

**PREPARED BY AND RETURN TO:**

Ariel R. Spires, Esq.  
Heekin Law, P.A.  
4540 Southside Blvd., Suite 202  
Jacksonville, FL 32216

Doc # 2021237064, OR BK 19905 Page 623,  
Number Pages: 32  
Recorded 09/10/2021 09:40 AM,  
JODY PHILLIPS CLERK CIRCUIT COURT DUVAL  
COUNTY  
RECORDING \$273.50

**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS OF MARSH CREEK HOMEOWNERS' ASSOCIATION, INC.**  
*(Rental Restricted Community)*

	PAGE(S)
TABLE OF CONTENTS	1-3
IDENTITY AND RECITALS	4
ARTICLE I – DEFINITIONS	4-8
ARTICLE II – PROPERTY SUBJECT TO THIS DECLARATION	8-9
Section 1. Property.	8
Section 2. Annexation of Additional Property.	9
Section 3. Supplemental Declaration.	9
Section 4. Effect of Annexation.	9
Section 5. Parcel Descriptions.	9
ARTICLE III – OWNERSHIP AND MEMBERSHIP	9-10
Section 1. Owners.	9
Section 2. Association Members.	9
Section 3. Voting Rights.	9-10
Section 4. Amplification.	10
ARTICLE IV – RIGHTS AND OBLIGATIONS OF OWNERS AND MEMBERS	10-11
Section 1. Owners' Easements of Enjoyment.	10-11
Section 2. Assignment of Rights to Tenant.	11
Section 3. Damage or Destruction of Association Real or Common Areas and Personal Property by Owner or Member.	11
ARTICLE V – RIGHTS AND OBLIGATIONS OF THE ASSOCIATION	11-12
Section 1. Association Duties and Powers.	11
Section 2. Maintaining Vacant Parcels.	11-12
Section 3. Exterior Maintenance.	12
Section 4. Maintenance of Lawn Care.	12
Section 5. Other Maintenance.	12
Section 6. Contracts.	12
Section 7. Security.	12
ARTICLE VI – GOVERNANCE	12-13
Section 1. Applicable Law.	12
Section 2. Board of Directors.	13
ARTICLE VII – BUDGETS, ASSESSMENTS, INITIATION FEES, RESERVES, AND DELINQUENT ACCOUNTS	13-18
Section 1. Creation of Lien and Personal Obligations for Assessments and Initiation Fees.	13
Section 2. Annual General Assessment.	13-14

Section 3. Special Assessments.	14
Section 4. Parcel Assessments.	14
Section 5. Commencement of Annual Assessments.	14
Section 6. Purpose of Assessments.	14-15
Section 7. Uniform Rate of Assessments.	15
Section 8. Initiation Fees.	15
Section 9. Effect of Nonpayment of Charges; Remedies of the Association.	16
Section 10. Certificate of Payment.	16
Section 11. Budgets.	16-18
Section 12. Exempt Property.	18
Section 13. Real Estate Taxes.	18
ARTICLE VIII – USE OF PROPERTY	18-28
Section 1. Protective Covenants.	18-26
(a) Limitations.	
(b) Building Restrictions.	
(c) Service Areas.	
(d) Residential Use.	
(e) Temporary Memberships, Leases, and Tenants.	
(f) Nuisances.	
(g) Waste.	
(h) Fires.	
(i) Improper or Unlawful Use.	
(j) Insurance.	
(k) Access.	
(l) Pets.	
(m) Signs.	
(n) Unauthorized Vehicles.	
(o) Garbage and Trash Containers.	
(p) Pool Entrance Cards.	
(q) Detached Temporary Structures.	
(r) Water Supply and Sewage.	
(s) Fuel Storage Tanks.	
(t) Window Units.	
(u) Garages and Parking.	
(v) Soliciting.	
(w) Maintenance.	
(x) Trees.	
(y) Mailboxes.	
(z) Watercraft.	
(aa) Shoreline Improvements.	
(bb) Hedges, Fences, and Walls.	
(cc) Tennis Court Areas.	
(dd) Motor Vehicles, Trailers, Boats, Etc.	
(ee) Delivery and Construction Hours.	
(ff) Overhead Wires.	
(gg) Aerials and Antennas.	
(hh) All Structures Must be Approved by the Board.	
(ii) Common Area Work.	
(jj) Easements for Encroachments, Maintenance, and Drainage.	
(kk) Implied Right.	
(ll) Personal Property for Common Use.	

Section 2. Compliance.	27-28
(a) Owners' and Members' Responsibilities.	
(b) Violations and Enforcement.	
Section 3. Personal Services.	27
ARTICLE IX – MISCELLANEOUS	28-30
Section 1. Amendments of Covenants and Restrictions and Release of Violations.	28
Section 2. Amendments of Declaration.	28
Section 3. Consent of Mortgagees.	28
Section 4. Severability.	28
Section 5. Duration.	28-29
Section 6. Condemnation.	29
Section 7. Notices.	29
Section 8. Enforcement.	29
Section 9. Interpretation.	29
Section 10. Invalidity.	29
Section 11. Gender and Number.	29
Section 12. Legal Fees.	29
Section 13. Action Without Meeting.	29
Section 14. Law to Govern.	29
Section 15. Successors and Assigns of Developer.	29-30
EXHIBITS	31-32
Exhibit A	31
Exhibit B	32

**SECOND AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, & RESTRICTIONS  
OF MARSH CREEK HOMEOWNERS' ASSOCIATION, INC.**  
*(Rental Restricted Community)*

**IDENTITY**

The following represents a total and complete Second Amended and Restated Covenants, Conditions, and Restrictions of the Marsh Creek Homeowners' Association, a corporation not for profit under the laws of the State of Florida. These covenants are adopted for the purpose of governing all properties described on Exhibit A (Lots 2 through 62, 65 through 157, Tracts 171 and 172, MARSH CREEK, according to plat thereof recorded in Plat Book 38, pages 58, SBA,.588, sac, 58D and 58E of the current public records of Duval County, Florida). This amends the Covenants that were originally recorded June 15, 1983 in O.R. Book 5663, page 1190 and subsequently amended December 31, 1984 in O.R. Book 5919, page 822 and re-recorded in O.R. Book 5924, page 822 and also, amended November 19, 1991, in O.R. Book 7524, page 0949, and March 3, 1996, in O.R. Book 8301 page 1835, and November 7, 2002 recorded January 22, 2003 in O.R. Book 10877, pages 2346-2360 all of which have been recorded in the Current Public Records of Duval County, Florida.

**RECITALS**

- A. The Association owns that certain real property (the "Property") located in Duval County, Florida, as defined below; and
- B. The Property is subject to that certain Declaration of Covenants, Conditions, and Restrictions of the Marsh Creek Homeowners' Association dated June 15, 1983, as recorded in Official Records in Book 5663, Page 1190 of the Public Records of Duval County, Florida, as amended and supplemented from time to time ("Original Declaration"); and
- C. The Association wishes to replace, amend, and restate the Original Declaration so that this Declaration shall replace and be a substitute thereof, and the lands described therein and herein shall henceforth be developed and used in accordance with the terms, conditions, and provisions of this Declaration; and
- D. This Declaration has been approved by a majority of Owners Entitled to Vote.

NOW, THEREFORE, the Association declares that the Property shall be held, sold and conveyed subject to the following easements, covenants, conditions, restrictions, and limitations, which have been established for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be binding on all parties having any right, title, or interest in any part of the Property, as well as their heirs, successors, and assigns, and shall inure to the benefit of each Owner, including the Association and Developer, and all Members of the Association.

**ARTICLE I – DEFINITIONS**

The following definitions shall apply wherever such capitalized terms appear in this Declaration:

- (a) "Architectural Committee" shall mean the Architectural Committee, as provided in Article VIII of the Bylaws.
- (b) "Annual Capital Budget" shall have the meaning set forth in Article VII, section 2.
- (c) "Annual General Assessments" shall mean an assessment or assessments required of all Owners and certain Members, as further provided in Article VII, section 2 and elsewhere in this Declaration, the Association Articles of Incorporation, and Bylaws.

- (d) "Annual Operating Budget" shall have the meaning set forth in Article VII, section 2.
- (e) "Articles" shall mean the Articles of Incorporation of the Association.
- (f) "Association" shall mean Marsh Creek Homeowners' Association, Inc., a Florida not-for-profit corporation, its successors and assigns. The Articles of Incorporation and Bylaws of the Association, as amended from time to time, shall be referred to as the "Association Articles of Incorporation" and the "Association Bylaws" respectively. The Association shall own the Association Real Property or Common Areas and Personal Property as defined below, and shall be responsible for its operation, maintenance, acquisition and disposal in accordance with the terms of this Declaration.
- (g) "Association Charges" shall mean all items which are charged to an Owner and/or Member by the Association, as well as Delinquent Account Charges.
- (h) "Association Expenses" shall mean the expenses and charges described in this Declaration incurred or to be incurred by the Association and assessed or to be assessed upon the Parcels and the Owners.
- (i) "Association Real Property" or "Common Areas" shall mean all real property, improved and unimproved, annexed by the Association and subject to this Declaration, including land, buildings, land improvements, building improvements and easements now or hereafter owned by the Association within the Property, which is intended for the common use, benefit and enjoyment of the Association Owners and Members and which shall include the swimming pool, tennis courts, playgrounds, parking areas and lots, drainage ditches, areas and systems, lakes, water courses, common roads, walkways, street lighting, signage, maintenance areas, and related facilities, ponds, access, utility and drainage easements, together with such other improvements and facilities within the surface water management system required by the St. Johns River Water Management District, as well as any conservation easement restrictions which upon completion shall be transferred to and owned by the Association. The Association Real Property or Common Area to be owned by the Association at the time of the conveyance of the first Parcel is described on Exhibit B attached hereto and made a part hereof. The term Common Area shall also include such additional parcels of the Properties as the Association may from time to time designate by filing a declaration in the public records of Jacksonville, Duval County, Florida, describing the additional Common Area.
- (j) "Association Personal Property" shall mean all moveable furniture, furnishings, fixtures, art work, interior decoration, vehicles, equipment and the like, incident to and necessary for the use, operation, and maintenance of the Association's Real Property or Common Areas and Personal Property. Any references to "Association Property" shall mean Association Real Property or Common Areas and Association Personal Property collectively.
- (k) "Association Rules & Regulations and Policies" shall mean the rules, regulations and policies adopted by the Board of Directors, as amended from time to time. Policies adopted by the Board of Directors shall automatically become invalid on the fifth anniversary of their adoption, and all policies shall be published in a "Policy Manual" available to all Members. Annually the Board (or an appropriate Committee) shall review and update or, in the event of impending "sunset" of a Policy, renew, amend, or sunset the Policy.
- (l) "Board of Directors" shall mean the Board of Directors of the Association as provided in applicable law and the Governing Documents of the Association.
- (m) "Capital Contribution" shall have the meaning set forth in Article VII, section 2.
- (n) "Charges" shall mean and include all Annual General Assessments, Special Assessments, Parcel Assessments, Emergency Assessments, Interim Assessments, Initiation Fees, and Association Charges. Charges shall also mean any attorneys' fees or costs incurred in seeking to enforce any provision in this Declaration, or the Governing Documents or in defending against any action taken against a Parcel in which the Association is a party, including but not limited to a foreclosure action.

(o) "Declaration" shall mean this Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions applicable to the Property, as recorded in the Official Record of Duval County, Florida.

