

**This Instrument Prepared by and after recording return to:**

Mark F. Grant, Esq.  
Greenspoon Marder LLP  
5150 Tamiami Trail North, Suite 502  
Naples, FL 34103  
(954) 527-2404

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
KINGSLEY CREEK**

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KINGSLEY CREEK

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**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
KINGSLEY CREEK**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR KINGSLEY CREEK ("Declaration") is made as of the 31<sup>st</sup> day of October, 2019, by AVH NORTH FLORIDA, LLC, a Florida limited liability company, its successors and assigns ("Declarant" or "Developer"), and is joined in by KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit ("Association").

WHEREAS, that certain Declaration of Covenants, Conditions, Restrictions and Easements for Kingsley Creek was recorded on the 2<sup>nd</sup> day of October, 2018, as Instrument No. 201845030576, and in Official Records Book 2227, Page 1041, et. sec., of the Public Records of Nassau County, Florida (referred to herein as the "Original Declaration"); and

WHEREAS, pursuant to Article XI, Section 11.6, of the Original Declaration, until the Turnover Date, the Developer shall have the unilateral right to amend the Original Declaration, without the consent or joinder of any other party to the fullest extent permitted by law; and

WHEREAS, Developer (defined as Declarant herein), is desirous of amending and modifying the Original Declaration by restating in its entirety the provisions thereof, it being the intent hereof, that this Declaration shall replace the provisions of the Original Declaration, in its entirety, and this Declaration shall constitute the covenants, conditions, restrictions and easements for Kingsley Creek; and

WHEREAS, the Turnover Date has not occurred as of the date of this Amended and Restated Declaration; and

WHEREAS, Declarant desires to develop a planned residential community to be known as "Kingsley Creek" on certain real property more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, in order to develop and maintain Kingsley Creek as a planned residential community and to preserve the values and amenities of such community, it is necessary to declare, commit and subject the Property and the improvements now or hereafter constructed thereon to certain land use covenants, restrictions, reservations, regulations, burdens, liens, and easements; and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance and enforcement; and

WHEREAS, the Association is joining in this Declaration in order to acknowledge its duties, responsibilities and obligations hereunder.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations,

regulations, burdens and liens hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

## **ARTICLE I** **DEFINITIONS**

The terms used in this Declaration shall be defined as set forth herein unless expressly provided otherwise.

**Section 1.** "ADDITIONAL PLAT" shall mean the plat of any portion of the Property which is not included in the Plat, if any, and the plat of any Additional Property provided a Supplemental Declaration for such Additional Property is recorded amongst the Public Records of the County. "Additional Plat" shall also mean the replat of all or any portion of the Plat or any other plat of all or any portion of the Property.

**Section 2.** "ADDITIONAL PROPERTY" shall mean any real property (other than the Property) that may be submitted by Declarant to the terms and provisions of this Declaration by a Supplemental Declaration which shall be executed by the owner of the Additional Property and need not be joined in by any other person or Owner. No portion of any Additional Property shall be encumbered by this Declaration unless and until such property is added by a Supplemental Declaration executed by the fee owner thereof and Declarant. In the event any Additional Property becomes encumbered by this Declaration, then, and only then in such event, the term "Property" as used herein shall also mean the Additional Property.

**Section 3.** "AMENDMENT(S)" shall mean any and all amendments to this Declaration, all of which shall be consecutively numbered beginning with the "First Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Kingsley Creek" and each of which shall be properly adopted pursuant to the terms of the Kingsley Creek Documents and recorded in the Public Records of the County; provided, however, the failure to so consecutively number such amendments shall not impair their validity hereunder and such amendments to the extent not otherwise numbered will be deemed to have been numbered in chronological order of their appearance in the Public Records of the County. "Amendment(s)" shall also mean any and all amendments to any Supplemental Declaration, as recorded in the Public Records of the County.

**Section 4.** "ARCHITECTURAL CONTROL COMMITTEE" or "COMMITTEE" shall mean the committee created pursuant to Article VIII hereof.

**Section 5.** "ARTICLES" shall mean the Articles of Incorporation of Kingsley Creek Homeowners Association, Inc., filed in the Office of the Secretary of State of the State of Florida, a true copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, as such Articles may be amended from time to time.

**Section 6.** "ASSESSMENT" shall mean assessments for which all Owners are obligated to pay to the Association and includes "Individual Lot Assessments," "Benefited Assessments" and "Special Assessments" (as such terms are defined in Article VII hereof) and any and all other

assessments which are levied by the Association in accordance with the Kingsley Creek Documents.

Section 7. "ASSOCIATION" shall mean and refer to KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC., a not-for-profit Florida corporation, its successors and assigns, existing pursuant to the Articles, which Association is responsible for the ownership, administration, operation, maintenance, preservation, enforcement and architectural control of Kingsley Creek as provided in this Declaration.

Section 8. "BOARD" shall mean the board of directors or other legally recognized governing body of the Association.

Section 9. "BUILDER" shall mean any entity(ies) Declarant may designate as a Builder. Declarant shall have the right to assign, in whole or in part, any of its rights and/or responsibilities hereunder to a Builder(s).

Section 10. "BUILDER LOT" shall mean a Lot owned by a Builder.

Section 11. "BYLAWS" shall mean the Bylaws of the Association, which have been adopted by the Board, a copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference, as such Bylaws may be amended from time to time.

Section 12. "COMMON AREA" shall mean such portions of the Property which are not included in any Lot, except those areas dedicated to the public by the Plat and which are or shall be owned or maintained by the Association, as set forth in this Declaration and/or the Plat together with landscaping, personal property and any other Improvements thereon, including, without limitation, all of the following if and to the extent located thereon, all structures, gatehouses, and other entranceways, parks, open spaces, primary amenity campus, bike paths, sidewalks, irrigation facilities, perimeter fences and walls, entry or other lighting, entrance features, buffer tracts, monument walls, monument signs, site walls, retaining walls, littoral plantings, and decorative street signs, if any, but specifically excluding any public utility installations thereon, and all portions of any "Community Systems" (as hereinafter defined) not made Common Area pursuant to Article II, Section 7 hereof, and any other property of Declarant not intended to be made Common Area. "Common Area" shall also include such portions of the Property as are declared to be Common Area in any Supplemental Declaration, less whatever portions of the Property are declared to be withdrawn from the provisions of this Declaration in any Supplemental Declaration.

Section 13. "COMMUNITY SYSTEMS" shall mean and refer to any and all television (cable, satellite or otherwise), telecommunication, internet access, alarm monitoring, gas, utility or other lines, conduits, wires, satellites, amplifiers, towers, antennae, equipment, materials, installations and fixtures (including those based on, containing or serving future technological advances not now known) installed by Declarant, an affiliate of Declarant, any other entity in which Declarant or an affiliate of Declarant may have an interest (financial or otherwise), or any third party expressly granted the rights by Declarant or Association to provide Community Systems within the Property, or pursuant to any grant of easement or authority by Declarant or Association and serving the Common Area and/or more than one Lot.

Section 14. "COMPLETED LOT" shall mean a Lot on which the construction of a Home has been completed, for which Home a certificate of occupancy or equivalent therefor has been issued by the appropriate governmental agency, and the title to such Lot has been conveyed by Declarant. If a Completed Lot is destroyed, such Completed Lot shall remain classified as a Completed Lot regardless of whether or not the Owner has reconstructed the Home.

Section 15. "COMPLETED LOT OWNER" shall mean the Owner of a Completed Lot.

Section 16. "COUNTY" shall mean Nassau County, Florida.

Section 17. "DECLARANT" shall mean and refer to AVH North Florida, LLC, a Florida limited liability company, and any successor or assign thereof to which AVH North Florida, LLC, specifically assigns all or part of the rights of Declarant hereunder by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Property. In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant. An Owner shall not, solely by the purchase of a Home and/or Lot, be deemed a successor or assign of Declarant under the Kingsley Creek Documents unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.

Section 18. "DECLARATION" shall mean this instrument as it may be amended from time to time, together with any Supplemental Declaration(s) or Amendments hereto, which may be recorded amongst the Public Records.

Section 19. "DIRECTOR" shall mean a member of the Board.

Section 20. "DEVELOPMENT AND SALE PERIOD" shall mean the period of time during which Declarant and/or its affiliates and/or any Builder and/or its affiliates are using the Community for the sale and marketing of Homes in the Community and/or in any other communities developed or to be developed by Declarant or any of its affiliates, including, but not limited to, the holding of sales and marketing meetings, the use of "model row(s)" if one or more, the use of design centers, the use of service and construction trailers, and engaging in sales promotions and related sales and marketing activities for the general public.

Section 21. "HOA ACT" shall mean the Homeowners' Association Act, Chapter 720, Florida Statutes, as amended through the date of recording of this Declaration amongst the Public Records of the County.

Section 22. "HOME" shall mean a residential dwelling unit constructed within Kingsley Creek, which is designed and intended for use and occupancy as a residence for a single family; provided, however, that no portion of any Community System, even if installed in a Home, shall be deemed to be a part of a Home unless and until same is made such pursuant to Article II, Section 7 hereof, if at all. Upon completion of construction of a Home on a Lot, the Lot and the Improvements thereon are sometimes collectively referred to as a Home in this Declaration and the Kingsley Creek Documents.

**Section 23.** "IMPROVEMENT" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within Kingsley Creek, including, but not limited to, buildings, walkways, sidewalks, parking areas, berms, fountains, sprinkler systems, gatehouses, streets, drives, roads, roadways, driveways, fences, retaining walls, underground footers and other foundation supports, stairs, landscaping, trees, hedges, plantings, poles, sheds, play structures, tennis courts, basketball courts, backboards and hoops, soccer goals, jogging, bicycling and walking paths, swing sets, gym sets, athletic/play equipment, site and perimeter walls, gazebos, benches, mailboxes, topographical features, landscaping, lawn sculptures, fences, swimming pools, covered patios, screened enclosures, street lights and signs.

**Section 24.** "INCOMPLETE LOT" shall mean a Lot which is not a Completed Lot.

**Section 25.** "INCOMPLETE LOT OWNER" shall mean the Owner of an Incomplete Lot.

**Section 26.** "INSTITUTIONAL MORTGAGE" shall mean a mortgage held by an Institutional Mortgagee on any property within Kingsley Creek.

