accordance with good accounting practices. All financial and accounting records shall be maintained for a period of not less than seven (7) years. The financial and accounting records shall include, but not be limited to:

Accurate, itemized and detailed records for all receipts and expenditures;

A current account and a periodic statement of the account for each Member of the Association, designating the name and current address of each Member, the due date and amount of each Assessment, the date and amount of each payment on the account, and the balance due;

All tax returns, financial statements and financial records of the Association; and

Any other records that identify, measure, record or communicate financial information.

Notwithstanding the provisions of this paragraph, the following records shall not be accessible to Members or Unit Owners:

(1) Any record protected by the lawyer-client privilege as described in Section 90.502, Florida Statutes, and any record protected by the work-product privilege, including, but not limited to, any record prepared by an Association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association and was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.

(2) Information obtained by the Association in connection with the approval of the lease, sale, or other transfer of a parcel.

(3) Disciplinary, health, insurance, and personnel records of the Association's employees.

(4) Medical records of Unit Owners or community residents.

The Association or its agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the Association other than information or

documents required by Chapter 720, Florida Statutes, to be made available or disclosed. The Association or its authorized agent may charge a reasonable fee to the prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed \$150.00 plus the reasonable cost of photocopying and any attorney's fees incurred by the Association in connection with the response.

BOOKS AND PAPERS; FISCAL YEAR; MINUTES; BUDGETS; FINANCIAL REPORTS

The official records shall be maintained within the State of Florida and must be open to inspection and available for photocopying by any Association Member or the authorized agent(s) of such Member at all reasonable times and places within ten (10) business days after receipt of a written request for access. The Association may adopt reasonable written rules regarding the frequency, time, location, notice and manner of inspections and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying, but may not impose a requirement that a Unit Owner demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a Unit Owner's right to inspect records to less than one 8-hour business day per month. The Association may charge up to 50 cents per page for copies made on the Association's photocopier. If the Association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the Association may have copies made by an outside vendor and may charge the actual cost of copying. If the Association has a photocopy machine available where the records are maintained, it must provide Unit Owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. The Association shall maintain an adequate number of copies of the recorded Declaration, Articles, By-Laws and any rules to ensure their availability to Members and prospective Members and may charge only its actual costs for reproducing and furnishing these documents.

The fiscal year of the Association shall be the 12-month period commencing January 1st and terminating December 31st of each year.

Minutes of all meetings of the Members and of the Board must be maintained in written form or in another form that can be converted into written form within a reasonable time. The vote or abstention from voting on each matter voted upon for each director present at a Board meeting must be recorded in the minutes.

The Association shall prepare an annual budget reflecting, among other things, the estimated revenues and expenses for the budgeted year and the estimated surplus or deficit for the end of the current year. The budget must separately set out all fees or charges for recreational amenities, whether owned by the Association or another person. The Association shall provide each Member with a copy of the annual budget or a written notice advising that a copy of the budget is available upon request at no charge to the Member. The copy must be provided to the Member in accordance with the time limits set forth in Section 10.1 above.

Financial reports shall be prepared and delivered consistent with the requirements of Section 720.303 (6) and (7), Florida Statutes, as amended from time to time.

CONTRACTS

All contracts as further described in this section or any contract that is not to be fully performed within 1 year after the making thereof for the purchase, lease, or renting of materials or equipment to be used by the Association in accomplishing its purposes under this chapter or the governing documents and all contracts for the provision of services shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the Association that exceeds 10 percent of the total annual budget of the Association, including reserves, the Association must obtain competitive bids for the materials, equipment, or services. Nothing contained in this section shall be construed to require the Association to accept the lowest bid. Notwithstanding the foregoing, contracts with employees of the Association, and contracts for attorney, accountant, architect, community Association manager, engineering, and landscape architect services are not subject to the provisions of this section.

DISCLOSURE

Owners shall comply with the disclosure requirements set forth in Part II of Chapter 720, Florida Statutes

TABLE OF CONTENTS

Page