(p) "Delinquent Accounts and Delinquent Account Charges" shall have the meanings set forth in X and shall include all late fees, interest, attorney's fees, costs and other expenses incurred in the collection of Delinquent Accounts, as defined and established by the Association's Board of Directors, or incurred in defending against any action taken against a Parcel in which the Association is a party, including but not limited to a foreclosure action, and shall include unpaid costs of filing appropriate liens against Parcels. Delinquent Account Charges shall also refer to all unpaid costs assessed against an Owner, Member, or Parcel which are incurred by the Association in the enforcement of the provisions of the Association's Governing Documents and which are allowed pursuant to applicable law and the Association's Governing Documents.

(q) "Developer" shall mean the original developer of the Association's Real Property or Common Areas and Personal Property, or any successor or assignee of all or substantially all of its interest in the development of the Property. Developer and each Preferred Builder may also be Owners for so long as such person or entity is record owner of any Parcel but shall not have the right to vote on Association matters.

(r) "Development Requirements" shall mean collectively those future improvements to be made by Developer, at its expense, of all infrastructure-improvements and other amenities in that portion of the Property which in the future may be improved by the Developer and conveyed to the Association as Association Property. Such improvements shall be consistent with the type of infrastructure, improvements and other amenities previously installed or constructed by Developer on Association Property previously transferred to the Association and in compliance with the terms hereof, and shall include: graded and seeded established lake banks; bulkheads required by law; water and sewer, storm drains and other drainage facilities in accordance with applicable law and governmental permits; fire hydrants; streets and curbs; street lights; stop signs; speed limit signs and other informational signs as necessary (using in each case where possible the same designs, colors and materials previously used on existing Association Property); necessary perimeter security fencing (fencing and not berms shall be used in all areas, except water areas); necessary irrigation and landscaping of any islands within any cul-de-sacs and any easements and other common areas; and clean-up of all debris and other construction materials. Upon their completion, all Development Requirements shall be transferred to and owned by the Association.

(s) "Emergency Assessment" shall mean those Emergency Assessments referred to and included within the definition of "Annual General Assessment" set forth in Article VII, section 2.

(t) "Entitled to Vote" shall mean that any Owner seeking to vote must be a Member in good standing with the Association and otherwise not disqualified from voting by the provisions of this Declaration. "Good Standing" shall mean that the Owner has not been suspended from the exercise of privileges and is not more than ninety (90) days delinquent with respect to any Charge. Any Owner who is the object of an unresolved enforcement action authorized in the Governing Documents shall not be entitled to vote unless, on or before the date established for a vote, the Owner's entitlement has been specifically restored by a majority vote of the Board of Directors. This definition shall apply equally to a Director's entitlement to vote at a meeting of the Board of Directors.

(u) "Family" shall mean an Owner or other Member, his or her spouse or significant other, and their dependents, including members of the Owner's immediate Family who are elderly or disabled and are residing with the Owner. For purposes of this Declaration, children under the age of 25 who reside on the Owner's Parcel shall be entitled to the privileges afforded members of an Owner's or Member's Family.

(v) "Governing Documents" shall mean the Association's Articles of Incorporation, this Declaration, the Association's Bylaws, and Association Rules & Regulations and Policies. All Governing Documents shall be made available to all Owners and Members by distribution, posting, and filing at the principal offices of the Association.

(w) "Gross Operating Revenue" shall mean the Annual General Assessment, all revenue received from Association fees, lot mowing, tennis court operations, health club charges, pool charges, finance charges, other fees received, and any other miscellaneous income, except Capital Contributions.

(x) "House" shall mean any residential dwelling constructed or to be constructed on any Parcel.

(y) "Initiation Fee" shall mean that fee charged to each Owner upon initial acquisition of record title to a Parcel within the Property and as further provided in Article VII and elsewhere in this Declaration and in the Association Bylaws.

(z) "Interim Assessment" shall have the meaning set forth in Article VII.

(aa) "Master Plan" shall mean the conceptual plan for the development of the Property as a Planned Unit Development which was approved by Duval County, Florida, as that plan may be amended.

(bb) "Member" shall mean a person entitled to membership in the Association by virtue of the ownership of a Parcel or as otherwise provided in the Association Governing Documents.

(cc) "Mortgage" shall mean any bona fide, duly recorded writing encumbering any interest in any Parcel and the Common Areas, or any portion thereof, as security for the performance of an obligation.

(dd) "Mortgagee" shall mean any holder of a Mortgage, such as a bank, pension fund, insurance company, or any other lender.

(ee) "Net Income from Operations" shall mean Gross Operating Revenue less all expenses with the exception of depreciation charges, interest rate swaps (income and/or expense), gain or loss on the disposition of Association Property and the current year's portion of operating leases, required and necessary to operate and maintain the Association Real Property or Common Areas and the Association Personal Property, and to provide the services of the Association for which it is responsible.

(ff) "Occupant" shall mean the person(s), other than the Owner(s), in possession of a Parcel and the improvements thereon.

(gg) "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Parcel in the Property, except that the Developer's rights as an Owner are limited by agreement; and, as otherwise set forth in this Declaration. Owners shall not include those having an interest merely as security for the performance of an obligation. In the event there is a "contract for deed" covering any Parcel, the Owner of such Parcel shall be the purchaser under said contract and not the current fee simple title-holder of the Parcel. Subject to applicable law, a contract for deed is defined as an agreement whereby the purchaser is required to make periodic payments toward the purchase of a Parcel for a period extending beyond nine (9) months from the date of the agreement and purchaser does not receive title to such Parcel until all periodic payments are made but is given the use and possession of the Parcel prior to such acquisition of title. In the case of multiple owners of a Parcel, or in the case of a corporate or trust owner of a parcel, the Owner shall be the person designated to vote in accordance with Article III.

(hh) "Parcel" shall mean any plot of land intended as a site for a House, shown on any duly recorded subdivision Plat of the Property, excluding Common Areas. Upon construction of a House, the term "Parcel" shall include the House and Yard.

(ii) "Parcel Assessment" shall mean any assessment charged to a particular Owner pursuant to this Declaration for services and costs which relate specifically to that Owner's Parcel or are imposed pursuant to Article VII.

(jj) "Person" shall mean any natural person or legal entity.

(kk) "Preferred Builder" shall mean any person or entity owning one or more Parcels which are exempt from the Annual General Assessment.

(ll) "Property" shall mean that land in Duval County, Florida which is more particularly described in the attached Exhibit "A," including but not limited to the Association Property. "Property" shall not include Additional Property prior to annexation to the Property.

(mm) "Reserve Account" shall have the meaning set forth in Article VII, section 11.

(nn) "Reserve for Operating Contingencies" shall have the meaning set forth in Article VII, section 11.

(oo) "Reserve for Repair and Replacement of Capital Assets," "Repair and Replacement," or "Repairs & Replacements," or any capitalized derivation thereof shall mean the capitalized repair, restoration or replacement (and improvements and additions incidental to the same) of any part of the Association Real (or Common Areas) or Personal Property derived from either immediate or emergency need. Improvements or additions incident to Repairs & Replacements shall be considered part of the repair or replacement.

(pp) "Special Assessments" shall have the meaning set forth in Article VII.

(qq) "Supplemental Declaration" shall mean any declaration of easements, covenants, conditions, restrictions, annexations and limitations recorded by the Association as provided herein.

(rr) "Surplus" shall mean the excess of all receipts of the Association from the Owners and any other income accruing to the Association in excess of the amount of Association Expenses.

(ss) "Temporary Membership" shall have the meaning set forth in Article VIII.

(tt) "Utility System" shall mean the pipes, sewers, mains, collectors, conduits, lines and appurtenant access ways and facilities used in connection with sewage disposal, water supply, gas, electricity, telephone, cable television and all other related services.

(uu) "Voting Member" shall mean an Owner.

(vv) "Yard" shall mean any and all portions of any Parcel lying outside the exterior walls of any House constructed on a Parcel and shall include all landscaping, improvements and decorative and functional appurtenances thereon.

(ww) "Zero Lot Line" shall mean when one boundary wall of a structure is built directly on the property line. A zero lot line property creates a blind side, which is the side in which an owner's vision is limited due to the exterior wall without an opening. Communities with zero lot line properties must mutually respect and cooperate with neighboring properties to allow reasonable access to each neighboring property.

Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of gender shall include all genders; and the use of the term "including" shall mean "including without limitation." This Declaration shall be liberally construed in favor of the parties seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the marketability and desirability of the Properties by providing a plan for the development, use, and enjoyment thereof. The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

## **ARTICLE II – PROPERTY SUBJECT TO THIS DECLARATION**

**Section 1. Property.** The Property shall be held, transferred, sold, conveyed, and occupied subject to this Declaration.

**Section 2. Annexation of Additional Property.** Additional Property and other land may also be annexed to the Property with the approval of sixty-six and two-thirds percent (66 2/3%) of Owners Entitled to Vote, together with any necessary governmental approvals required by law. This provision is not to be construed as requiring voter consent for the annexation of properties included within Exhibit A. The addition or annexation shall occur automatically within the sole discretion of the Association upon the recordation of a declaration imposing the structures of this document upon the annexed property. No annexation shall have the effect of increasing the maximum number of Parcels within the Property and subject to this Declaration.

**Section 3. Supplemental Declaration.** Any annexations authorized in Section 2 of this Article II may be made by recording one or more Supplemental Declarations with respect to the land which is annexed. A Supplemental Declaration shall contain the designation and legal description of the land, including an identification of Parcels and Association Real (or Common Areas) and Personal Property, which is annexed and any additions to, or modifications of, applicable provisions hereof that are necessary to reflect any different character of the land which is annexed. A Supplemental Declaration shall become effective upon being recorded in the Public Records of Duval County, Florida.

**Section 4. Effect of Annexation.** In the event that any land is annexed to the Property pursuant to the provisions of this Article, such land shall be considered within the definition of the Property for all purposes of this Declaration. The portion of the annexed property which is not a Parcel shall be conveyed to the Association and shall become part of the Association Real Property. All Owners of Parcels resulting from the purchase of Parcels within the annexed property shall be obligated to pay a pro-rata portion of the expenses related to the Association Real Property or Common Areas, Association Personal Property, and operations provided herein as of the date of annexation.

**Section 5. Parcel Descriptions.** No Parcel upon which a House has been constructed shall be further subdivided or separated into smaller Parcels by any Owner; provided that this proscription shall not prohibit corrective deeds or similar corrective instruments, including but not limited to mutual agreements between adjoining Parcel Owners for minor adjustments to lot lines, which do not violate the size and building restrictions of this Declaration or the regulations of the Architectural Committee. The Association shall have the right to modify any subdivision Plats of the Property; provided that all Owners to whom Parcels on such Plat have been conveyed consent to such modification, which consent shall not be unreasonably withheld, and provided that such modification does not exceed the limitations set forth in Section 2 of this Article II.

### **ARTICLE III – OWNERSHIP AND MEMBERSHIP**

**Section 1. Owners.** A Parcel may be owned by one or more natural persons or an entity other than a natural person.

**Section 2. Association Members.** Every Owner subject to assessment shall be a member of the Association. Every Owner shall be a Voting Member of the Association when, as and if the Owner is "entitled to vote" as defined above. Membership in the Association arising from the ownership of a Parcel shall be appurtenant to, and may not be separated from, ownership of a Parcel, except as provided in the Governing Documents of the Association. All memberships of the Association shall be governed by the Board of Directors and Bylaws of the Association. Any new class of Membership, or change in existing classes of Memberships, or the terms thereof, proposed by the Board after the effective date of this Declaration (other than Temporary Memberships), shall be approved by sixty-six and two-thirds percent (66 2/3%) of the Owners Entitled to Vote that are present, in person or by proxy, at a meeting at which a quorum has been attained.