**Section 27.** "INSTITUTIONAL MORTGAGEE OR INSTITUTIONAL LENDER" shall mean any lending institution owning a first mortgage encumbering any Home or Lot within Kingsley Creek, which owner and holder of said mortgage shall either be a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof, licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any "secondary mortgage market institution," including the Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; any and all lenders, and the successors and assigns of such lenders, which have loaned money to Declarant and which hold a mortgage on any portion of the Property securing any such loan; any pension or profit-sharing funds qualified under the Internal Revenue Code; the Veterans Administration, the Federal Housing Administration or the Department of Housing and Urban Development or such other lender as is generally recognized in the community as an institutional lender; or Declarant, its successors and assigns.

**Section 28.** "INTEREST" shall mean the maximum non-usurious interest rate allowed by law on the subject debt or obligation, and if no such rate is designated by law, then eighteen percent (18%) per annum.

**Section 29.** "KINGSLEY CREEK" OR "COMMUNITY" shall mean that planned development located in the County which encompasses the Property, and is presently intended to consist of Homes and Common Area. Kingsley Creek will initially consist of the Property and may be expanded to include Additional Property or reduced by withdrawal of property, all by the recording of one or more Supplemental Declaration(s).

**Section 30.** "KINGSLEY CREEK DOCUMENTS" shall mean in the aggregate this Declaration, the Articles, the Bylaws, the Plat, and all of the instruments and documents referred

to herein and therein, including, but not limited to, any Amendment(s) and Supplemental Declaration(s), all as may be further amended and/or supplemented from time to time.

**Section 31.** "LEGAL FEES" shall mean reasonable fees for attorney and paralegal services and all court costs through and including all trial and appellate levels and post-judgment proceedings incurred in connection with: (i) negotiation and preparation for mediation, arbitration or litigation, whether or not an action is actually begun, and (ii) collection of past due Assessments including, but not limited to, preparation of notices and liens.

**Section 32.** "LOT" shall mean and refer to any parcel of land within Kingsley Creek which has been platted, upon which a Home is permitted to be constructed, together with the Improvements thereon, and any portion of the Property within Kingsley Creek that is declared to be a Lot by a Supplemental Declaration and is not subsequently withdrawn from the provisions of this Declaration by a Supplemental Declaration; provided, however, that no portion of any Community System shall be deemed to be part of a Lot unless and until such Community System (or portion thereof) is made a part of a Lot pursuant to Article II, Section 7 hereof, if at all. For purposes of Individual Lot Assessments, a Lot is either a Completed Lot, an Incomplete Lot or a Builder Lot. Upon completion of construction of a Home on a Lot, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot in this Declaration and the Kingsley Creek Documents.

**Section 33.** "MEMBERS" shall mean and refer to all of the Owners who are also members of the Association, as provided herein.

**Section 34.** "NOTICE AND HEARING" shall mean written notice and a public hearing before a tribunal appointed by the Board at which the Owner concerned shall have an opportunity to be heard in person or by counsel, at Owner's expense, in the manner set forth in Article X, Section 1 herein.

**Section 35.** "OPERATING EXPENSES" shall mean the expenses for which Owners are liable to the Association as described in this Declaration and any other Kingsley Creek Documents and include, but are not limited to: (a) the costs and expenses incurred by the Association in owning, administering, operating, maintaining, financing, or repairing (but not reconstructing, replacing or improving) the Common Area or any portion thereof and Improvements thereon, all other property owned by the Association (including, without limitation, the Surface Water and Storm Water Management System), and (b) all costs and expenses incurred by the Association in carrying out its powers and duties hereunder or under any other Kingsley Creek Documents.

**Section 36.** "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot within Kingsley Creek, and includes Declarant for as long as Declarant owns fee simple title to a Lot, but excluding therefrom those having such interest as security for the performance of an obligation.

**Section 37.** "PLAT" shall initially mean the plat of Barnwell Manor – Phase 1, recorded in Plat Book 8, Pages 293 through 293, of the Public Records of the County. In the event an Additional Plat is recorded in the Public Records of the County, then the term "Plat" as used herein shall also mean and refer to the Additional Plat(s).

Section 38. "PROPERTY" shall initially mean and refer to that certain real property described in Exhibit "A" attached hereto and made a part hereof, and thereafter, as applicable, to such additions thereto as may be brought within the jurisdiction of this Declaration and/or the Association; provided, however, Declarant reserves the right to withdraw from the provisions hereof such portion or portions of the Property as Declarant from time to time elects, upon the execution by Declarant of a Supplemental Declaration.

Section 39. "SUPPLEMENTAL DECLARATION" shall mean any instrument executed by Declarant which, when recorded in the Public Records of the County, shall: (a) commit Additional Property, if any (provided Declarant is the owner thereof) to the provisions of this Declaration, and shall be the only method of committing such property to the provisions of this Declaration, (b) withdraw any portion(s) of the Property from the lien and effect of this Declaration, (c) designate portion(s) of the Property or Additional Property to be or not to be Common Area hereunder, and/or (d) be for such other purposes as are provided in this Declaration. A Supplemental Declaration may also be used to impose additional covenants, restrictions, reservations, regulations, burdens, liens and easements upon the Property or any portion thereof and/or remove any of same. The Association shall join in the execution of any Supplemental Declaration at the request of Declarant but such joinder shall not be required to make any such Supplemental Declaration effective. The Owners shall not be required to join in the execution of any Supplemental Declaration but shall nevertheless be bound thereby.

Section 40. "SURFACE WATER AND STORM WATER MANAGEMENT SYSTEM" shall mean a system of structures and other improvements, including, without limitation, control structures, culverts, headwalls and/or swales, which is designed and constructed or installed to collect and convey rain water runoff from Kingsley Creek to the water management tracts within the Property, and shall also mean the stormwater management system. The Surface Water and Storm Water Management System is Common Area and is located upon and designed to serve the Property.

Section 41. "TURNOVER DATE" shall mean the date upon which the Members shall assume control of the Association and elect the Board, as more particularly described in the Bylaws.

Section 42. "WATER MANAGEMENT DISTRICT" shall mean the St. Johns River Water Management District.

Section 43. "WATER MANAGEMENT DISTRICT PERMIT" shall mean that certain permit issued by the Water Management District under Permit No. 146934-1, as same may be amended, modified or supplemented from time to time. Copies of the Water Management District Permit and any future Water Management District actions shall be maintained by the Association's Registered Agent for the Association's benefit.

## **ARTICLE II**

### **DESCRIPTION OF KINGSLEY CREEK**

Section 1. GENERAL PLAN OF DEVELOPMENT. Kingsley Creek comprises the Property encompassing, or which will encompass, Homes and the Common Area as more particularly defined by this Declaration and, in addition, lands which Declarant may add, but



shall in no way be obligated to add, by one or more Supplemental Declaration(s). The Property initially declared hereunder is described in Exhibit "A" attached hereto. It is presently anticipated that Kingsley Creek will contain single-family Homes and the Common Area described herein. Notwithstanding the foregoing, however, Declarant reserves the right to modify its plan of development of Kingsley Creek (including, without limitation, the right to modify the site plan of Kingsley Creek and the right to change the Home product types and the number of Homes to be constructed within Kingsley Creek) and/or the right to add land to Kingsley Creek or to withdraw land from Kingsley Creek in its sole and absolute discretion. Therefore, in the event Declarant modifies its plan of development of Kingsley Creek, adds land to Kingsley Creek and/or withdraws land from Kingsley Creek, the number of Lots, the layout of Lots and/or the size of Lots within Kingsley Creek may change and as a result of any changes in the number of Lots, the Assessments required to be paid pursuant to this Declaration may increase or decrease as appropriate. Declarant's general plan of development further contemplates that such Homes shall be whatever types of structures Declarant may choose which are in conformance with this Declaration. Declarant's general plan of development of Kingsley Creek may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to Kingsley Creek, as well as any changes thereto.

Additional Property will become a part of Kingsley Creek if, and only if, Declarant in its sole discretion adds Additional Property to Kingsley Creek by recording a Supplemental Declaration to such effect. Declarant hereby reserves an easement for ingress and egress and for utilities and drainage over, under and across the Property for the benefit of any Additional Property; provided, however, no such easement may be granted upon any portion of the Property that lies directly beneath a Home.

Declarant expressly reserves the right as to the Property to (i) commence construction and development of the Property if and when Declarant desires; (ii) develop the Property (including, without limitation the recreational facilities and amenities), upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the plan of development of the Property (including, without limitation, the right to modify the site plan and/or master plan of Kingsley Creek, the right to add recreational facilities and amenities, and the right to change the Home product types and number of Homes to be constructed within Kingsley Creek) in such manner as Declarant, in its sole discretion, chooses. Nothing contained herein shall be construed as obligating Declarant to construct Kingsley Creek according to the present plan of development or as obligating Declarant to declare any Additional Property to be Property.

Section 2. COMMON AREA. The Common Area shall consist of: (a) the property indicated on the Plat as Common Area or as property reserved for or dedicated to the Association, and (b) any other property designated as Common Area in this Declaration or any Supplemental Declaration. The Common Area shall be used for recreational and social purposes as well as other proper purposes by the Association and the Owners and their family members, guests, invitees and tenants in accordance with the Kingsley Creek Documents. Common Area may not be altered, modified, removed or replaced by Owners or their family members, guests, invitees or tenants.

The portions of Kingsley Creek described in this Section 2 shall constitute Common Area and shall be used solely in accordance with the covenants, restrictions, reservations, regulations and burdens imposed upon the Common Area including, without limitation, the following:

A. Roadways. The "Roadways" are those portions of Kingsley Creek designated on the Plat as Sandown Drive, Helena Lane, Raintree Court and Good Wood Drive, as well as public areas shown thereon and which are reserved for and dedicated to the public for the uses and purposes stated on the Plat. The Roadway shall be maintained, administered, operated and ultimately owned by the Association. Notwithstanding anything to the contrary, each Owner shall be responsible for the maintenance, repair and replacement of the driveway serving his or her Lot, including that portion of the driveway in the Roadway, if any, unless the driveway was damaged by the Association in the fulfillment of its obligations and duties under this Declaration. The Association shall be responsible for the maintenance, repair and replacement of the common sidewalks within the Property. Any paved pathway leading from the street or driveway to the Home shall be maintained, repaired and replaced by the Owner of the Home to which such paved pathway leads.