**Section 3. Voting Rights.** An Owner shall be entitled to one vote for each Parcel owned. No Member (as that term is defined herein or in the Bylaws) shall be entitled to vote unless he or she is also an Owner. When more than one person or entity hold an interest in any Parcel other than as security for the performance of an obligation, such as with a corporation, family trust, trust, partnership, or similar legal entity, the vote for such Parcel shall be exercised as they, between or among themselves, determine and designate by written notification to the Association; but in no event shall more than one vote be cast with respect to any Parcel. The vote appurtenant to any Parcel shall be suspended in the event that, and for so long as, more than one of the Owners

holding an interest in that Parcel lawfully seek to exercise it. No vote of an Owner shall be counted if an Owner is not "Entitled to Vote" as defined herein. Notwithstanding the foregoing, the Developer or any successor or assign of all or substantially all of its interest in the development of the Property shall not be entitled to vote on any matter and shall not be considered an Owner for purposes of determining whether a quorum is present or whether the requisite number of votes for a particular matter has been obtained.

**Section 4. Amplification.** The performance of this Declaration may be amplified with the Articles and the Bylaws; provided, however, no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth herein. In the event of any conflict among this Declaration, the Articles or the Bylaws, this Declaration shall control.

#### **ARTICLE IV – RIGHTS AND OBLIGATIONS OF OWNERS AND MEMBERS**

**Section 1. Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Association Real or Common Areas and Personal Property, which shall be pertinent to and pass with the title to every lot, whether or not the same shall be referred to in any deed conveying title to any Lot, subject to the following provisions:

(a) The right of the Association to charge for the operation, maintenance, and improvement of the Association Real or Common Areas and Personal Property, and the facilities, goods, and services provided to Owners and Members as described herein. An Owner and his or her Family shall not be charged user fees with respect to the use of the Association Real or Common Areas and Personal Property; provided that charges for goods and services furnished by or through the Association are not privileged or precluded. Furthermore, the Association retains the right to limit the number of guests of Owners or Members who may use the Association Real or Common Areas and Personal Property and to provide for the exclusive use and enjoyment of specific portions by the Owners, Members, and their guests at certain designated times.

(b) The right of the Association to adopt Rules and Regulations and Policies governing the manner and extent of use of the Association Real or Common Areas and Personal Property, the personal conduct of Owners, Members, and their Families, tenants, guests, and invitees on the Property, and their treatment of the Property and employees of and vendors to the Association, whether on or off the Property.

(c) The right of the Association to levy and assess reasonable fines and suspend the right of an Owner, or Member, an Owner's or Member's Family, tenants, guests, and invitees to use the Association Real or Common Areas and Personal Property and to withhold Owner voting rights for violations of the Association's Governing Documents. Such a suspension of privileges or fines may also be imposed for any period during which any fine or Association Charge remains unpaid beyond the periods set forth in this Declaration, without waiver or discharge of the Owner's obligation to pay the amount due. Any suspension of privileges and all fines shall be imposed in compliance with the applicable provisions of Chapter 720 of the Florida Statutes, as amended; provided, however, that the Association, regardless of any fine or suspension of privileges, shall not deny an Owner's right of ingress and egress to his or her Parcel.

(d) The right of the Association to dedicate or transfer all or any part of the Association Real or Common Areas, including but not limited to the common roads, to any private party or parties or any public agency, authority, or utility (public or private) for such purposes and subject to such conditions as are agreed by the Owners. No such dedication or transfer shall be effective unless by sixty-six and two-thirds percent (66 2/3%) of Owners Entitled to Vote.

(e) The right of the Association (subject to the rights of the Owners set forth herein) to mortgage any or all of the Association Real or Common Areas to improve or repair such property or facilities, to finance other repairs to and replacements of Association Real or Common Areas and Personal Property, or to preserve and maintain the financial viability of the Association, if approved by sixty-six and two-thirds percent (66 2/3%) of Owners Entitled to Vote that are present, in person or by proxy, at a meeting at which a quorum has been attained.

(f) The right of the Association to grant and reserve easements and rights-of-way through, under, over, and across the Association Real Property for the installation, maintenance, and inspection of the Utility System and for drainage or compliance with the directives of any regulatory authority having jurisdiction.

(g) The right of the Association to acquire, extend, terminate, or abandon easements in favor of the Association on Association Real or Common Areas without claim by any Member or Owner that such action affects or violates any claimed right as a third-party beneficiary.

**Section 2. Assignment of Rights to Tenant.** Any Owner may lease his Parcel to a Tenant for no fewer than twelve (12) months, subject to the provisions of Article VIII, subsection (e), and any other pertinent provision of the Governing Documents. If the Owner delegates his or her rights of enjoyment to the Association Real or Common Areas and facilities to the residing members of his family, his tenants, or contract purchasers who reside on the Parcel, the Owner waives his or her right of enjoyment and use of the Association Real or Common Areas and facilities.

**Section 3. Damage or Destruction of Association Real or Common Areas and Personal Property by Owner or Member.** In the event any Association Real or Common Areas and Personal Property is damaged or destroyed by an Owner, Member, or any of his or her guests, tenants, licensees, agents, employees, or Family as a result of accident, negligence, or intentional acts, such Owner or Member authorizes the Association to repair the damage. Such repairs will be performed in a good and workmanlike manner in conformance with the then existing plans and specifications of the damaged or destroyed Association Property. The cost of such repairs shall be the responsibility of the Owner or Member directly or indirectly causing the destruction or damage and shall become an Association Charge, and further, if an Owner, shall become a Parcel Assessment.

## **ARTICLE V – RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

### **Section 1. Association Duties and Powers.**

(a) The duties and powers of the Association shall be those provided by law or set forth in the Association's Governing Documents, together with those duties and powers which may be reasonably implied to operate and maintain the Association Real or Common Areas and Personal Property and to provide the services for which the Association is responsible. Included in the property for which the Association is responsible are the common roads and the surface water management system bordering the Association Real Property as permitted by the St. Johns River Water Management District, including lakes, ponds, lake and pond banks and edges, watercourses, drainage ditches and systems, and bulkheads where there is not an upland Owner. The Association may take such measures and perform such services which in the judgment of the Board of Directors are necessary or desirable to keep the Association Real or Common Areas and Personal Property in good, clean, attractive, safe, and sanitary condition according to the requirements of law, to eliminate fire, health, or safety hazards and to provide such other services or facilities which may be of general benefit to the Owners, the Members and the Association's Real or Common Areas and Personal Property.

(b) The Board of Directors of the Association may sell, or otherwise dispose of, Association Personal Property in keeping with sound business practices.

(c) The Board of Directors may borrow money for the purpose of maintenance, repair, or replacement of the Association Real or Common Areas and Personal Property if the total of such borrowing or borrowings outstanding at any one time would not exceed ten percent (10%) of the total of the Association's current Annual General Assessment. Borrowing in excess of this amount shall first be approved by sixty-six and two-thirds percent (66 2/3%) of Owners Entitled to Vote that are present, in person or by proxy, at a meeting at which a quorum has been attained. The term "borrowing(s)" shall include the annual funding of all capital and operating leases in excess of \$10,000 per year but shall not include any borrowings approved by the Owners in connection with the approval of a Special Assessment.

**Section 2. Maintaining Vacant Parcels.** It shall be the obligation of each Owner to maintain the Owner's vacant Parcel in a neat, clean, and attractive condition. In the event an Owner fails to do so, the Association shall have the right to perform such tasks as are necessary to restore the Parcel to a neat and clean

condition. The costs incurred by the Association for such Parcel maintenance shall be a Parcel Assessment. If construction of a house on any Parcel has not begun within three years after the first conveyance of such Parcel by the Developer or the Association, the Association may install an irrigation system, plant grass, and maintain the Parcel to provide a finished appearance. The costs of these services shall be a Parcel Assessment.

**Section 3. Exterior Maintenance.** Except as provided in Section 4 and 5 below, the Association is not responsible for any exterior maintenance of Houses.

**Section 4. Maintenance of Lawn Care.** The Association shall be responsible for lawn maintenance (mowing and edging) of the front yards of the improved Parcels from the front corners of the Parcel or other points to be designated by the Association as the beginning of the front yard area, to the curbs of the public streets dedicated to the City of Jacksonville by plat. The owner shall be responsible for keeping said property in good, clean, and attractive condition. No significant alteration of the front yard area may be made without first obtaining the approval of the Architectural Committee. Cost for the maintenance (mowing and edging) shall be paid from accounts established for this purpose.

**Section 5. Other Maintenance.**

(a) **Owner's Responsibility.** To the extent that maintenance is not provided by the Association, after the completion of a House on a Parcel, each Owner shall keep all parts of the Owner's Parcel and House in good order and repair, free of debris, in a good and attractive manner. If an Owner fails to maintain the exterior portions of his or her House or his Yard in a good and attractive manner, the Association, after written notice to the Owner and approval by a majority vote of all Directors, shall have the right to enter upon such Parcel to correct, repair, restore, paint, landscape and maintain any such part of the House and Parcel. All costs related to such correction, repair or restoration shall become a Parcel Assessment.

(b) **Contract for Maintenance.** Upon request of an Owner, the Association may, in its discretion, enter into a contract for the routine maintenance of those portions of the Parcel not required to be maintained by the Association on terms and conditions satisfactory to the Board of Directors. All costs shall become a Parcel Assessment.

**Section 6. Contracts.** The Association may employ or contract with one or more third parties for the performance of any portion (but not all) of the Association's operational responsibilities, management, maintenance, and repair activities as the Board of Directors may choose. The Association shall be billed by its independent contractors, and the costs shall be included as an expense to be funded within the Annual General Assessment or Parcel Assessment, as the case may be.

**Section 7. Security.** The Association shall establish security procedures with respect to the Property. Such procedures may be adopted and, from time to time, changed by the Board of Directors chooses in its discretion. The security procedures shall be part of the Association's Rules & Regulations and Policies. **No representation, guaranty or warranty is made, or assurance given, that the security systems and procedures for the Property will prevent personal injury or damage to or loss of life or property.** Notwithstanding the Association's adoption of security procedures, under no circumstance shall the Association, its Board of Directors, officers, employees, or other agents or vendors be liable or responsible to any person for any personal injury or for any loss or damage to property which may occur within the Property, whether or not due to negligence on the part of the Association, its Board of Directors, officers, employees, or other agents or vendors, or to the failure of the security system and procedures adopted from time to time.

**ARTICLE VI – GOVERNANCE**

**Section 1. Applicable Law.** The Association shall be governed as a not-for-profit corporation by its Board of Directors in accordance with the provisions of Chapters 617 and 720 of the Florida Statutes, as amended.

## **Section 2. Board of Directors.**

(a) The Board of Directors of the Association shall be charged with the duty and responsibility to manage the affairs of the Association but may delegate that responsibility with continuing oversight to other persons or committees who may or may not be members of the Board. The Board of Directors may appoint only a Board Member to serve as an Officer of the Association. All Board delegations and appointments shall comply with the provisions of Chapter 720 of the Florida Statutes.

(b) The Board of Directors shall consist of seven (7) Members who shall be elected by the Owners entitled to vote. Four (4) Directors will be elected in even years and three (3) Directors will be elected in odd years and begin at the time their successors are duly elected and ends when their successors are duly elected or until they are removed from office in the manner elsewhere provided. A Director must be an Owner entitled to vote or a spouse of an Owner entitled to vote; provided however, no person and his or her spouse may serve on the Board at the same time. Article IV of the Bylaws addresses all matters regarding vacancies, term of office, nominations, and the election process and is incorporated herein by reference.

## **ARTICLE VII – BUDGETS, ASSESSMENTS, INITIATION FEES, RESERVES, AND DELINQUENT ACCOUNTS**

**Section 1. Creation of Lien and Personal Obligations for Assessments and Initiation Fees.** All Charges, together with interest, costs of collection when delinquent, and attorneys' fees and costs, whether incurred in seeking to enforce this Declaration or to defend any action related to an Owner's Parcel in which the Association is a party shall be a continuing lien upon the Owner's Parcel. All Charges shall be the joint and several personal obligation of the person or entity that was the Owner of such Parcel at the time the Charges were incurred and of each subsequent Owner regardless of how the subsequent Owner takes title or ownership to the Parcel. Each Owner of a Parcel, regardless of how the Owner takes title or ownership to the Parcel and whether or not expressed in any document reflecting a change in ownership of the Parcel, covenants and agrees to pay the Association the Charges established or described in this Article and in the Association's Governing Documents, including but not limited to any Charges incurred by a previous Owner that remain unpaid at the time title to a Parcel is transferred. No diminution or abatement of any Charges shall be allowed by reason of any alleged failure of the Association to perform some function required of it, or any alleged negligent or wrongful acts of the Association, its officers, agents, and employees, or the non-use by an Owner of any or all of the Association Real or Common Areas and Personal Property, products or services. The obligation to pay such Charges is a separate and independent covenant by each Owner.

## **Section 2. Annual General Assessment.**

(a) Each Parcel and all Members entitled to the use and enjoyment of the Association's Property and services are subject to Annual General Assessments by the Association for the maintenance, operation, Repair and Replacement, and improvements incidental to Repairs and Replacements of the Association Real or Common Areas and Personal Property, whether capitalized or not, the purchase of additional non-capitalized Association Property, the management and administration of the Association and the furnishing of services as set forth in this Declaration or as determined to be appropriate for the Association to provide to the Owners and Members from time to time as reflected in the Annual Operating Budget and the Annual Capital Budget adopted as provided below.

(b) As further described by this Article, the Board of Directors by majority vote of all members of the Board, shall set the Annual General Assessments at a level sufficient to meet the Association's obligations defined above. The Annual General Assessment shall also include the funding of that part of the Annual Capital Budget providing for Repairs & Replacements and additions to the Association's Reserves for future Repairs & Replacements, as the Board determines is necessary. The funding of the Annual Capital Budget provided in the Annual General Assessment for capitalized Repairs & Replacements improvements, additions and additions to Reserves for future Repairs & Replacements shall be established as a separate line item in the Annual General Assessment entitled "Capital Contribution." The Capital Contribution shall be added directly to a Property Owner Equity account and be expended only for capitalized Repairs & Replacements and the funding of the Reserves for Future Repairs and Replacements.

(c) The Board of Directors shall fix the amount of the Annual General Assessment against each Parcel at least thirty (30) days in advance of each annual assessment period. Written notice of the Annual General Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

(d) The Board of Directors shall have the right, power and authority, during any fiscal year, but only for the balance of that year, to increase the Annual General Assessment by adopting an Interim Assessment for the purpose of meeting the Association's current expenses and operating costs or capital expense requirements for current Repairs & Replacements. All Annual General Assessments adopted by the Board (other than Emergency Assessments as defined below) shall be due in twelve equal monthly installments during the Association's fiscal year, or, in the case of an Interim Assessment during a fiscal year, in equal quarterly installments for the balance of the fiscal year.

(e) **Emergency Assessments.** The Association may levy as part of the Annual General Assessment, an Emergency Assessment at any time by a majority vote of all Directors, for the purpose of defraying, in whole or in part, the cost of an emergency expenditure to cover the cost to repair damage from a major, unanticipated event in the nature of an Act of God, or to preserve and maintain the financial viability of the Association. Such Emergency Assessment shall be due and payable at the time and in the manner specified by the Board of Directors, but in no event shall it extend beyond the then current Association fiscal year unless the Board has found that extraordinary circumstances require a longer payment period.

**Section 3. Special Assessments.** For the exclusive use of defraying, in whole or in part, the cost of any acquisition, construction, expansion, renovation, or remodeling of a capital improvement on Association Real or Common Areas including fixtures and Personal Property related thereto, the Association may levy a Special Assessment payable over the lesser of (1) the useful life of the asset being funded, or (2) ninety-six (96) months, (commencing on the date of its approved commencement), provided that any such assessment, and any borrowing necessary to finance the capital improvement shall have the approval of sixty-six and two-thirds percent (66 2/3%) of Owners Entitled to Vote that are present, in person or by proxy, at a meeting at which a quorum has been attained. The presence of members or of proxies entitled to cast fifty-one percent (51%) of all the votes shall constitute a quorum.

Written notice of any meeting called for the purpose of taking any action authorized under Section 2 or Section 3 shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of the meeting.

**Section 4. Parcel Assessments.** In addition to the assessments authorized above, the Association may levy a Parcel Assessment against a particular Parcel for the purpose of recovering the cost of restoring the Parcel, or a House thereon, to a clean, neat, and safe condition, as authorized by this Declaration or otherwise in the Governing Documents, the cost of which shall not be included in the General Assessment.

**Section 5. Commencement of Annual Assessments.** The Annual General Assessments provided herein shall become the obligation of an Owner on the date the ownership of the Parcel is transferred to an Owner who is not the Developer or the Developer's Preferred Builder, except as otherwise provided in Section 1 of this Article. Upon acquiring his or her Parcel, each Owner shall be responsible for any delinquent assessments and the pro rata share of the Annual General Assessment or any Special Assessments charged and in effect with respect to the Owner's Parcel, based upon a three hundred sixty-five (365) day year, together with any other charges imposed or payable thereafter pursuant to Section 1 of this Article.

**Section 6. Purpose of Assessments.** The Assessment levied by the Association shall be used exclusively to promote the recreational, health, safety, and welfare of the residents in the Properties, for the improvement and maintenance of the Association Real Property or Common Areas and maintenance (mowing and edging) of the front yards of each Parcel and for the purpose of enabling the Association: (a) to pay all valorem taxes assessed against any property, real or personal, or any interest therein owned by or leased to the Association, and to pay any other taxes payable by the Association; (b) to pay for insurance on any buildings, land, or other improvements owned by or leased to the Association, and public liability insurance as hereinabove

provided; (c) to pay for all expenses of operating the Association including without limitation, management fees, legal and accounting fees, payroll and general office operating expenses and to any and all other things necessary and desirable in the judgment of the Board of Directors; (d) to keep the property owned or leased by the Association neat and attractive or to preserve or enhance the value of the property or to eliminate a fire, health, or safety hazard, which in the judgment of the Board of Directors may be of general benefit to the members of the Association; (e) to repay funds together with interest thereon, borrowed by the Association and used for the purposes referred to herein; and (f) to accumulate reasonable reserves for the foregoing purposes.

It shall not be necessary for the Board of Directors to allocate or apportion the funds collected pursuant hereto or expenditures there from among the various purposes specified herein and the judgment of the Board of Directors and the expenditures of the funds shall be final. The Board of Directors, in its discretion, may hold the funds invested or un-invested and may reserve such portions of the funds as the Board deems advisable for expenditures in the years following the year for which the maintenance assessment was assessed.

**Section 7. Uniform Rate of Assessments.** Both annual and special assessments must be fixed at a uniform rate for all Parcels and may be collected on a pre-paid annual or less frequent basis after the initial levy. The initial levy of assessment shall be collected at the permanent loan closing and shall include the assessed amount due for the remainder of the then current calendar quarter; provided, that for any closing occurring in the last calendar quarter the assessment for the next calendar quarter shall be collected. If there is no permanent loan closing, then the initial levy shall be made in a manner to be determined by the Board of Directors.

#### **Section 8. Initiation Fees.**

(a) The Board of Directors shall have the power and authority to institute an Initiation Fee payable to the Association and in the amount and on such terms and conditions as are approved by a majority of Owners Entitled to Vote that are present, in person or by proxy, at a meeting at which a quorum is attained. If a change is approved with respect to the refundable portion of any Initiation Fee, such change shall be prospective only.

(b) The Initiation Fee amount for all new Parcel Owners shall be equal to the first year of dues, determinable by the amount in effect on the date the ownership of the Parcel is transferred to the new Parcel Owner, regardless of the method by which the Parcel is transferred.

(c) The Initiation Fee shall be due and paid to the Association by each new Parcel Owner immediately upon the transfer of ownership of the Parcel regardless of the method by which ownership of the Parcel is transferred. Any Initiation Fee which is not paid to the Association when due shall be dealt with in a manner set forth in this Declaration.

(d) To the extent that the Association has authorized a refund in whole or part of any Initiation Fee to an Owner selling the Owner's Parcel, no such refund shall be made unless and until the new Owner of the Parcel has paid the Initiation Fee due at the time of the transfer of title in accordance with the terms and provisions set forth in this Declaration.

(e) Proceeds from Initiation Fees shall be used in the following order: to fund Initiation Fee refunds, to fund such other specific purposes for which an increase in the Initiation Fee was authorized, to fund the Reserve for Operating Contingencies, to fund the Reserve for Repair and Replacement of Capital Assets, to maintain Association Property, to fund any violations on the Parcel, and to purchase additional capitalized Association Property. Initiation Fees shall **NOT** be used in lieu of payment of Assessments of any kind.

(f) The Initiation Fee shall not apply to any intra-family title transfers, or to any transfer to a deceased Member's surviving spouse or child who becomes an Owner of the deceased Member's Parcel by testamentary bequest or otherwise, pursuant to a testamentary plan, or as the result of a divorce that calls for the transfer to a spouse not previously holding title to the Parcel, unless specifically required under the Bylaws. At the discretion of the Board of Directors, the Initiation Fee shall not apply to the temporary transfer of a Parcel to a relocation firm.

## **Section 9. Effect of Nonpayment of Charges; Remedies of the Association.**

(a) **Delinquent Accounts.** Any assessment not paid within thirty (30) days after the due date shall be charged interest at the rate of 18% per annum presently established by Florida Statute 687.01 or latest publication from the date when due until paid and there shall also be assessed as a late charge 5% of the sum due not to exceed \$25.00, each billing period, which is quarterly. Any payment received by the Association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. In addition, if a Member has a Delinquent Account, including Delinquent Account Charges, and also has a refundable Special Assessment, Initiation Fee, or any other deposit with the Association, the Association may use all or any part of the Member's refundable deposit to reduce the total account balance owed, reducing the Member's deposit by the same amount.

This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of Chapter 687 and is not a fine. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Parcel and all costs and attorney's fees shall be charged to the delinquent Owner. The Association's Board of Directors may also implement other lawful collection procedures in its sole discretion. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Association Real Property or Common Areas, abandonment of his/her Parcel or declination of contracted Association services.

The Association will notify Members in writing that their account is deemed a Delinquent Account at or shortly thereafter 30 days, 60 days, 90 days, and 120 days. Nothing within this paragraph shall waive the Association's rights to collect on a Delinquent Account.

(b) **Liens, Foreclosures and Costs.** All Charges against any Owner or Parcel pursuant to this Declaration, together with such Delinquent Account Charges that have been charged and which subsequently become due, shall be a lien on such Parcel. The Association may bring an action at law against the Owner personally obligated to pay the Charges, foreclose the lien against the Parcel, or both. Costs and reasonable attorneys' fees incurred in any such action may be awarded to the prevailing party. The lien shall be in favor of the Association. The Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Parcel foreclosed at a foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

(c) **Owner's Obligations.** Each Owner, by acquisition of an interest in a Parcel, expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of Charges by all methods available for the enforcement of such debts and any related liens, including but not limited to foreclosures, in the name of the Association as if the lien was a mortgage lien on real property. Such Owner expressly grants to the Association a power of sale with respect to any such lien. No Owner may waive or otherwise evade liability for the Charges by abandonment of the Owner's Parcel.