B. Entranceway(s), if any. Kingsley Creek may include entranceway(s) and monuments installed by Declarant or the Association. Such entranceway(s) and/or monuments shall be deemed Common Area and shall be administered, maintained, operated, repaired and/or replaced by the Association and the expense thereof shall be included as an Operating Expense.

Declarant, its successors, assigns, employees, contractors, sub-contractors and potential purchasers shall have access to the Property at all times and the Association shall not impede any such access. Declarant hereby reserves and grants an easement in favor of itself, its successors and/or assigns throughout all portions of Kingsley Creek as may be necessary for the purpose of accessing the Property during the Development and Sale Period and no Owner or the Association shall do any act which may interfere with Declarant having access through the entranceway(s). Declarant hereby reserves and grants an easement in favor of the Association throughout all portions of Kingsley Creek as may be necessary for the purpose of accessing the Property, maintaining and administering the entranceway(s), and no Owner shall do any act which may interfere with the performance by the Association of its obligations hereunder or to interfere with access to through the entranceway(s).

C. Landscape Buffer Tracts. The "Landscape Buffer Tracts" are those portions of Kingsley Creek shown on the Plat as Tracts 7 and 8, which are reserved for or dedicated to the Association, shall be Common Area and are to be used, kept and maintained as such by the Association and the Owners within Kingsley Creek, their family members, guests, invitees and tenants, in accordance with the provisions of this Declaration. Such Landscape Buffer Tracts shall be owned by the Association, and shall be maintained, administered and operated by the Association in accordance with the provisions of this Declaration and the requirements of the appropriate governmental agencies. No Owner may install landscaping or any other Improvements in such Landscape Buffer Tracts.

D. Open Space Tracts. The "Open Space Tracts" are those portions of Kingsley Creek shown on the Plat as Tracts 11, 13 and 29, and which are reserved for or dedicated to the Association, shall be Common Area and are to be used, kept and maintained as such by the Association and the Owners within Kingsley Creek, their family members, guests, invitees and tenants, in accordance with the provisions of this Declaration. Such Open Space Tracts are owned by the Association, and shall be maintained, administered and operated by the Association in accordance with the provisions of this Declaration and the requirements of the

appropriate governmental agencies. No Owner may install landscaping or any other Improvements in such Open Space Tracts.

E. Park/Amenity Center Tract. Kingsley Creek is planned to contain a Park/Amenity Center Tract. The Park/Amenity Center Tract is that portion of Kingsley Creek designated on the Plat as Tract 30 and which is reserved for or dedicated to the Association and shall be used for recreational purposes by the Association, and the Owners and their family members, guests, invitees and tenants. Such portions, if any, of the Park/Amenity Center Tract upon which Declarant has constructed or hereafter constructs Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located or to be located thereon. The Park/Amenity Center Tract shall always be kept and maintained by the Association for recreational uses or beautification and attendant uses (e.g., parking spaces within any of the Park/Amenity Center Tract shall be used for proper purposes by those using the recreational facilities but only while using such facilities), and shall be used for such purposes and not for residential, commercial or industrial construction of any kind. The Park/Amenity Center Tract shall be maintained, administered, operated and ultimately owned by the Association.

Declarant reserves the right, but shall not be obligated, to construct additional recreational facilities upon the Park/Amenity Center Tract, and to modify or reduce the facilities and amenities planned for the Park/Amenity Center Tract. Declarant, at its sole discretion, hereby expressly reserves the right to reduce and/or modify the planned facilities, and to determine the timing of construction of the recreational facilities and installation of amenities. The decision as to whether to construct additional recreational facilities or amenities, to modify the planned facilities or amenities, to reduce the planned facilities, and/or the timing of the construction thereof, shall be in the sole discretion of Declarant.

Notwithstanding anything contained herein, neither Declarant nor the Association makes any representations whatsoever to commence, complete or construct any of the recreational facilities within any specific time period.

Declarant, its successors and/or assigns, shall have access to the Park/Amenity Center Tract at all times during the Development and Sale Period and the Association shall not impede any such access, and no Owner nor the Association shall do any act which may interfere with Declarant having access to the Park/Amenity Center Tract. Until such time as Declarant no longer owns any portion of the Property, Declarant shall be allowed to use the Park/Amenity Center Tract for sales meetings and sales related functions and for other business purposes or functions Declarant determines in its sole discretion.

F. Surface Water and Storm Water Management System Tracts and Wetlands and Vegetative Natural Buffer Tracts. The "Surface Water and Storm Water Management System Tracts" are those portions of the Property designated on the Plat as Tracts 5, 9, 15 and 16 and the Wetlands and Vegetative Natural Buffer Tracts are those portions of the Property designated on the Plat as Tracts 6 and 14, are to be used, kept and maintained as such by Declarant, the Association, and the Owners within Kingsley Creek, their family members, guests, invitees and tenants, in accordance with the provisions of this Declaration. The Surface Water and Storm Water Management System and Wetlands and Vegetative Natural Buffer Tracts shall be part of the Common Area. Declarant has caused or will cause to be constructed

within the geographic areas shown on a Plat, drainage canals, lakes and drainage retention/detention ponds. These drainage structures are part of the overall drainage plan for Kingsley Creek. Declarant may grant easements encumbering all or part of the Common Area, and/or portions of the Lots conveyed to Owners to preserve the natural condition of wetlands, uplands or buffer areas. The Association shall have unobstructed ingress to and egress from all retention/detention ponds and lakes and Wetlands and Vegetative Natural Buffer Tracts as well as all easements at all reasonable times to maintain said ponds, lakes, wetlands, buffers and easements in a manner consistent with its responsibilities. No Owner shall cause or permit any interference with such access and maintenance. No Owner shall utilize, in any way, any of the Kingsley Creek drainage facilities without the express prior written consent of Declarant and the Association. Further, where an Owner's Lot is contiguous to any of the drainage facilities or the of Kingsley Creek, such Owner shall keep his or her Lot so that the utilization of such Owner's Lot will not adversely affect the drainage facilities and structures and so as to be aesthetically compatible with such drainage facilities and structures.

The Association shall maintain, as part of the Common Area, drainage structures, the Surface Water and Storm Water Management System and Wetlands and Vegetative Natural Buffer Tracts and other environmentally significant Common Area in accordance with the County-approved resource management plan and the County's Land Development Regulations, and comply with conditions of the Water Management District Permit issued for the Property attached hereto as Exhibit "D" and incorporated herein by reference, and any permits issued by the Department of Environmental Protection or U.S. Army Corps of Engineers for the Surface Water and Storm Water Management System, or other environmentally significant Common Area, including, without limitation, perpetual maintenance of all signage required by the permit. All such areas shall be defined, identified, and described as such on all Plats of the Property, or may be granted by separate easements recorded in the public records of the County. No Owner shall (i) undertake or perform any activity in the Surface Water and Storm Water Management System Tracts and Wetlands and Vegetative Natural Buffer Tracts, or (ii) remove native non-nuisance vegetation that becomes established within the wet detention ponds or the Wetlands and Vegetative Natural Buffer Tracts without prior written consent of the Board of Directors of the Association, the County, and the applicable permitting agencies. Prohibited activities within such areas include removal of native vegetation (by dredging, application of herbicide or cutting); excavation; placement or dumping of soil, trash, land clearing or landscaping debris; and construction or maintenance of any building, residence, or structure. It shall be the responsibility of all Owners to comply with the construction plans for the Surface Water and Storm Water Management System approved by the applicable permitting agencies. The Association shall, when requested by Declarant, accept transfer of Water Management District Permit applicable to Kingsley Creek. The conditions of the Water Management District Permit include monitoring and record keeping schedules and maintenance. The "Recorded Notice of Environmental Resource Permit", Form No. 62-330.090(1), has been recorded in Official Records Book 2080, Page 1460, of the Public Records of Nassau County, Florida. A copy of the Water Management District Permit is attached hereto and incorporated herein by this reference as Exhibit "D". The Registered Agent for the Association shall maintain copies of all permitting actions for the benefit of the Association.

Within the Surface Water and Storm Water Management System Tracts and Wetlands and Vegetative Natural Buffer Tracts, no Member shall remove any native vegetation (including cattails) that may become established therein. The prohibition against removal of

native vegetation shall not be construed to prevent the removal of exotic vegetation in accordance with a governmentally approved maintenance plan. Inquiries regarding provisions of this Article should be addressed to the Water Management District.

Water quality data for the water discharged from Kingsley Creek or into the surface waters of the state shall be submitted to the Water Management District as required. Parameters to be monitored may include those listed in Chapter 17-3 of the Florida Administrative Code. Analyses shall be performed according to procedures outlined in the current edition of Standard Methods for the Examination of Water and Wastewater by American Public Health Association of Methods for Chemical Analyses of Water and Wastes by the U.S. Environmental Protection Agency. If water quality data are required, the Association shall provide data as required on volume of water discharged, including total volume discharged during the days of sampling and total monthly discharge from Kingsley Creek or into surface waters of the state.

The Association agrees to operate and maintain the system and has sufficient ownership so that it has control over all water management facilities authorized for the Property.

The Association shall hold and save the Water Management District harmless from any and all damages, claims, or liabilities which may arise by reason of the operation, maintenance or use of any facility authorized by the permit.

The Association shall at all times properly operate and maintain the systems of treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the permit, as required by the Water Management District. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by the Water Management District rules.

The Association specifically agrees to allow authorized Water Management District personnel, upon presentation of credentials or other documents as may be required by law, access to Kingsley Creek, at reasonable times, where the permitted activity is located or conducted; for the purposes of inspection and testing to determine compliance with the Water Management District permit and the Water Management District regulations, such as:

- a. Having access to and copying any records that must be kept under the conditions of the Water Management District Permit; and
- b. Inspecting the facility, equipment, practices, or operations regulated or required under the Water Management District Permit; and
- c. Sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with the Water Management District Permit or Water Management District rules; and
- d. Gathering of data and information.

Reasonable time may depend on the nature of the concern being investigated.

Establishment and survival of littoral areas provided for storm water quality treatment in wet detention systems shall be assured by proper and continuing maintenance procedures designed to promote viable wetlands plant growth of natural diversity and character. Following as-built approval, perpetual maintenance shall be provided for the permitted system.

The Association shall submit inspection reports, if required by the Water Management District, in the form required by the Water Management District, in accordance with the Water Management District Permit application.

In the event of casualty, it shall be the responsibility of each Owner within Kingsley Creek at the time of reconstruction of a building, residence, or structure, to comply with the construction plans for the Surface Water and Storm Water Management System pursuant to the Water Management District Permit approved and on file with the Water Management District.

Owners are hereby notified that certain Lots may include, or be adjacent to wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements. It is the Owner's responsibility not to remove native vegetation (including cattails) that becomes established within the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements abutting the Owner's Lot. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp. Owners should address any question regarding authorized activities within the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements to the Water Management District. The Water Management District may authorize removal of certain exotic or nuisance vegetation upon application by Owners or the Association.

No Owner of a Lot within Kingsley Creek may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, wetland mitigation areas, buffer areas, upland conservation areas, wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated drainage or conservation easements described in the approved permit and recorded Plats of the Property, unless prior approval is received from the Water Management District.

Each Owner of a Lot within Kingsley Creek at the time of construction, and with the Committee's approval of construction, of a building, residence, or structure shall comply with the construction plans for the Surface Water and Storm Water Management System approved and on file with the Water Management District.

In the event of the termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water and Storm Water Management System must be transferred to and accepted by one of the entities identified in sections 12.3.1(a) through (f) of the Environmental Resource Permit Applicant's Handbook Volume I ("ERP Handbook"), who has the powers listed in section 12.3.4.(b) 1 through 8 of the ERP Handbook, the covenants and restrictions required in section 12.3.4(c) 1 through 9 of the ERP Handbook, and the ability to accept responsibility for the operation and maintenance of the system described in Section 12.3.4(d) 1 or 2 of the ERP Handbook, and be approved by the Water Management District prior to such termination, dissolution or liquidation.

The Surface Water and Storm Water Management System is designed to provide drainage for the Property. Neither the Association nor Declarant shall have any liability whatsoever to any Owner for claims for damages alleged by an Owner due to water levels being below or above normal or otherwise unacceptable to the Owner. Recreational use and aesthetic appearance is secondary to the intended drainage function, and during periods of prolonged drought or other unusual weather events water levels may fluctuate, and neither the Association nor Declarant shall have any liability for such conditions.

G. Buffers. The "Buffers" are those portions of the Property which run along the outer perimeter of the Property, or adjacent to certain roads. The Buffers shall be maintained by the Association in accordance with the provisions of this Declaration and the requirements of the appropriate governmental authorities. In order to preserve the aesthetic image of Kingsley Creek and to help maximize the Owners' use and enjoyment thereof, no Improvements, landscaping or other additions and/or deletions are permitted within the Buffers without the prior written consent of the Association and appropriate governmental agencies, excepting any Improvements, landscaping or other additions made or installed by Declarant and/or the Association, such as, but not limited to, berms, landscaping, fences, sod, signs, walkways, walls and light poles.

H. Irrigation System(s). The Association shall be responsible for all costs associated with the irrigation system(s) serving the Common Area within Kingsley Creek as described in Article VI, Section 7 hereof.

I. Right to Add Additional Improvements. Such portions of the Common Area upon which Declarant has constructed, or Declarant or the Association hereafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located, or to be located, thereon. Declarant and the Association reserve the right, but shall not be obligated, to construct additional facilities upon the Common Area. Declarant's decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of Declarant, and the Association's decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of the Association.

Section 3. STREET LIGHTS. The "Street Lights" and any associated facilities placed within the Property and any street lights and associated facilities placed within rights of way by agreement between Declarant or the Association and Florida Power and Light Company, will be repaired, replaced, relocated, maintained and owned by Florida Power and Light Company.

Section 4. COSTS. All costs associated with operating, maintaining, repairing and replacing the Common Area shall be the obligation of the Association. The Common Area shall be conveyed to the Association in accordance with the provisions of Article III, Section 6 hereof.

Section 5. PRIVATE USE. For the term of this Declaration, the Common Area is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Association, the Owners, and their family members, guests, invitees and tenants, but only in accordance with this Declaration.

A. Notwithstanding anything in this Declaration to the contrary, however, Declarant hereby expressly reserves for itself and its affiliates the right to use the Common Area for such period of time as Declarant determines to be necessary in connection with the sale and marketing by Declarant and/or its affiliates of Homes in Kingsley Creek and/or in any other communities developed or to be developed by Declarant or its affiliates, including, but not limited to, the holding of sales and marketing meetings, the use of "model row(s)" if one or more, the use of design centers, the use of service and construction trailers, and engaging in sales promotions and related sales and marketing activities for the general public.

B. Except to the extent provided herein and elsewhere in the Kingsley Creek Documents, the Common Area shall be for the sole and exclusive use of the Owners and residents of Kingsley Creek and their family members, guests, invitees and tenants.

C. The administration, management, operation and maintenance of the Common Area shall be the responsibility of the Association, as provided herein and in the Kingsley Creek Documents.

D. The right to use the Common Area shall be subject to the rules and regulations established by the Association as the same may be amended from time to time.

**Section 6. MODEL ROW.** Declarant hereby reserves the right to construct and/or operate a "model row(s)" in Kingsley Creek that contains models for Kingsley Creek. The "model row(s)" may also contain parking, landscaping and fencing as Declarant may determine in its sole discretion. In the event that Declarant and/or any of Declarant's affiliates constructs a "model row(s)" in Kingsley Creek, such "model row(s)" may be used for such period of time that Declarant and/or any of Declarant's affiliates determine to be necessary in its or their sole discretion. Each Owner, by acceptance of a deed or title to a Lot in Kingsley Creek, acknowledges and agrees that: (i) Declarant and/or any of Declarant's affiliates have a right to construct and/or operate a "model row(s)"; (ii) Declarant and/or any of Declarant's affiliates have an easement over Kingsley Creek for ingress and egress to and from the "model row(s)" and to use and show the models to prospective purchasers in Kingsley Creek or other communities being developed by Declarant and/or any of Declarant's affiliates, for so long as such "model row(s)" exists; and (iii) Owner shall not interfere in any manner whatsoever in the sales process by Declarant and/or any of Declarant's affiliates, including, without limitation, the carrying of signs, the posting of signs on Lots or Homes, or other types of demonstrations in or around Kingsley Creek or any public right-of-way adjacent to the Property. Each Owner acknowledges and agrees that any such activities interfere with the quiet enjoyment of Kingsley Creek by the other Owners, are detrimental to the value of the Homes within Kingsley Creek, and interfere with Declarant's and/or its affiliates' ability to conduct their business.

**Section 7. COMMUNITY SYSTEMS.** Declarant shall have the right, but not the obligation, to convey, transfer, sell or assign all or any portion of the Community Systems located within the Property, or all or any portion of the rights, duties or obligations with respect thereto to the Association or any other person or entity (including an Owner, as to any portion of a Community System located on/in such Owner's Lot). Without limiting the generality of this Section 7, if and when any of the aforesaid persons and/or entities receive such a conveyance, sale, transfer or assignment, such person and/or entity shall automatically be deemed vested with such rights of Declarant with regard thereto as are assigned by Declarant in connection therewith; provided,



however, that if the Association is the applicable entity, then any Community Systems or portions thereof shall be deemed Common Area hereunder and the Association's rights, duties and obligations with respect thereto shall be the same as those applicable to other Common Area unless otherwise provided by Declarant. Any conveyance, transfer, sale or assignment made by Declarant pursuant to this Section 7: (i) may be made with or without consideration, (ii) shall not require the consent or approval of the Association or any Owner, and (iii) if made to the Association, shall be deemed to have been automatically accepted (with all rights, duties, obligations and liabilities with respect thereto being deemed to have been automatically assumed). In recognition of the intended increased effectiveness and potentially reduced installation and maintenance costs and user fees arising from the connection of all Lots and Common Area within Kingsley Creek to the applicable Community Systems, each Owner and occupant of a Home shall, by virtue of the acceptance of a deed or title to a Lot or other right of occupancy thereof, be deemed to have consented to and ratified any and all agreements to which the Association is a party which is based upon (in terms of pricing structure or otherwise) a requirement that all Lots be so connected. The foregoing shall not, however, prohibit the Association or Community Systems provider from making exceptions to any such 100% use requirement in its reasonable discretion. WITH RESPECT TO COMMUNITY SYSTEMS, ALL PERSONS ARE REFERRED TO ARTICLE VI, SECTION 6 HEREOF, WHICH SHALL AT ALL TIMES APPLY TO THIS SECTION.

**ARTICLE III**  
**ADDITIONS TO AND WITHDRAWALS FROM THE PROPERTY;**  
**CONVEYANCE OF COMMON AREA**

**Section 1. ADDITIONS.** Declarant may from time to time, in its sole discretion, by recording appropriate Supplemental Declaration(s) in the Public Records of the County, add any Additional Property to the Property governed by this Declaration, and may declare all or part of such Additional Property (including any Improvements thereon) to be Lots or Common Area. Upon the recording of a Supplemental Declaration, the property described therein shall be deemed part of the Property as if it were originally included therein and subject to this Declaration. Any such Supplemental Declaration may submit any Additional Property to such modifications of the covenants, restrictions, reservations, regulations, burdens, liens and/or easements contained in this Declaration as may be necessary or convenient to reflect or adapt to any changes in circumstances or differences in the character of any such Additional Property. Nothing contained in this Section 1 shall be construed to require the joinder by or consent of the Owners or the Association to any such Supplemental Declaration; provided, however, the Association shall join in the execution of any such Supplemental Declaration at the request of Declarant. In addition, nothing herein shall require Declarant to add any Additional Property.

**Section 2. DESIGNATION OF ADDITIONAL COMMON AREA.** Declarant may, from time to time, by recording Supplemental Declarations in the County, designate additional portions of the then existing Property owned by it to be Common Area.

**Section 3. DISCLAIMER OF IMPLICATION.** Only the real property described in Exhibit "A" hereto is submitted and declared as the Property subject to this Declaration. Unless and until a Supplemental Declaration is recorded in the fashion required pursuant to this Declaration, no other property shall in any way be deemed to constitute a portion of the Property or be

affected by the covenants, restrictions, regulations, burdens, liens and easements expressly binding the Property as provided by the terms of this Declaration.