(d) **Subordination of the Lien to Mortgages.** Any lien with respect to unpaid Charges shall, only to the extent required by applicable law, be inferior and subordinate, for foreclosure purposes only, to the lien of a Mortgage placed upon any Parcel, if such mortgage lien is recorded prior to any claim of lien filed by the Association. However, for all mortgages recorded after the date of the recording of this Declaration, sale or transfer of any Parcel by foreclosure or deed-in-lieu of foreclosure shall not affect any continuing lien or recorded lien against a Parcel with respect to unpaid Charges. The sale or transfer of any Parcel pursuant to mortgage foreclosures or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Parcel from liability for any assessments thereafter becoming due or, from the lien thereof.

**Section 10. Certificate of Payment.** The Treasurer of the Association, upon demand of any Owner liable for Charges, shall furnish to such Owner a certificate in writing signed by such Treasurer setting forth whether such Charges have been paid.

## Section 11. Budgets.

(a) **Fiscal Year.** The fiscal year of the Association shall consist of the twelve (12) month period commencing on January 1 of each year and terminating on December 31 of that year.

(b) **Preparation and Approval of Annual Budget.** Each year, two weeks prior to the Annual Meeting, the Association Board of Directors shall adopt an Annual Operating Budget for the coming year which shall set forth estimates of revenues and expenses for that year and the estimated current year-end surplus or deficit in accordance with Generally Accepted Accounting Principles, exclusive of depreciation, interest rate swaps (income and/or expense), gain or loss on the disposition of Association Property and operating leases. The Board shall also adopt an Annual Capital Budget for the coming year which shall provide for the additions to the Association Property and for Repair and Replacement of Association Property.

Two weeks before the second Tuesday in January, the Association Board shall provide each of its Members a copy of the approved Operating and Annual Capital Budgets in a reasonably itemized form, and written notice that copies of the Budgets are available to review, upon request. The Budgets, or the commentary presenting the Budgets, shall set forth the amount of the Annual General Assessment and any other Association Charges or funding sources upon which the Budgets are based.

The Annual General Assessment as forecasted in the Budgets may not exceed one hundred ten percent (110%) of the highest of the preceding three years Annual General Assessments, provided that such percentage is to be adjusted for the change in the Consumer Price Index for the most current year as compared to the immediately preceding year, without the prior approval of a majority of Owners Entitled to Vote that are present, in person or by proxy, at a meeting at which a quorum has been attained.

The Annual General Assessment may be increased above either 110% of the maximum assessment for the previous year or the increase in the cost of living index, as chosen by the Board of Directors, by a vote of with the approval of sixty-six and two-thirds percent (66 2/3%) of Owners Entitled to Vote, in person or by proxy, at a meeting duly called for this purpose.

(c) **Reserves.** The Association shall collect for and maintain the following Reserve Accounts:

- (i) Reserve for Operating Contingencies.
- (ii) Reserve for Repair and Replacement of Capital Assets.

The Reserve for Operating Contingencies is to be used to fund short-term demand for cash needed for operating expenses. The amount of this Reserve shall be three percent (3.0%) of the current year budget for Gross Operating Revenue. This Reserve shall be funded in the following sequence and from the following sources:

- (i) From any balance remaining in this reserve account at the end of the preceding year.
- (ii) From Net Income from Operations for the preceding year.
- (iii) From unapplied Initiation Fees from the preceding year.
- (iv) From unapplied Initiation Fees from the current year.
- (v) From, and only to the extent necessary, an Interim Assessment.

The Reserve for Repair and Replacement of Capital Assets is to be used for repair and replacement of existing capitalized Association Real Property or Common Areas and Personal Property, whether financed with purchase, operating or capital leases. This Reserve shall be funded, as determined by the Annual Reserve Study, in the following sequence and from the following sources:

- (i) From Capital Contributions from the Members in an amount determined annually by the Board of Directors and set forth in the Annual Capital Budget.
- (ii) From interest income on the balance of this Reserve's funds.

- (iii) From unapplied Initiation Fees, but only after funding of Initiation Fee refunds, funding such other specific purposes for which an increase in the Initiation Fee was authorized and the funding of the Reserve for Operating Contingencies.
- (iv) From Net Income from Operations, but only after the Reserve for Operating Contingencies has been fully funded. Net loss from Operations shall not be charged to this Reserve.

Unanticipated operating or capital expenditures not originally included in the Annual Capital Budget which may become necessary during the year shall be charged first against the Reserve for Operating Contingencies, if an operating expense, and against the Reserve for Repair and Replacement of Capital Assets, if a capital expenditure.

Reserves shall be accumulated for specific purposes and in accordance with Section 720.303(6) of the Florida Statutes. In the event of an emergency, the Board of Directors may expend funds from the Reserve for Operating Contingencies, if an operating expense, and from the Reserve for Repair and Replacement of Capital Assets, if a capital expense, reporting this expenditure to the Members together with a plan for the restoration of the Reserves. If the Reserves are inadequate for any reason, including nonpayment of any Owner's assessment, a further assessment to restore or reasonably expand the Reserves may be levied in accordance with the provisions of this Article. The Board of Directors, in consultation with the General Manager and any reasonably required independent professional consultants, annually prepare, review and approve a Reserve Study that sets forth the estimated life of all the Association's capital assets, including Association Real Property and Association Personal Property, and the estimated future replacement or repair cost of same. The Reserve Study shall cover a period of twenty (20) years, shall be updated for all additions to or deletions from Association Property and shall include items that are or may be financed by operating and capital leases.

(d) **Effect of Failure to Prepare or Adopt Budget.** The failure of a Board of Directors to prepare or adopt the Annual Budgets in accordance with the provisions of this Declaration, for any fiscal year shall not constitute a waiver or release in any manner of any Owner's obligation to pay the Owner's or Member's assessments and Association Charges, whenever the same shall be determined. In the absence of an Annual Budget, each Owner and Member shall continue to pay the Association Charges at the rate established for the previous fiscal period in the manner such payment was previously due until notified otherwise.

(e) **Association Accounts.** Except as otherwise provided herein, all sums collected by the Association for whatever reason from the Owners, or any other source, may be commingled in a single fund but shall be accounted for separately in accordance with the Policies adopted by the Board of Directors.

**Section 12. Exempt Property.** The following properties subject to this Declaration shall be exempted from Association Charges and liens: (a) all properties dedicated to and accepted by a governmental body, agency, or authority; (b) all Association Real Property or Common Areas and Personal Property; and (c) all properties owned by Developer which are either unimproved or improved but not occupied.

**Section 13. Real Estate Taxes.** In the event any of the Property or the Additional Property is taxed separately from the Parcels deeded to Owners, the Association shall include such taxes as part of its Annual Operating Budget. In the event the Association Real Property is taxed as a component of the value of the Parcel owned by each Owner, it shall be the obligation of each Owner, for each Parcel owned by such Owner, to timely pay such taxes.

## **ARTICLE VIII – USE OF PROPERTY**

**Section 1. Protective Covenants.** In order to preserve the Property as a desirable place to live for all Owners, the following protective covenants and restrictions shall apply to the portions of Marsh Creek, described in Exhibit A attached hereto and made a part hereof. Building and use restrictions have been specified in the PUD Ordinance approved by the Jacksonville Area Planning Commission and enacted by the Jacksonville City Council.

(a) **Limitations.** Nothing shall be erected, constructed, planted or otherwise placed on a Parcel in such a position so as to create a hazard or block the vision of motorists on any of the common roads. No modification, alteration, or improvement shall interfere with those easements or other rights set forth in this Declaration.

(b) **Building Restrictions.** No House or other structure shall be constructed which has a height exceeding thirty-five feet (35') above the normal surface of the ground, or the maximum structure height allowed by the codes and ordinances established by Duval County, whichever is less, without the approval of the Association. No Home shall be erected or allowed to remain on any Parcel unless the square footage area thereof, exclusive of screened porches, garages, and storage rooms, shall equal or exceed one thousand (1,000) square feet; provided, however, that two-story Homes need only have seven hundred (700) square feet on the ground floor.

(c) **Service Areas.** All garbage receptacles, fuel tanks, gas and electric meters, air conditioning equipment, pool equipment, machinery, generators and all other materials, supplies, and equipment which are stored outside must be placed or stored so they will be concealed from view from Association Real Property or Common Areas and Personal Property and adjacent Parcels.

(d) **Residential Use.** Each Parcel shall be improved and devoted exclusively to residential use except as otherwise permitted or declared by law. No commercial uses, including home occupations, will be allowed without the approval of the Association, unless permitted or declared by law. Any use of a Parcel which would require a non-residential zoning designation shall not be permitted.

(e) **Temporary Memberships, Leases, and Tenants.**

(i). **Rental Restrictions.** No more than ten percent (10%) of the Parcels in Marsh Creek may be leased at any given time to a third party. Any Owner engaged in leasing or subleasing activities as of the date of the amendment shall be allowed to continue leasing or subleasing until said Parcel is sold. Any Parcel owner engaged in leasing or subleasing must, upon the sale of said Parcel, notify any potential buyer or person taking title that no more than ten percent (10%) of the Parcels in Marsh Creek may be leased at any given time. Any Owner wishing to lease his Parcel must submit to the HOA a security deposit in an amount of \$1,000, along with a copy of the executed lease agreement. For the purpose of this provision, "third party" shall be defined as any person who is not the Owner as defined in this Declaration. A complete list of rental properties will be compiled and maintained by an individual appointed by the Board, including copies of lease agreements.

**Grandfathering.** Grandfathering refers to an exemption from the lease restriction granted to a specified group of Owners at the time the lease restriction is adopted. Owners who were leasing at the time the lease restriction becomes effective may continue to lease their Parcel without regard to the limit on the total number of leased residences allowed under this restriction. These Owners are "grandfathered" in under the lease restriction. However, once the lease agreement expires or the Parcel is sold, the Parcel can no longer be leased if the ten percent (10%) cap has already been reached.

When a Parcel is sold or transferred, the new Owner loses the grandfather status and is required to comply with all provisions of the lease restriction, including applying to the Board for authorization to lease his or her Parcel. **A \$1,000 refundable security deposit will be required for new lease properties.**

All Owners are responsible for ensuring that their tenants understand and abide by these Covenants and Restrictions.

No building situation on any Parcel shall be rented or leased separately from the rental or lease of the entire property.

(ii). **Temporary Members.** Any Tenant seeking to have use of the Association Real Property or Common Areas and Personal Property, other than for ingress and egress, must apply for and be

approved as a Temporary Member by the Board of Directors or such review committee as the Board may designate, unless the rights of Membership are being retained by the Owner of the Parcel. If a Tenant is approved as a Temporary Member, the Owner of the leased Parcel shall not have the right to use the Association Real Property or Common Areas and Personal Property, or exercise any other rights of Membership, except the sole right to vote. Regardless of an approved tenancy, the Owner leasing a Parcel shall be responsible for all unpaid Charges incurred by the Tenant, whether or not approved as a Temporary Member.

(iii). **Eviction.** The Board of Directors may evict tenants, whether or not approved as Temporary Members, upon reasonable notice for a major violation, or repeated minor violations, of provisions of the Governing Documents. Any approved Temporary Membership is subject to annual review and renewal or termination in the sole discretion of the Board of Directors.

(f) **Nuisances.** No nuisance that is or might be detrimental to any other Parcel or Association Real Property or Common Areas and Personal Property shall be permitted to exist, or operate on, any Parcel or Association Real Property or Common Areas and Personal Property. No illegal, noxious, or offensive activity shall be permitted or carried on to any part of the Properties, nor shall anything be permitted or done thereon which is or may become a nuisance to the neighborhood. Be respectful of your neighbors regarding noise and loud music.

(g) **Waste.** No waste shall be committed on the Property. No trash, garbage, rubbish, debris, waste materials or other refuse shall be deposited or allowed to accumulate or remain on any part of the Properties.

(h) **Fires.** No fires for burning trash, leaves, clippings, or other debris or refuse shall be permitted on any part of the Properties, Association Real Property or Common Areas, or city right-of-ways.

(i) **Improper or Unlawful Use.** No immoral, improper, offensive, or unlawful use shall be made of the Property or any part thereof. All laws, zoning ordinances, orders, rules, regulations, or requirements of any governmental agency having jurisdiction, relating to any portion of the Property, shall be complied with at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

(j) **Insurance.** Nothing shall be done or kept on any Parcel or in or on Association Property which will increase the cost, or cause the cancellation or material detrimental modification of insurance required for Association Real Property or Common Areas and Personal Property or any other Parcel, or the contents thereof, without the prior written consent of the Association.

(k) **Access.** Owners shall allow the Board of Directors or agents and employees of the Association to enter any Parcel for the purpose of inspecting, making necessary maintenance, repairing or replacing improvements in the Yards, determining compliance with the Governing Documents, or dealing with an emergency.

(l) **Pets.** Pets of customary household variety, such as cats, dogs, birds and fish, may be kept by an Owner on his or her Parcel but only if such pets do not cause disturbance or annoyance on the Property. Not more than two dogs, or two cats, or four birds may be kept on a Parcel for the pleasure and use of the Occupants. Commercial or breeding uses or purposes shall not be permitted. No other animals may be kept without the approval of the Association. If, in the sole opinion of the Association, the animal or animals become dangerous or any annoyance or nuisance in the neighborhood or nearby property or destructive of wildlife, they may not thereafter be kept on the Parcel. Birds shall be kept caged at all times. All pets must be held or kept leashed at all times in the Property, and pet owners shall immediately collect and properly dispose of the wastes and litter of their pets. The Association reserves the right to limit those parts of the Association Property where pets may be walked and to make reasonable rules and regulations restricting the number and type of pets that may be kept on any Parcel. The Association further reserves the right to demand that an Owner remove a pet from the Property if such pet is found to be a nuisance or is in violation of this Declaration.

(m) **Signs.** Except as may be required by applicable law or legal proceedings, no sign, advertisement, or notice of any type or nature whatsoever may be erected or displayed on any Parcel, House, Association Real Property or Common Areas or Yard, unless prior written approval of size, shape, content, and location has been obtained from the Association Board of Directors, which approval may be withheld in its sole discretion. Notwithstanding the foregoing, the Board of Directors may erect reasonable and appropriate signs on any portion of the Association Property to promote or announce Association sponsored events, to welcome tournament or other invited guests or to control and direct traffic.

(n) **Unauthorized Vehicles.** No mopeds, motorized scooters, motorized skate boards, go-carts, or any unauthorized vehicle shall be allowed on the Common Roads or anywhere within the Property except as approved by the Association Board of Directors in its sole discretion.

(o) **Garbage and Trash Containers.** All garbage and trash containers must be placed and maintained in accordance with the Association's Rules & Regulations. No garbage or trash shall be placed anywhere except as aforesaid, and no portion of the Property shall be used for dumping refuse. Garbage and recycle receptacles shall not be visible from the street except for the scheduled day of collection. To properly discard building materials or construction debris, please refer to the trash pick-up schedule for disposal of bulk items, which is collected every other week on the same day. NOTE: Carpet, padding, and fencing materials, are not considered construction debris. Please call 630-City (2489) for more information. Any debris from work performed by a contractor must be removed by the contractor. As with all household garbage, waste should be placed at the curb no later than 6:00 am on collection day. Waste should not be placed at the curb before 5:00 pm the day prior to scheduled collection and all empty containers must be removed from the curb no later than 6:00 am the day after scheduled collection.

(p) **Pool Entrance Cards.** There will be a ten-dollar (\$10) fee assessed to replace any lost pool entrance card. The Board of Directors may assess a fifty-dollar (\$50) reinstatement fee to reactivate a pool access card that has been suspended due to violations of the Governing Documents at the discretion of the Board.

(q) **Detached Temporary Structures.** No detached structures, including without limitation trailers, tents, shacks, barns, sheds, or other outbuildings, shall be permitted on any Parcel at any time, other than:

(i) Cabanas appurtenant to a swimming pool, detached garages, and gazebos approved by the Architectural Committee;

(ii) Temporary structures (including temporary or Porto-Let toilets) on any Parcel during the period of actual construction on that Parcel. Such structures shall be reasonably neat in appearance, no larger than eight feet by ten feet and shall be placed on the Parcel no farther forward than the main residential building; and

(iii) Tents or temporary structures for use during social functions.

(r) **Water Supply and Sewage.** No individual water system or well of any type shall be maintained, drilled, or permitted on any Parcel without prior approval of the Architectural Committee of the Association. The central water system operated for Jacksonville will provide for the service of the Parcels and shall be used as the sole source of water for all purposes on each Parcel (except water used for yard, garden, swimming pool, or air conditioning purposes) including, but not limited to, water for all water spigots and outlets located within and without all buildings. Each Owner shall pay when due the periodic charges or rates for the furnishing of water made by the supplier thereof.

At the Owners' expense, a contractor, shall connect the sewage disposal line to the sewer collection line provided to serve the Parcels so as to comply with the requirements of such sewage collection and disposal service of the local utility. After such connection, each Owner shall pay when due the periodic charges or rates for the furnishing of such sewage collection and disposal service. The local utility has the sole and exclusive right to provide all water and sewage facilities and service to the property described

herein except as set forth hereafter. All sewage from any building or structure must be disposed of through the sewage lines and disposal plant owned or controlled by the local utility. No water from air-conditioning systems or swimming pools or non-domestic drains shall be disposed of through the lines of the sewage system except where special rate provisions have been made with the utility company. The local utility company has a nonexclusive and perpetual easement and right in, to, over and under any and all public drives, public roads and lanes as shown on the plat and in, to, over, upon and across those portions of the Parcels which are shown on the plat as "Easement for Utilities" for the installation, maintenance, and operation of water and sewer lines, pipes, and appurtenances. All Parcels are subject to all rules, regulations, and ordinances relative to water and sewer rates, usage, rights, privileges, and obligations regarding such services as may be adopted from time to time by the local utility.

(s) **Fuel Storage tanks.** No visible fuel or storage tanks may be affixed on any Parcel. Notwithstanding this provision, an Owner may keep and maintain a small gas tank for gas barbecues and fireplaces on his or her Parcel if specifically approved by the Architectural Committee.

(t) **Window Units.** No window air conditioning units may be installed in any House.

(u) **Garages and Parking.** Garage doors shall be kept closed, except when vehicles are entering or leaving the garage or doors need to be open for reasonable purposes. Vehicles shall be kept inside the garage(s) from sunset to sunrise, except that they may be parked on the driveway of the Parcel if the number of licensed drivers and vehicles owned and operated by permanent Occupants of such Parcel exceeds the number of garage spaces. For the purposes of this paragraph, golf carts shall not be counted as vehicles in calculating the number of vehicles owned and operated by permanent Occupants of a Parcel. Vehicles should not be parked on the street, except for service vehicles during permitted hours for service, emergency vehicles, and vehicles connected to social functions.

(v) **Soliciting.** No commercial door-to-door soliciting shall be allowed. Unposted Member-to-Member mailings shall not be used for any solicitation.

(w) **Maintenance.** The portions of the House visible from other Parcels and the Association Real Property or Common Areas and Personal Property and all Yards and entrances must be kept in an orderly condition so as not to detract from the neat appearance of the Property. The Board of Directors, in its sole discretion, may determine whether the visible portions of the Houses and Yards are orderly. After reasonable notice to the Owner and a failure to cure the specified maintenance failure, the Association may have any objectionable items removed from any Yard to restore its orderly appearance, without liability, and charge the Owner for any costs incurred in the process. All such costs shall be Charges and a Parcel Assessment.

(x) **Trees.** No trees greater than three inches in diameter at breast height shall be cut or removed without approval of the Architectural Committee.

(y) **Mailboxes.** All mailboxes will be in the uniform color of black and be maintained in good repair. No mailbox or paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines, or similar material shall be erected or located on any Parcel unless and until the size, location, design, and type of material for the mailboxes or receptacles are approved by the Architectural Committee of the Association.

(z) **Watercraft.** No watercraft may be used on any body of water on the Property without prior approval of the Board of Directors.

(aa) **Shoreline Improvements.** No docks appurtenant to any Parcel shall be permitted. Bulkheads, decks, and other shoreline improvements may be built by an Owner or the Association but only with the prior approval of the Association.

(bb) **Hedges, Fences, and Walls.** Hedges, fences, or walls may not be built or maintained on any portion of any Parcel except on the rear or interior side lot line and no closer to the front of the Parcel than the

front line of the main residence. The exception: No fence hedge or walls shall be closer to the front of the lot than the back line of the neighboring residence that has a zero "O" lot line. No fence, hedge, or walls may be closer than twelve (12) feet to a side street when the residence is situated on a corner Parcel. Privacy fences can be natural wood, or tan vinyl material. No fence or wall shall be erected nor hedge maintained higher than six (6) feet from the normal surface of the ground. No fence or wall shall be erected until the quality, style, color, design, and location have been first approved in writing by the Architectural Committee and the Board of Directors of the Association.

The Association shall have the right, but no obligation, to remove, or require the removal of any fence, wall, hedge, shrub, bush, tree, or other thing, natural or artificial, placed or located upon any Parcel, if the location of same will, in the sole judgment and opinion of the Association, obstruct the vision of the motorists upon any of the streets. Currently installed decks, fences, and other structures that do not meet the standards of these amended Covenants are grandfathered in for current owners only. Effective immediately, however, any replacement of these decks, fences, and structures must be properly approved by the Board of Directors and shall meet these new standards. The conveyance of the property to a new Owner, shall include a review of the property for compliance and requirement that all decks, fences, and other structures be brought up to the standards of this Amended Declaration.

(cc) **Tennis Court Areas.** Owners, as well as their Families, tenants, guests, invitees and pets, shall be obligated to refrain from any actions which would interfere with or detract from the play or playing qualities of the Tennis Court. Such prohibited activities shall include but not be limited to: maintenance of dogs or other pets under conditions which interfere with Tennis Court play due to their loud barking or other actions; running or walking on the court; and transmission of loud noises which would distract tennis players, except where incident to construction activity.

(dd) **Motor Vehicles, Trailers, Boats, Etc.** No outside storage or overnight parking shall be permitted upon any Parcel or within any portion of the Property (other than areas provided therefore within the Property, if any) of any trailer (either with or without wheels), motor or mobile home, tractor, truck (other than pickup trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices. No Owners or other Occupants of any portion of the Property shall repair or restore any vehicle of any kind upon or within any Parcel or within any portion of the Property, except (i) within enclosed garages or workshops or (ii) for emergency repairs, and then only to the extent necessary to enable movement of the vehicle to a proper repair facility.