**Section 4. ABSENCE OF OBLIGATION.** Nothing in this Declaration shall be construed to require Declarant to add any Additional Property to the Property encumbered by this Declaration or to require Declarant to declare any portion of any properties added to the Property to be Common Area, nor shall anything in this Declaration be construed to require Declarant to declare any portion or portions of the existing Property as Common Area, except to the extent herein specifically provided.

**Section 5. WITHDRAWAL.** Notwithstanding anything herein to the contrary, Declarant reserves the absolute right at any time to withdraw portions of the Property from the provisions of this Declaration by recording an appropriate Supplemental Declaration in the County. Any such Supplemental Declaration must be executed by Declarant, the Owner of each Lot located on the Property sought to be withdrawn (if any) and each holder of an Institutional Mortgage on a Lot located on the Property sought to be withdrawn (if any), in order to be effective. Nothing contained in this Section shall be construed to require the joinder by or consent of the Owners of Lots on the portion of the Property which is not withdrawn by such Supplemental Declaration, such Owners' Institutional Mortgagees holding mortgages on Lots on the portion of the Property which is not withdrawn by such Supplemental Declaration, or the Association.

**Section 6. TITLE TO THE COMMON AREA.** To the extent herein provided, the Common Area is hereby dedicated to the joint and several uses in common of the Owners of all Lots that may, from time to time, constitute part of the Property. Declarant will convey to the Association on or prior to the Turnover Date the fee simple title to the Common Area by quitclaim deed.

The Association hereby agrees to accept the Common Area and the personal property and Improvements appurtenant thereto in "AS IS" "WHERE IS" condition, without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Common Area or any portions thereof, and the personal property and Improvements appurtenant thereto being conveyed. IN THAT REGARD, THE ASSOCIATION AND EACH OWNER KNOWINGLY AND VOLUNTARILY RELINQUISHES AND WAIVES, AND DECLARANT EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED) AS TO THE COMMON AREA AND PERSONAL PROPERTY AND IMPROVEMENTS WHETHER ARISING FROM CUSTOM, USAGE OR TRADE, COURSE OF CONDUCT, COURSE OF DEALING, CASE LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR ANY IMPLIED WARRANTY OF FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE.

TO THE EXTENT THAT BY LAW OR OTHERWISE ANY OF THE WARRANTIES RELINQUISHED, WAIVED OR DISCLAIMED CANNOT BE RELINQUISHED, WAIVED OR DISCLAIMED, IN WHOLE OR IN PART, ALL SECONDARY, INCIDENTAL AND CONSEQUENTIAL DAMAGES ARE SPECIFICALLY EXCLUDED AND DISCLAIMED (INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM CLAIMS OF PROPERTY DAMAGE, LOSS OF USE, PERSONAL INJURY OR EMOTIONAL DISTRESS).

The Association and each Owner acknowledges and agrees that Declarant has or will install trees, shrubs, plants and other landscaping that meets or exceeds the requirements of the County and that from the time of such initial installation, such trees, shrubs, plants and other landscaping may mature, expand, decay and/or die from time to time. The Association shall have no claim whatsoever against Declarant and hereby releases any and all claims against Declarant for any trees, shrubs, plants and other landscaping that has decayed or died regardless of the reasons therefor so long as all of the remaining trees, shrubs, plants and other landscaping, when looked at as a whole, exceed the minimum requirements of the County.

The Association shall accept the conveyance of the Common Area (together with the personal property and Improvements appurtenant thereto) and shall pay all costs of such conveyance including documentary stamps and other taxes of conveyance, recording charges, title insurance expenses and insurance fees. The conveyance shall not, however, impair in any way Declarant's rights and easements as set forth in this Declaration.

Commencing upon the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Area in a continuous and satisfactory manner without cost to the general taxpayers of the County. The Association shall be responsible for the payment of real estate taxes, if any, against the Common Area including taxes on any Improvements and any personal property thereon accruing from and after the date this Declaration is recorded. The Association and the Owners in Kingsley Creek shall receive no discount in property taxes or any other tax or fee because of the retention or private ownership of the Common Area.

The Owners (including Declarant as to Lots owned by it) shall have no personal liability for any damages: (i) for which the Association is legally liable, or (ii) arising out of, relating to, or in connection with the existence or use of any Common Area, or any other property required to be maintained by the Association.

#### **ARTICLE IV** **OWNERS' PROPERTY RIGHTS**

**Section 1. OWNERS' EASEMENTS OF ENJOYMENT.** Every Owner and family member, guest, tenant, agent or invitee of an Owner shall, except as may otherwise be provided in this Declaration, have a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of Common Area within the Property (except as may otherwise be specifically provided elsewhere in this Declaration), in common with all other Owners, their family members, guests, tenants, agents and invitees, which easement shall be appurtenant to, and shall pass with a deed and/or title to, each Owner's Lot. This right shall be subject to the following conditions and limitations:

A. The right and duty of the Association to reasonably limit the number of guests, visitors, invitees or tenants of an Owner using the Common Area.

B. The right and duty of the Association to levy Assessments against each Lot for the purpose of operating, maintaining, repairing and replacing the Common Area and Improvements thereon in compliance with the provisions of this Declaration and the restrictions on portions of the Property from time to time recorded by Declarant.

C. The right of the Association to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the use of the Common Area.

D. The right of the Association to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the Lots for the purposes of enhancing the aesthetic uniformity of the Property.

E. The right of the Association in accordance with its Articles, Bylaws, and this Declaration, with the vote or written assent of two-thirds (2/3) of the total voting interests, except as provided to the contrary in this Declaration, to borrow money for the purpose of improving the Common Area and Improvements thereon, and, in aid thereof, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners in the Common Area. Notwithstanding the foregoing, such two-thirds (2/3) vote or written assent of total voting interests shall not be required for such Improvements made for the sole purpose of preservation of, or prevention of damage to Common Area.

F. The right of the Association to dedicate, release, alienate, or transfer all or any part of the Common Area owned by the Association to any public agency, authority, or utility and to grant any covenant, restriction or reservation against the Common Area in favor of any such public agency, authority, or utility; provided, however, no such dedication, release, alienation, or transfer shall be effective unless Members entitled to cast two-thirds (2/3) of the total voting interests agree to such dedication, release, alienation or transfer.

G. The right of the Association, without any vote of the Owners, to grant easements and rights-of-way, where necessary or desirable, for utilities, water and sewer facilities, cable television, and other services over the Common Area to serve the Common Area and other portions of the Property without vote of the Owners.

H. The right of Declarant, Declarant's affiliates, and each of their respective officers, directors, partners, employees, agents, licensees, and invitees to the nonexclusive use of the Common Area and the Improvements thereon, without charge, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes, and to grant (without consent of the Association and/or vote of the Owners) easements and rights-of-way as provided in this Declaration.

I. The right of the Association, by action of the Board, to reconstruct, replace, or refinish any Improvement or portion thereof upon the Common Area, in accordance with the original design, finish, or standard of construction of such Improvement.

J. The right, however not the duty, of the Association to replace destroyed trees or other vegetation and plant trees, shrubs, and ground cover upon any portion of the Common Area.

K. The right, however not the duty, of the Association by action of the Board to seek the vacation of publicly dedicated streets upon the Property.

L. The right, however not the duty, of the Association, following a tropical storm, hurricane or other Act of God, to upright and/or remove any fallen or dislodged trees on: (i) any Lot, and/or (ii) any grassed areas located between the front and/or side(s) of such Owner's Lot and the street. The Owner of said Lot(s) shall be required to reimburse the Association for the costs and expenses incurred by the Association in connection with the uprighting and/or removal of any fallen or dislodged trees. In that regard, the Association may levy a Special Assessment against such Lot(s) in connection with such costs and expenses, to the exclusion of all other Owners, without the need for obtaining the affirmative assent of at least two-thirds (2/3) of all Members as set forth in Section 3 of Article VII.

M. The easements provided elsewhere in this Declaration and designated on the Plat, including, but not limited to, those set forth in this Article IV.

N. The right of the Association to provide for the maintenance, preservation and architectural control of Lots, Improvements and other properties as set forth in this Declaration.

O. The right of the Association and Declarant and their respective employees, agents, licensees, and invitees to come upon the Property (including, without limitation, Common Area as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient for the Association and/or Declarant to carry on their respective duties, obligations, responsibilities under, and all other work referred to in, this Declaration (including, without limitation, Declarant's development and construction of Kingsley Creek and Homes therein).

P. The right of the Association to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the use of the Common Area.

Section 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, such Owner's right of enjoyment to the Common Area to the members of such Owner's family, or to the tenants who reside in such Owner's Home, subject to this Declaration, all of the rules and regulations presently in effect and any which may become effective in the future, and subject further to reasonable regulation by the Board.

Section 3. RECOGNITION OF EASEMENTS. Each Owner, by acceptance of a deed or other instrument of conveyance, recognizes and consents to the easements reserved and/or granted with respect to the Property under this Declaration.

Section 4. EASEMENTS FOR VEHICULAR TRAFFIC. In addition to the general easements for use of the Common Area reserved herein, there shall be, and Declarant hereby reserves, grants, and covenants for itself and all future Owners, their family members, guests, invitees and tenants, Institutional Mortgagees of the Property (or portions thereof), and to the Association, that all of the foregoing shall have a perpetual nonexclusive easement for vehicular traffic over all streets within or upon the Property dedicated to the public use (as well as alcoves, cul de sacs, and other paved areas abutting or serving the same). There is hereby created, granted and reserved for the benefit of the County and other public service and emergency service providers, a non-exclusive easement over, under and through the private roads and alleys, if any, for vehicular and pedestrian ingress and egress access for the purpose of

providing public and emergency services to the Common Area and Lots, including but not limited to, postal, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services.

Section 5. ACCESS EASEMENT. Declarant hereby reserves perpetual, nonexclusive easements of ingress and egress over and across: (i) any and all streets within or upon the Property dedicated to the public use (as well as alcoves, cul de sacs, and other private, paved areas, if any, abutting or serving the same), (ii) any private roads and driveways within or upon the Property, and (iii) all other portions of the Property, any of the foregoing of which are necessary or convenient for enabling Declarant to carry on and complete the work and/or exercise its rights referred to in this Declaration. All of the foregoing easements shall be for the use of Declarant, Declarant's employees, contractors and agents, Declarant's successors and assigns, Owners, and the respective tenants, employees, agents, invitees, and licensees of Declarant and Owners.