No wheeled vehicles of any kind: boats or any other offensive objects may be kept or parked in a state of disrepair between the paved road and single-family patio homes, but may be kept if completely inside a garage attached to the main residence. No occupant's private passenger vehicle bearing commercial signs may be parked in the driveway on the building lot. Vehicles of guests of the occupants may be parked in such driveways, and other vehicles may be parked in such driveways during the time necessary for pickup and delivery service and solely for the purpose of such service. No wheeled vehicle or boat shall be kept or parked on the grass in the front, back, or side yard of any lot. No trailers or recreational vehicles shall be maintained or kept on any lot. The use of car covers/tarps on vehicles parked in driveways is strictly prohibited. Basketball goals are strictly prohibited.

(ee) **Delivery and Construction Hours.** Unless there is an emergency, no construction or delivery of construction material is permitted on any Parcel or the Association Real Property or Common Areas and Personal Property Monday through Friday before 7:00 a.m. or after 6:00 p.m., on Saturdays before 9:00 a.m. or after 4:00 p.m., and on Sundays and Holidays at no time without the prior consent of the Association.

(ff) **Overhead Wires.** All telephone, electric, and other utility lines and connections between the main utilities' lines and the residence and other buildings located on each Parcel shall be concealed and located underground so as not to be visible. Electric service is provided by the Electric Authority through underground primary service lines running to transformers. The Developer has provided an underground conduit to serve each Parcel, extending from the point of applicable transformer to a point at or near a lot line, and such conduit to each Parcel shall become and remain the property of the Owner of the Parcel. Each Owner requiring an original or

additional electric service shall be responsible to complete at his expense in the secondary electric service conduits, wires, (including those in the conduit provided by the Developer), conductors and other electric facilities from the point of the applicable transformer to the residence on the Parcel and all of the same shall be and remain the property of the Owner of each Parcel. Each Owner shall be responsible for all maintenance, operation, safety, repair, and replacement of the entire secondary electrical system extending from the applicable transformer to the residence on his Parcel.

(gg) **Aerials and Antennas.** No radio or television aerial, antenna, dish receivers, or any other exterior electronic or electrical equipment or devices of any kind shall be installed or maintained on the exterior of any structure located on a Parcel or on any portion of any Parcel occupied by a building unless and until the location, size, and design thereof shall have been approved in writing by the Board of Directors of the Association.

(hh) **All Structures Must be Approved by the Board.** For the purpose of further ensuring the development of the properties as a residential area of highest quality and standards, and in order that all improvements on each Parcel shall present an attractive and pleasing appearance from all sides of view, the Association shall be vested with the exclusive power and discretion to control and approve all of the buildings, structures, and other improvements on each Parcel in the manner and to the extent set forth herein.

No residence or other building, and no building, fence, wall, driveway, swimming pool or other structure or improvements, regardless of the size or purpose, shall be placed, erected, or allowed to remain on any Parcel, nor shall any additions to or exterior change, including enclosed garage, or alteration thereto be made, unless and until building plans and specifications covering the same (the building plans and specifications shall show the nature, kind, shape, height, size, materials, floor plans, exterior color schemes, location, and orientation on the Parcel and approximate square footage, and contain a construction schedule and such other information as the Board of Directors shall require, including, if so required, plans for the grading and landscaping of the Parcel showing any changes proposed to be made in the elevation and surface contours of the Parcel) have been submitted to and approved by the Board of Directors in writing.

The Board of Directors shall have the absolute and exclusive right to refuse to approve any such building plans and specifications and lot grading and landscaping plans which are not suitable or desirable in its opinion for any reason, including purely aesthetic reasons. In passing upon such building plans and specifications, lot grading and landscaping plans, the Board of Directors may take into consideration the suitability and desirability of the proposed construction, the materials to be used and the quality of the proposed workmanship. Building designs using natural materials having earth tones are encouraged by the Board of Directors. No plans and specifications shall be approved unless suitable sidewalks and landscaping are provided. Builders shall be responsible for landscaping, including providing ground cover and erosion control on the Lots themselves and the areas between front lot lines and streets. The builders of Homes shall follow all guidelines, conditions, and stipulations set forth under the terms of the PUD authorized by the City of Jacksonville, Florida. Any request for approval not approved or denied by the Board of Directors within sixty (60) days of submission shall be automatically denied and must be re-submitted for further action.

(ii) **Common Area Work.** **ALL WORK DONE ON COMMON AREAS MUST BE INITIATED AND APPROVED BY THE BOARD OF DIRECTORS.** All capital improvements to the Common Area, except for replacement or repair of those items installed by the Developer and except for personal property related to the maintenance of the Common Area, shall require the approval of two-thirds (2/3) of the votes entitled to be cast.

The Association, subject to the rights of Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon, and shall keep the same in good, clean, substantial, attractive and sanitary conditions, order and repair. The Association's rights shall extend to and include all parking areas and private streets, if any, situate on the Common Area, as well as that property owned by the City of Jacksonville, Duval County, to the betterment of the subdivision.

The following covenants and restrictions shall apply to the Association Real Property or Common Areas and are intended to insure that from an aesthetic, as well as quality standpoint, the Common Areas will be

maintained in such a manner so as to preserve and enhance the value of adjoining property and to maintain a harmonious relationship with the surrounding structures and the natural vegetation and topography.

(a) No excavation or disturbance of the natural terrain of the Common Area shall be allowed therein;

(b) No dock or other structure extending into or over the river located in the Common Area shall be constructed;

(c) Fishing with nets in the river located in the Common Area is prohibited.

(d) No object, out of keeping with the Common Area as determined by the Association, shall be located therein;

(e) No plants may be positioned so as to extend into or permitted to grow into the Common Area.

The Association from time to time may adopt, alter, amend, and rescind reasonable rules and regulations governing the use of the Common Area. The rules and regulations shall be consistent with the rights and duties established by this Declaration.

(jj) **Easements for Encroachments, Maintenance, and Drainage.** The Association hereby reserves and is given a perpetual, alienable and releasable easement, privilege and right on, over and under a strip of land extending the full length of and along the interior back line of each Parcel, and a strip of land extending the full length of and along the interior lines of each Parcel.

The width of the interior back line easement or interior side line easement shall be five (5) feet or less as measured from the exterior back lot line or measured from the exterior side line to the setback line of the home constructed on the Parcel as shown in the final survey prepared for the buyer at closing.

Each Parcel shall be subject to the above-described interior back line and interior side line easements for: (a) the ordinary and reasonable maintenance and upkeep of structures on adjoining Parcels; (b) encroachments created by construction, settling and overhangs including plants, board and cement walkways, screen and trellis supports and patio enclosure walls for all buildings constructed by the Contractor; and (c) the installation, maintenance and use of water drainage facilities and storm sewers. Drainage flow shall not be obstructed or diverted from drainage swales, storm sewers or utility easements as designated herein or as may hereafter appear on any plat of record in which reference is made to these covenants. In the event any home is partially or totally destroyed, and then rebuilt, the Owners of the adjoining Parcels agree that minor encroachments created by reconstruction shall be permitted, and that a valid easement for such encroachments and the maintenance thereof shall exist.

The Association shall have the unrestricted and sole right and power of alienating and releasing the privileges, easements, and rights referred to in this section. The Owners of the Parcel subject to the privilege, rights, and easements referred to in this section shall acquire no right, title, or interest in or to any pipes, lines, or other equipment or facilities placed on, over, or under the property which is subject to the privileges, rights, and easements. All such easements are and shall remain private easements and the sole and the exclusive property of the Association and its successors and assigns.

Each Parcel Owner shall be responsible to maintain the portion of the yard of the adjacent Parcel that is open to his view and concealed from the view of the said adjacent Parcel Owner.

**The Architectural Committee has an approval form available on our website for residents to complete when beginning a project. This form is subject to approval.**

(a) All homes shall be constructed by a contractor or builder approved by the Board of Directors. Changes in the exterior color schemes of any residence or other buildings, or fence, wall, driveway, swimming pool or other structure or improvement shall not be made without the prior approval of the Architectural Committee

of the Association. No addition or alterations to any structure and no alteration of the exterior color of any structure shall be allowed without the Architectural Committee of the Association's approval, with the exception of replacing wood rot and maintaining the same quality and current paint scheme.

No awnings, shades, or siding other than cedar or Hardie (Hardy) Board may be attached to the exterior of any structure. Hurricane shutters may be added if type and style are approved by the Architectural Committee and the Board of Directors. No exterior windows or doors, including garage doors, may be altered, added, deleted, or relocated except where approved by the Architectural Committee of the Association.

Roof ventilators, exposed pipes, gutters, down spouts, ease flashing, and other exterior vents shall be painted to match adjacent surfaces. Your roof must be maintained and in good repair. All roofing repairs should be done using the same type of shingles as the existing roof (i.e. asphalt or architectural composite, or fiberglass), and be as close as possible in color and appearance. Replacement of roofs shall require the installation of the same type of roofing shingles as the original roof. No tile, metal, slate, or wood shingles are permitted.

No carports shall be permitted, and installation of doors on all garage openings facing the street or Access Easements is required. No garage door opening shall be enclosed to prevent the parking or storage of vehicles in the garage.

(b) The maintenance of the grounds of each Parcel (whether vacant or occupied) over and above that maintenance to be undertaken by the Association in the front yard shall be undertaken by the Owner in a neat and attractive condition. Upon the failure of any Owner to so maintain his/her Parcel (whether vacant or occupied) in a neat and attractive condition, the Association or its authorized agents or successors and assigns may, after fourteen (14) days written notice to such Owner, enter upon such Parcel and have the grass, woods, or other vegetation cut, debris removed, when, and as often as, the same is necessary in its judgment, and may have dead trees, shrubs, and other plants removed therefrom. Such Owner shall be personally liable to the Association for the cost of any cutting, removing of debris, clearing, and maintenance described above and the liability for amounts expended for such cutting, clearing, and maintenance shall be a permanent charge and lien upon such Parcel, enforceable by the Association by any appropriate proceeding at law or in equity. All costs incurred by the Association on behalf of such Owner shall be reasonable. Although written notice given as hereinabove provided shall be sufficient to give the Association or its designated committee or its successors and assigns, the right to enter upon any such Parcel and perform the work required, entry for the purpose of performing the work required shall be only between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday.

(kk) **Implied Right.** The Association may exercise any of the rights and privileges given it expressly by this Declaration, its Articles or Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege granted herein or reasonably necessary to effectuate any right or privilege granted herein.

(ll) **Personal Property for Common Use.** The Association may acquire, hold, and own tangible and intangible personal property and may dispose of the same by sale or otherwise subject to such restrictions as may from time to time be provided by the Articles or Bylaws.

## **Section 2. Compliance.**

(a) **Owners' and Members' Responsibilities.** It shall be the responsibility of each Owner and Member to conform to and abide by the Governing Documents in regard to the use of the Parcels and Association Real Property or Common Areas and Personal Property, which may be adopted in writing from time to time by the Association's Membership, Board of Directors, or the Architectural Committee, and to ensure the Owner's or Member's Family, guests, tenants, employees, agents and contractors do likewise.

(b) **Violations and Enforcement.** Upon any violation of any of the Governing Documents by an Owner, a Member, or his or her Family, tenants, guests, or invitees, the Association may levy fines in such amounts and for such periods as may be permitted by law and approved by two-thirds (2/3) of the Board of Directors or suspend an Owner's or Member's privileges to use the Association Real Property or Common Areas and Personal Property for a period permitted by law. Any suspension of privileges approved in accordance

herewith shall apply to a Member and his or her Family, guests, tenants, or invitees in compliance with the applicable provisions of Chapter 720 of the Florida Statutes, as amended. To enforce any provisions of the Governing Documents, the Association or any Owner may bring action for specific performance, declaratory relief, injunction, damages, foreclosure of a lien, or any other remedy at law or in equity. The prevailing party may recover costs and attorneys' fees in such suit, including all fees and costs incurred on appeal.