Section 6. GRANT AND RESERVATION OF EASEMENTS. Declarant hereby reserves and grants the following perpetual, nonexclusive easements over and across the Property as covenants running with the Property for the benefit of the Owners, the Association, Declarant, and the County as hereinafter specified for the following purposes:

A. Utility and Services Easements. All of the Property shall be subject to an easement or easements to provide for: (i) installation, service, repair and maintenance of the equipment required to provide utility services other than Community Systems to the Common Area and the Lots, including, but not limited to, power, lights, telephone, gas, water, sewer, irrigation and drainage, and (ii) governmental services, including, but not limited to, police, fire, mail, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

B. Easement for Encroachment and Sidewalks. All of the Property shall be subject to an easement or easements for encroachment in favor of each Owner in the event any portion of such Owner's Home or appurtenant Improvements installed by Declarant such as stucco, a fence or underground footer now or hereafter encroaches upon any of the Lots as a result of minor inaccuracies in survey or construction, by design, or due to settlement or movement. Such encroaching Improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvements in favor of the Owner thereof or such Owner's designees.

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. Such easement shall permit encroachments between Lots only by a structure or fixture (i) which has been built by Declarant, a Builder or approved in accordance with Article VIII of this Declaration, or (ii) which is unintentionally constructed on another's property. An encroachment easement between Lots shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement. All Lots shall be subject to an easement for any sidewalks placed upon such Lots by Declarant or a Builder, if any.

C. Easement to Enter Upon Lots. An easement or easements for ingress and egress in favor of the Association, including the Board or the designee of the Board, to enter upon the Lots for the purposes of fulfilling its duties and responsibilities of maintenance and/or repair in accordance with the Kingsley Creek Documents, including, by way of example, the making of such repairs, maintenance or reconstruction as are necessary for the Common Area, as required herein.

D. Easement Over Common Area. An easement of enjoyment in favor of all Owners, their family members, guests, invitees and tenants in and to the Common Area which shall be appurtenant to and shall pass with a deed or title to every Lot in the Property, subject to the following:

(1) the right of the Association to suspend the right to use the Common Area of any Owner and such Owner's family members, guests, invitees and tenants for any period during which Assessments against such Owner's Lot remain unpaid, subject to the notice and hearing provisions in Article X, Section 1 herein;

(2) the right of the Association to grant permits, licenses and easements over the Common Area for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; and

(3) all provisions set forth in the Kingsley Creek Documents.

E. Drainage Easement. An easement over, under and upon all of the Property for the Surface Water and Storm Water Management System and access to install, operate, maintain, alter, inspect, remove, relocate, repair and/or replace the Surface Water and Storm Water Management System. By this easement, the Association and the County shall have the right to enter upon any portion of a Lot which is part of the Surface Water and Storm Water Management System, at a reasonable time and in a reasonable manner, to operate, maintain and repair the Surface Water and Storm Water Management System as required by the Water Management District or the County. No Owner shall install any plantings, landscaping, fences and/or other Improvements whatsoever in, on, over or across any drainage easement.

F. Surface Water and Storm Water Management System Encroachment Easement. An easement for encroachment over, under and upon the drainage easements located within the Lots, as designated on the Plat in favor of: (i) the Owner of the Lot upon which the drainage easement is located for the existence of any driveway and/or sidewalk or irrigation system or part thereof, encroaching over, under and upon such drainage easement, and (ii) the Association for reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair any driveway and/or sidewalk, or irrigation system or part thereof installed or located over, under and upon such drainage easement. In the event the Association and/or the County requires access to any Surface Water and Storm Water Management System improvements within a drainage easement located within a Lot upon which any such driveway and/or sidewalk or irrigation system encroaches, the Association has the obligation, at its own cost and expense, to remove and replace any such encroachment, and to return it to its condition immediately preceding such removal and replacement once access to the drainage easement is no longer required. The flowage easements providing for drainage run

between each of the Lots parallel to and over the side lot line thereof, draining either from the rear to the front, or from the front to the rear of the Lots. In addition, Declarant may, but is not obligated to, convey easements to the owner(s) of adjacent properties (or portions thereof) to provide legal positive outfall for runoff from such adjacent properties.

G. Irrigation Easement. An easement for irrigation over, under and upon the Common Area, in favor of the Association, including, but not limited to, reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate, repair and/or replace the Irrigation System, including, without limitation, irrigation pipes and related equipment. Notwithstanding the foregoing, in the event of any damage caused by an Owner to the Irrigation System or any part thereof (including, without limitation, any portions located upon such Owner's Lot) the cost of the repairs and/or replacement resulting from such damage shall be paid by such Owner.

H. Buffer Easements. An easement or easements in favor of the Association for landscape, buffer, drainage and utility purposes.

Section 7. EASEMENT FOR COMMUNITY SYSTEMS. Notwithstanding anything to the contrary in this Declaration, Declarant and its affiliates and their respective designees shall have a perpetual exclusive easement over, across, upon and under the Common Area and the Lots for the installation, operation, maintenance, repair, replacement, alteration and expansion of Community Systems.

Section 8. ASSIGNMENTS; ADDITIONAL EASEMENTS. The easements reserved hereunder may be assigned by Declarant or the Association in whole or in part to the County or state government or agency thereof, or any duly licensed or franchised public utility, or any other designee of Declarant. Declarant shall have and hereby reserves the right to grant and/or reserve additional easements over, under and upon the Property or portions thereof (including the portion of Lots where no physical structure of the Home is located) which may be necessary or desirable by Declarant. The Owners hereby authorize Declarant and/or the Association to execute, on their behalf and without any further authorization, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Property or portions thereof in accordance with the provisions of this Declaration.

Notwithstanding anything in this Declaration to the contrary, the easement rights granted to or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

## **ARTICLE V**

### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION;**

### **BOARD; DURATION OF THE ASSOCIATION**

Section 1. MEMBERSHIP AND VOTING RIGHTS. Membership in the Association shall be established and terminated as set forth in the Articles and Bylaws. Each Member shall be entitled to the benefit of, and be subject to, the provisions of the Kingsley Creek Documents. The voting rights of the Members shall be as set forth in the Articles and Bylaws.



**Section 2. BOARD.** The Association shall be governed by the Board which shall be appointed, designated or elected, as the case may be, as set forth in the Articles and Bylaws.

**Section 3. DURATION OF ASSOCIATION.** The duration of the Association shall be perpetual, as set forth in the Articles. However, in the event of the termination, dissolution or final liquidation of the Association, the Surface Water and Storm Water Management System will be transferred to and maintained by one of the entities identified in the Water Management District's Environmental Resource Permit Applicant's Handbook Volume I sections 12.3.1(a) through (f), who has the powers listed in sections 12.3.4(b)1 through 8, the covenants and restrictions required in sections 12.3.4(c)1 through 9, and the ability to accept responsibility for the operation and routine custodial maintenance of the Drainage System described in sections 12.3.4(d)1 or 2 prior to its dissolution.

#### **ARTICLE VI**

#### **COVENANT TO PAY ASSESSMENTS; ESTABLISHMENT OF LIENS; COLLECTION OF ASSESSMENTS; COLLECTION BY DECLARANT; CERTAIN RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES**

**Section 1. AFFIRMATIVE COVENANT TO PAY ASSESSMENTS.** In order to: (a) fulfill the terms, provisions, covenants, conditions, restrictions, reservations, regulations, burdens, liens and easements contained in the Kingsley Creek Documents; and (b) maintain, operate and preserve the Common Area for the use, safety, welfare and benefit of the Members and their family members, guests, invitees and tenants, there is hereby imposed upon each Completed Lot and Incomplete Lot, and each Completed Lot Owner and Incomplete Lot Owner, the affirmative covenant and obligation to pay to the Association commencing from and after the first conveyance of a Completed Lot from Declarant as evidenced by the recordation of a deed in the Public Records of the County (in the manner herein set forth) all Assessments, including, but not limited to, the Individual Lot Assessments, Benefited Assessment and Special Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot within the Property, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments in accordance with the provisions of the Kingsley Creek Documents.

The following expenses of the Association are hereby declared to be Operating Expenses which the Association is obligated to assess and collect, and which the Owners are obligated to pay as provided herein or as may be otherwise provided in the Kingsley Creek Documents: (1) any and all taxes and tax liens which may be assessed or levied at any and all times against the Common Area, the Community Systems or against any and all personal property or Improvements thereon; (2) all charges levied for Community Systems or other utilities providing services for the Common Area or to Owners on a bulk basis, such as water, gas, electricity, telephone, cable television, sanitation, sewer and any type of utility or any other type of service charge which is not separately billed to an Owner; (3) the premiums on policies of insurance including, but not limited to, liability and casualty insurance for the Common Area and directors and officers liability insurance for the officers and directors of the Association; (4) any sums necessary for the maintenance and repair of the Common Area and all Improvements located thereon; (5) administrative and operational expenses; (6) fees and other costs of water usage relating to the use, maintenance and repair of the Irrigation System(s) for the Common Area including, without limitation, all consumption and usage fees; (7) all sums necessary for the

maintenance and repair of the Surface Water and Storm Water Management System, including, without limitation, wetland mitigation and monitoring, work within retention areas, drainage structures and drainage easements; and (8) any and all expenses deemed to be Operating Expenses by the Association and/or under this Declaration. In addition, any expense which is required by the Declaration to be the matter of Special Assessment shall not be deemed to be an Operating Expense. Expenses which are required to be the matter of Special Assessment include, by way of example but not by way of limitation, the following: the cost of reconstructing, replacing or improving the Common Area or any portion thereof or Improvements thereon; any casualty loss affecting the Association or the Common Area to the extent such loss exceeds the insurance proceeds, if any, receivable by the Association as a result of such loss; any judgment against the Association (or against a Director or Directors if and to the extent such Director is, or such Directors are, entitled to be indemnified by the Association therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Association as a result of such judgment, or an agreement by the Association (or such Director or Directors to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such Director or Directors) to the extent such settlement exceeds the insurance proceeds, if any, received by the Association as a result of such settlement agreement; and Legal Fees incurred by the Association in connection with litigation (whether incurred for the preparation, filing, prosecution or settlement thereof or otherwise), except Legal Fees incurred by the Association in connection with the collection of Assessments or other charges which Owners are obligated to pay pursuant to the Kingsley Creek Documents or the enforcement of the use and occupancy restrictions contained in the Kingsley Creek Documents, and except Legal Fees incurred for lawsuits not approved pursuant to Section 12 of Article XIII below.

**Section 2. ESTABLISHMENT OF LIENS.** Each Assessment against a Lot, together with Interest thereon and costs of collection, including, but not limited to, Legal Fees, shall be the personal obligation of the Owner of such Lot. Any and all Assessments made by the Association in accordance with the provisions of the Kingsley Creek Documents with Interest thereon and costs of collection, including, but not limited to, Legal Fees, are hereby declared to be a charge and continuing lien upon each Lot against which each such Assessment is made. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of the County of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, in the event an Institutional Mortgagee of record obtains a deed or title to a Lot as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such acquirer of a deed or title, its successors or assigns, shall be liable for Assessments pertaining to such Lot or chargeable to the former Owner except and to the extent limited by the HOA Act.

**Section 3. COLLECTION OF ASSESSMENTS.** In the event any Owner shall fail to pay any Assessment, or installment thereof, charged to such Owner within fifteen (15) days after the same becomes due, then the Association, through its Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

A. To accelerate the entire amount of any Assessment for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

B. To advance on behalf of the Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Owner(s) is (are) liable to the Association and the amount or amounts of monies so advanced, together with Interest and all costs of collection thereof, including, but not limited to, Legal Fees, may thereupon be collected by the Association from the Owner(s), and such advance by the Association shall not waive the default.

C. To file an action in equity to foreclose its lien at any time after the effective date thereof as provided in Section 2 hereinabove. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.

D. To file an action at law to collect said Assessment plus Interest and all costs of collection thereof, including, but not limited to, Legal Fees, without waiving any lien rights or rights of foreclosure of the Association.

E. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of Twenty-Five and No/100 (\$25.00) Dollars or five percent (5%) of the past due amount, whichever is greater, by the Association to defray additional collection costs. This amount is subject to change in the Board's sole discretion.

F. To suspend the use rights of the Owner(s) in default to the Common Area, subject to the Notice and Hearing provisions in Article X, Section 1 herein.

G. To suspend the right of the Owner(s) in default to vote on any matter on which Owners have the right to vote if such Owner is delinquent in payment of assessments for more than ninety (90) days.

H. To collect any monetary obligation, including delinquent Assessments due for the Home from the rents paid by any tenant occupying the Home if the Owner has leased the Home. In such case, the tenant shall remit such delinquent Assessments and other amounts due to the Association directly to the Association upon written notice from the Association that the Owner is delinquent in the payment of its monetary obligations and the tenant may deduct such amounts paid to the Association from the rent due to the Owner. The Association has the right to require Owners to use a lease addendum which provides, among other things, that the tenant will pay the rent due under the lease directly to the Association upon receipt of notice from the Association that the Owner is delinquent in amounts due to the Association.

**Section 4. COLLECTION BY DECLARANT.** In the event for any reason the Association shall fail to collect the Assessments, Declarant shall at all times have the right (but not the obligation): (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments and, if applicable, any such sums advanced by Declarant, together with Interest and costs of collection, including, but not limited to, Legal Fees.

**Section 5. RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES TO PAY ASSESSMENTS AND RECEIVE REIMBURSEMENT.** Declarant and any Institutional Mortgagee(s) shall have the right, but not the obligation, jointly or individually, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Lot(s). Further, Declarant and any Institutional Mortgagee shall have the right, but not the obligation, jointly or individually, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association in the event the same are overdue and when lapses in policies or services may occur. Declarant and any Institutional Mortgagee paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection including, but not limited to, Legal Fees, and the Association shall execute an instrument in recordable form acknowledging such reimbursement obligation(s) and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement and to Declarant if Declarant is entitled to reimbursement.

**Section 6. COMMUNITY SYSTEMS SERVICES.** The Association shall have the right to enter into one or more agreement(s) ("Bundled Service Agreements") for receipt of television (via cable, satellite or otherwise), entertainment, telecommunication, internet, gas, monitored alarm and/or other services (collectively, "Bundled Services") for Homes in Kingsley Creek. Any and all costs and expenses incurred by the Association under or pursuant to any Bundled Service Agreements entered into by the Association for Bundled Services will be assessed against all Completed Lot Owners as a Benefited Assessment. It is contemplated that there may be features and services that are or will be available in addition to and not part of the Bundled Services (each, an "Optional Service"). Owners will be responsible for hook-up costs, any converter boxes, remote control units, any Optional Services elected by Owner and the charge therefor shall be billed directly to Owner. Notwithstanding anything to the contrary contained in this Declaration, the costs and expenses charged to the Association under the Bundled Services Agreements shall be apportioned equally, but only amongst those Homes with respect to which the Association is being charged under or pursuant to the Bundled Services Agreement except to the extent, if any, that any Owner elects to receive an Optional Service (being a service not automatically received by all Owners entitled to receive Bundled Services pursuant to the Bundled Services Agreements). Each Owner who receives an Optional Service, if any, shall be responsible for paying for the costs of such Optional Service. The foregoing shall in no way obligate Declarant or the Association to enter into any Bundled Services Agreement.

**Section 7. IRRIGATION SYSTEM(S).** Declarant shall have the right, but not the obligation, to install one or more irrigation systems (referred to in this Declaration as the "Irrigation System(s)") for the Common Area and/or any or all of the Lots within Kingsley Creek. In the event Declarant installs one or more Irrigation System(s) for the Common Area and/or any or all of the Lots within Kingsley Creek, the responsibility for operating, maintaining, repairing and replacing such system(s) shall be governed by the provisions of Section 1.B of Article IX below. The foregoing shall in no way obligate Declarant to install the Irrigation System(s) for the Common Area or within any or all of the Lots within Kingsley Creek. Declarant has installed an integrated irrigation system capable of using reclaimed water for irrigation of the Common Area. All costs of the Irrigation System(s) serving the Common Area and all usage and consumption fees charged for use of water serving the Common Area shall be part of the Operating Expenses of the Association.

**ARTICLE VII**  
**METHOD OF DETERMINING ASSESSMENTS**  
**AND ALLOCATION OF ASSESSMENTS**

**Section 1. DETERMINING AMOUNT OF ASSESSMENTS.** It shall be the duty of the Board of Directors to annually prepare a budget ("Budget") covering the estimated Operating Expenses of the Association. In addition to the Operating Expense Budgets which shall be the basis for operation and management of the Property, the Board of Directors shall annually attempt to determine the Operating Expenses which would be incurred upon completion of Kingsley Creek, including without limitation any future expansions or additions of Common Area and number of Lots. Prior to the Turnover, these operational Budgets shall be utilized in determining Assessments allocated to Lots by allocating the Operating Expenses among the number of Lots anticipated to be constructed within Kingsley Creek upon completion. This allocation of Assessments is undertaken in an effort to fairly allocate the Operating Expenses anticipated upon completion of Kingsley Creek.

Each Completed Lot and Incomplete Lot shall be assessed its *pro rata* portion of the total anticipated Operating Expenses, which shall be the "Individual Lot Assessment" as to each Lot. The Individual Lot Assessment shall be based upon the level of service to each Lot and upon the state of the Lot's development, with the Owners of Completed Lots paying the Operating Expenses on a twenty to one ratio (20:1) compared to the Owners of Incomplete Lots as set forth below. Therefore, the Completed Lot Owners and Incomplete Lot Owners shall share the payment of the Operating Expenses on a ratio of twenty to one (20:1). Therefore, the total anticipated Operating Expenses (other than those expenses which are properly the subject of Special Assessment) shall be divided by the total number of Completed Lots multiplied by twenty (20) plus the number of Incomplete Lots, with the quotient thus arrived at being the "Individual Lot Assessment" for an Incomplete Lot. Said quotient multiplied by twenty (20) shall be the Individual Lot Assessment for a Completed Lot. The number of Completed Lots and Incomplete Lots shall be adjusted, as needed, as hereinafter set forth. At such time as Declarant has conveyed all of the Homes on all of the Lots, each Lot shall be a Completed Lot and the Individual Lot Assessment shall be equal for each Lot. Notwithstanding anything in the Kingsley Creek Documents to the contrary, any Assessment for Legal Fees incurred by the Association for lawsuits shall be deemed an Operating Expense which is properly the subject of Special Assessment and not the subject of an Individual Lot Assessment so long as approved pursuant to Section 12 of Article XIII, except the Legal Fees incurred by the Association in connection with the collection of assessments or other charges which Owners are obligated to pay pursuant to the Kingsley Creek Documents or the enforcement of the use and occupancy restrictions contained in the Kingsley Creek Documents.

**Section 2. ASSESSMENT PAYMENTS.** Individual Lot Assessments shall be payable quarterly, in advance, on the first day of January, April, July and October of each year, provided, however, at the Association's option, Individual Lot Assessments may be payable monthly or annually. Individual Lot Assessments, and the quarterly installments thereof, may be adjusted from time to time by the Board to reflect changes in the number and status of Completed Lots and Incomplete Lots (thus apportioning all such Assessments and installments thereof among all Lots at the time such installment is due) or changes in the Budget or in the event the Board determines that an Assessment or any installment thereof is either less than or more than the amount actually required. When an Incomplete Lot becomes a Completed Lot or when a Builder

Lot is conveyed to a third party end user (also referred to as a "Completed Lot" herein) during a period with respect to which an Assessment or installment thereof has already been assessed, such Completed Lot shall be deemed assessed the amount of such Assessment or installment thereof which was assessed against Completed Lots in existence at the time of such Assessment, prorated from the date the Lot became a Completed Lot through the end of the period in question. If the payment of such Assessment or installment thereof was due at the time the Lot became a Completed Lot or prior thereto, said prorated amount thereof shall be immediately due and payable. Likewise, the amount paid with respect to such Completed Lot based upon the Lot's status as an Incomplete Lot, prorated from the date the Incomplete Lot became a Completed Lot to the end of the period in question, shall be credited against the amount owed as a Completed Lot.