- (i) In the event of a violation by any Owner or his or her family members, guests, invitees, lessees and their family members, guests, and invitees, and his or her or its tenants, licensees, guest, invitees, and sub-tenants of any of the provisions of the Governing Documents or Restrictions set forth by the Association, the Association shall notify the Member/Owner of the violation by written notice, providing the Member/Owner the opportunity to cure the violation. If the violation is not cured, as soon as practicable, and in any event, no later than fourteen (14) days after the receipt of the written notice, or if the Member/Owner fails to commence and/or diligently and completely cure the violation, within said fourteen (14) day period, the Association may, at its option:
  - Commence an action to enforce the performance on the part of the Member/Owner, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
  - Commence an action at law to recover damages; and/or
  - Take any and all action reasonably necessary to correct such violation, such action may include, but is not limited to, fines of not less than \$100 per day per violation/occurrence (cumulative, up to \$1,000); performance of any maintenance required to be performed, including the right to enter upon the Parcel of the Owner(s) to make such corrections or modifications as are necessary, or remove anything in violation of the provisions of the Governing Documents or any restriction set forth by the Board of Directors. The process of imposing a lien upon the Parcel of the Owner(s) will commence effective upon the date of recording this Declaration.
- (ii) Mediation is available upon request with a committee of three impartial members, but must be held under most circumstances prior to initiation of a lawsuit, pursuant to Florida Statutes.
- (iii) All expenses incurred by the Association in connection with the correction of any violation, or the commencement of any action against any Owner, including administrative fees and costs and reasonable attorneys' fees and disbursements through the appellate level, shall be a Special Assessment, as defined in Article VII of these Covenants and Restrictions, assessed against the applicable Owner, and shall be due upon written demand of the Association.
- (iv) Right Cumulative. All rights, remedies, and privileges granted to the Association pursuant to any terms, provisions, covenants, or conditions of the Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from executing such additional remedies, rights, or privileges as may be granted or as it might have bylaw.
- (v) Unless otherwise provided, all notice, demands, bills, statements, or other communications under these Covenants and Restrictions shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by first class mail, with postage prepaid.

**Section 3. Personal Services.** Employees, agents, and workers of the Association shall not be required to attend to any personal matters or business of the Owners, nor shall they be permitted to leave the Property on any private business of Owners. The uses and functions of the employees shall

be governed by the Association Board of Directors. *The direct engagement of any employee of the Association by a Member to perform services for the Member on a Member's Parcel or otherwise is at the full risk of the Member.* The Association shall not be responsible in any way for the performance of the employee, any injury or other damages suffered by the employee or any damages of any kind caused by the employee while engaged by the Member. No employee of the Association may utilize any property or equipment of the Association when performing private services for a Member unless such services are contracted by the Member with the Association and are subject to all the terms and conditions of such a contract. In particular, all Members are advised that any claims advanced by employees or their legal representatives against the Association arising out of their engagement by any Member for services outside of their normal duties and responsibility as employees of the Association unless such services have been contracted for with the Association, *including but not limited to claims for compensation under applicable worker compensation laws, shall be solely the responsibility and obligation of the Member*, who shall indemnify, hold harmless and defend the Association harmless against all claims, including but not limited to reasonable attorney's fees incurred by the Association.

#### ARTICLE IX – MISCELLANEOUS

**Section 1. Amendments of Covenants and Restrictions and Release of Violations.** The Association reserves and shall have the sole right (a) to amend these Covenants and Restrictions for the purpose of curing any ambiguity in or any inconsistency between the provisions contained herein, and (b) to release any Parcel from any part of the Covenants and Restrictions which have been violated (including, without limiting, the foregoing, violations of the building restriction lines and provisions hereof relating thereof) if the Association in its sole judgment determines such violations to be a minor or insubstantial one; provided, however, that authority to release such violations shall arise only upon substantial completion of the building upon each Parcel.

**Section 2. Amendments of Declaration.** This Declaration may be amended at a regular or special meeting of the Members with the approval of sixty-six and two-thirds percent (66 2/3%) of Owners Entitled to Vote, present in person or by proxy. An amendment so adopted shall be effective upon (i) its execution by the President of the Association and certification by the Secretary of the Association, and (ii) its subsequent recordation in the public records of Duval County, Florida.

**Section 3. Consent of Mortgagees.** This Declaration contains provisions concerning various rights, priorities, remedies, and interests of the Mortgagees. Such provisions are to be construed as covenants for the protection of the Mortgagees on which they rely in making loans secured by Mortgages on the Parcels. Accordingly, no amendment or modification of this Declaration impairing such current rights, priorities, remedies, or interests of a Mortgagee shall be adopted without prior written consent of all Mortgagees holding liens on eighty percent (80%) or more of the Parcels encumbered by Mortgages. Any such consent requested by the Developer, the Mortgagees shall be given prompt consideration and shall not be unreasonably withheld. This Section shall not apply to, or be construed as a limitation upon, those rights of the Developer, the Association or the Owners to make amendments which do not adversely affect the Mortgagees.

**Section 4. Severability.** Invalidity of any one of these Covenants or Restrictions by judgment or court orders shall not affect any other provisions that shall remain in full force and effect.

**Section 5. Duration.** The covenants and restrictions contained in this Declaration, as the same may be amended from time to time, shall run with, and bind, the Property and shall inure to the benefit of and be enforceable by the Developer, the Association, the Owners, and their respective legal representatives, heirs, successors or assigns for a term of twenty (20) years after the date on which this Declaration is recorded in the Public Records of Duval County, Florida, after which time all of said provisions shall be extended automatically for successive periods of ten (10) years each unless the Association records an instrument, approved by seventy-five percent (75%) of Owners Entitled to Vote, which terminates this Declaration as of a specified date, no earlier than the expiration of an extended term of three (3) years from the date of such recording. Unless this Declaration

is terminated in accordance with this Section, the Association shall re-record this Declaration or other notice of its terms at intervals necessary under Florida law to preserve its effect.

**Section 6. Condemnation.** In the event all or part of the Association Real Property or Common Areas and Personal Property shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to the Association. The Board of Directors shall have the sole and exclusive right to act on behalf of the Association with the respect to the negotiation and litigation of the taking or condemnation affecting such Association Real Property or Common Areas and Personal Property. By a vote of eighty percent (80.0%) of Owners Entitled to Vote, Owners may agree to distribute the proceeds from any condemnation or taking by eminent domain; but if the Owners do not so agree, such proceeds shall be added to the capital funds of the Association.

**Section 7. Notices.** Any notice required to be sent to the Owner of any Parcel under the provisions of this Declaration or any other Governing Document shall be deemed to have been properly sent when mailed, first-class postage prepaid, or, with respect to an address within the Property, deposited with the Association's mail service and, hand delivered to the last known address of the person who appears as Owner of such Parcel on the records of the Association at the time of such mailing or delivery.

**Section 8. Enforcement.** In addition to the other enforcement provisions set forth in this Declaration, the provisions of this Declaration and any other Governing Document may be enforced by any Owner, or the Association or Developer (as long as it holds title to any Parcel) by a proceeding at law or in equity against any person or entity violating or attempting to violate the provisions of a Governing Document, either to restrain violation or to recover damages or both. Failure to so enforce any of these protective covenants and restrictions shall in no event be deemed a waiver of the right to so enforce at any time thereafter.

**Section 9. Interpretation.** The provisions of this Declaration and all other Governing Documents shall be liberally construed to effectuate their purpose and intent of creating a uniform, consistent plan for the development and use of the Property.

**Section 10. Invalidity.** The invalidity of any part of this Declaration shall not impair or affect in any manner the validity and enforceability of the balance of the Declaration, which shall remain in full force and effect.

**Section 11. Gender and Number.** The use of masculine gender herein shall be deemed to include the feminine gender and the use of singular shall be deemed to include the plural, whenever the context so requires.

**Section 12. Legal Fees.** Any and all legal fees, including but not limited to trial and appellate attorneys' fees and court costs, incurred by the Association in the lawful enforcement of any of the provisions of this Declaration or any Governing Document, regardless of whether such enforcement requires judicial action, such as attorneys' fees and costs and related expenses incurred in any grievance committee proceeding in which any Member or Owner is suspended or fined, or both, shall be assessed against and collectible from the unsuccessful party to the action and, if an Owner, shall be a lien against such Owner's Parcel in favor of the Association.

**Section 13. Action Without Meeting.** Any action required to be taken under this Declaration by vote or assent of the Owners may be taken in the absence of a meeting by obtaining the written approval of the requisite number of Owners Entitled to Vote. Any action so approved shall have the same effect as though taken at a meeting of the Owners Entitled to Vote, and such approval shall be duly filed with the minutes of the Association.

**Section 14. Law to Govern.** This Declaration shall be construed in accordance with the laws of the State of Florida, both substantive and remedial.

**Section 15. Successors and Assigns of Developer.** All rights, privileges, and obligation conferred upon the Developer shall be exercisable by each successor in title designated by Developer and agreed by Association, such agreement by Association not to be unreasonably withheld. In addition, all Developer's rights,

privileges and responsibilities in this Declaration shall be assignable upon the prior written consent of Association's Board of Directors.

IN WITNESS WHEREOF, the Association has caused this Declaration to be executed in its name on the day and year first above written by its duly authorized President and Secretary, who certify that the requirements for executing and recording this Declaration have been satisfied.

**MARSH CREEK HOMEOWNERS' ASSOCIATION, INC.**  
a Florida not-for-profit corporation

Signed, sealed and delivered  
in the presence of:

*Kim Sellers*  
Name: Kim Sellers

By: ANITA L. RIMMER  
Name: Anita L. Rimmer  
Its: President

*Ariel Spires*  
Name: Ariel Spires

By: Cathy Williams  
Name: Cathy Williams  
Its: Secretary

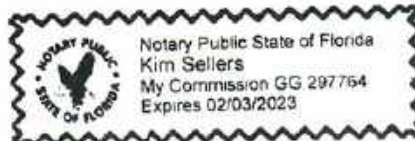
STATE OF FLORIDA  
COUNTY OF DUVAL

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to take acknowledgments, Anita Rimmer as President and Cathy Williams as Secretary of Marsh Creek Homeowners' Association, Inc., a Florida not-for-profit corporation, to me personally known to be the persons who signed the foregoing instrument as such officers; and they severally acknowledged that the execution thereof was their free act and deed for the uses and purposes expressed and that the said instrument is the act and deed of said corporation.

WITNESS my hand and official seal in the County and State last aforementioned this 25<sup>th</sup> day of August, 2021.

Print Name: Kim Sellers  
Notary Public, State of Florida  
Commission No.: GG 297764  
My Commission Expires: 2/3/23

[NOTARY SEAL]



**EXHIBIT A**

Lots 2 through 62, 65 through 157, Tracts 171 and 172, MARSH CREEK, according to plat thereof recorded in Plat Book 38, pages 58, 58A, 588, sac, 580, and 58E, of the current public records of Duval County, Florida.

**EXHIBIT B**

Tracts 171 and 172, MARSH CREEK, according to plat thereof recorded in Plat Book 38, pages 58, 58A, 588, SSC, 580, and 58E, of the current public records of Duval County, Florida.