**Section 3. SPECIAL ASSESSMENTS.** "Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Kingsley Creek Documents and whether or not for a cost or expense which is included within the definition of "Operating Expenses," those Assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring Improvements for, or on, the Common Area or the cost (whether in whole or in part) of reconstructing or replacing such Improvements. In addition, Special Assessments may be levied against particular Lots and/or Owners to the exclusion of others. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any Individual Lot Assessment. Any Special Assessments assessed against Lots and the Owners thereof shall be paid by such Owners in addition to any other Assessments and shall be assessed in the same manner and using the same 20:1 ratio as the Individual Lot Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, the levying of any Special Assessment after the Turnover Date shall require the affirmative assent of at least two-thirds (2/3) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws for all Special Assessments, except only any Special Assessment for: (a) repair, reconstruction or replacement of damaged or destroyed Improvements previously existing on Common Area (including, without limitation, landscaping), (b) capital improvements necessary or desirable for the sole purpose of preservation of, or prevention of damage to Common Area, or (c) up-righting or removing any fallen or dislodged trees as set forth in Article IV, Section 1.L. above; which shall not require such affirmative assent of at least two-thirds (2/3) of all Members. Prior to the Turnover Date, a Declarant-controlled Board may make a Special Assessment without such vote of the Members. Special Assessments are not included in any deficit funding or subsidizing of the Budget as set forth in Sections 7 and 8 of this Article VII below.

**Section 4. BENEFITED ASSESSMENTS.** The Association may levy Benefited Assessments against one or more particular Lots as follows:

A. to cover the costs, including, without limitation, overhead and administrative costs, of providing services to a Lot upon request of the Owner pursuant to any menu of special services which the Association may offer or pursuant to a Supplemental Declaration. Benefited Assessments for special services may be levied in advance of the provision of the requested service;

B. to cover costs incurred in bringing a Lot into compliance with the Kingsley Creek Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests, including, without limitation, Legal Costs;

C. to cover the costs and expenses charged to the Association under the Community Systems agreements shall be apportioned equally, but only amongst those Homes with respect to which the Association is being charged under or pursuant to the Bundled Services Agreement.

**Section 5. LIABILITY OF OWNERS FOR ASSESSMENTS.** By the acceptance of a deed or other instrument of conveyance of a Lot in the Property, each Owner thereof acknowledges and agrees that each Lot and the Owners thereof are jointly and severally liable for their own Individual Lot Assessments, any Benefited Assessment against their Lot, and their applicable portion of any Special Assessments, as well as for any and all other Assessments for which they are liable, as provided for herein. Such Owners further recognize and covenant that they are jointly and severally liable with the Owners of all Lots for the Operating Expenses (subject to any specific limitations provided for herein such as, but not limited to, the limitation with respect to matters of Special Assessment and the limitations on the liability of Institutional Mortgagees and their successors and assigns). Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner, for such Owner and such Owner's heirs, executors, successors and assigns, that in the event any Owner fails or refuses to pay such Owner's Individual Lot Assessment or any portion thereof, or such Owner's Benefited Assessment, or such Owner's respective portion of any Special Assessment or any other Assessment, then the other Owners may be responsible for increased Individual Lot Assessments, Benefited Assessments or Special Assessments or other Assessments due to the nonpayment by such other Owner, and such increased Individual Lot Assessment, Benefited Assessment or Special Assessment or other Assessment can and may be enforced by the Association and Declarant in the same manner as all other Assessments hereunder as provided in the Kingsley Creek Documents.

**Section 6. BUDGETING FOR RESERVES.** The Board may, but is not obligated to, prepare and periodically review separate reserve budgets for the Common Area for which the Association maintains capital items which takes into account the number and nature of replaceable completed assets, the expected life of each completed asset, and the expected repair or replacement cost of capital items under each budget. The Board may include in the Operating Expense Budget adopted pursuant to Section 1, as appropriate, a contribution to fund reserves in an amount which the Board, in the exercise of its business judgment, deems sufficient to meet the projected needs under each budget with respect to both amount and timing by annual contributions over the budget period. The budgeted amount for reserves need not be for one hundred percent (100%) of the repair or replacement cost but may be for a lower amount as determined by the Board. The Board may determine to pool reserves, meaning that a general reserve fund may be used for any item for which reserves are being collected. Completed Lot Owners are referred to the then current Budget to determine if reserves are included in the Budget, the amount budgeted therefor and if Assessments include amounts for reserves.

Reserve funds, if collected, shall be held in a separate account or accounts from the operating and other funds of the Association.

The reserve funds may be expended only for major maintenance, repair, or replacement of those assets covered by the reserve budget pursuant to which they were collected. Subject to such limitation, the Board may adopt resolutions regarding the expenditure of any reserve funds including, without limitation, policies designating the nature of assets for which reserve funds may be expended. Neither the Association membership nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent during the Development and Sale Period.

Notwithstanding anything contained in this Section 6, or as may be otherwise set forth in this Declaration, any reserve funds so collected and/or paid pursuant hereto are not created or established in accordance with Section 720.303(6)(d) of the HOA Act.

**Section 7. ASSESSMENTS PAYABLE BY DECLARANT; DECLARANT SUBSIDIES.**

Each Owner acknowledges and agrees that because Individual Lot Assessments, Benefited Assessments and Special Assessments are allocated as set forth in this Article VII above, it is possible that the Association may collect more or less than the amount budgeted for Operating Expenses in the Budget of the Association. Except as may be limited by applicable law, Declarant has the right (at its sole election) to: (i) pay Individual Lot Assessments and Benefited Assessments for the Lots owned by Declarant in the same manner as other Owners (but at the 20:1 ratio described above), (ii) pay the Deficit (as calculated pursuant to Section 8 below, herein referred to as the "Deficit"), and/or (iii) subsidize the Budget of the Association as provided below by making voluntary contributions in amounts determined by Declarant in Declarant's sole discretion.

During the period of time that Declarant is offering Homes for sale in Kingsley Creek and/or based on the number of Homes owned by Owners other than Declarant, Declarant may seek to keep Assessments lower than they otherwise may be by subsidizing the Budget of the Association by making voluntary contributions in amounts determined by Declarant. The amount of any such voluntary contributions may vary from time to time or may be discontinued and recommenced by Declarant from time to time. The determination to subsidize the Budget of the Association, the amount of any such voluntary contributions, the discontinuance and/or commencement of any such voluntary contributions shall all be made by Declarant in Declarant's sole discretion and in no event shall Declarant have any obligation whatsoever to make any such voluntary contributions. Each Owner shall be solely responsible to review the Budget of the Association then in effect to determine if and to what extent Declarant is making any voluntary contributions to subsidize the Budget and thus lower the Assessments payable by the Owners that would otherwise be higher based on the Operating Expenses of the Association.

**Section 8. DECLARANT'S OPTION TO FUND BUDGET DEFICITS.** To the extent permitted by Florida law, until the end of the Development and Sale Period, Declarant may satisfy the obligation for Assessments on Lots which it owns either by paying Assessments in the same manner as any other Owner (but at the 20:1 ratio described above) or by funding the budget deficit. The budget deficit ("Deficit") is the difference between (i) the amount of Assessments levied on Owners' Lots plus any other income, revenue or sums received by the Association during the period during which Declarant has elected to fund the Deficit, and (ii) the amount of the Association's actual expenditures during the fiscal year and excluding to the maximum extent allowable by law, contributions to reserves, if any, and Special Assessments arising as a



result of any unusual loss or liability. The calculation of Declarant's Deficit funding obligation shall be done on a cumulative basis (from the inception of the election to fund the Deficit until Declarant's election to cease funding the Deficit) although Declarant will fund the Association to meet its cash flow obligations as they arise during the Deficit funding period. Should Declarant, in its sole discretion, elect to fund cash shortfalls caused by delinquencies or other matters which would not otherwise require deficit funds from Declarant, such funds shall be considered a loan to the Association to be paid back to Declarant by the Association. Declarant is not required to make contributions to reserves while Deficit funding even though Owners other than Declarant may be required to make such contributions.

Unless Declarant otherwise notifies the Board in writing at least thirty (30) days before the beginning of the fiscal year, Declarant shall continue paying on the same basis as during the previous fiscal year. Regardless of Declarant's election, Declarant's Assessment obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these, the value of which shall be reasonably determined by Declarant. After the end of the Development and Sale Period, or sooner if Declarant elects to pay Assessments and cease Deficit funding, Declarant shall pay Assessments on Lots which it or its affiliates own in the same manner as any other Owner.

Declarant's obligation to Deficit fund is not a guarantee of the Assessments or Operating Expenses as contemplated by Florida Statutes Section 720.308 because the amount of Assessments or Operating Expenses to be paid by Owners during any Deficit funding period may change based upon changes in the then buildout Budget.

**Section 9. DECLARANT'S PAYMENT OF ASSESSMENTS, DEFICIT FUNDING, AND/OR SUBSIDIZING THE BUDGET.** Notwithstanding anything to the contrary set forth herein, if Declarant elects to Deficit fund or provide a subsidy to lower the Assessments due from Owners prior to the end of the Development and Sale Period, or such other time as Declarant, in its sole discretion desires to discontinue such Deficit funding or subsidy, Declarant will not retroactively recalculate any Assessments for any period during which Declarant was Deficit funding and/or subsidizing the budget on the 20:1 ratio as described in Section 1 above, however, the Deficit funding or subsidy shall be calculated on a cumulative basis as set forth in Section 8 above.

**Section 10. WORKING FUND CONTRIBUTION.** Each Owner of a Lot shall pay to the Association a Working Fund Contribution at the time legal title is conveyed to such Owner by the previous Owner. The Working Fund Contribution shall be Five Hundred and No/100 Dollars (\$500.00) for each Lot and each subsequent conveyance of the Lot. The amount of the Working Fund Contribution is subject to change in the Board's sole discretion. In the event an Institutional Mortgagee acquires title through foreclosure or a deed in lieu, the Institutional Mortgagee shall be exempt from paying such Working Fund Contribution. The purpose of the Working Fund Contribution is to ensure that the Association will have cash available for initial start-up expenses, to meet unforeseen expenditures and to acquire additional equipment and services deemed necessary or desirable by the Board. Working Fund Contributions are not advance payments of Individual Lot Assessments and shall have no effect on future Individual Lot Assessments, nor will they be held in reserve. Working Fund Contributions may also be used to offset Operating Expenses and fund any Deficit. Declarant may, in its sole discretion,

move any remaining Working Fund Contributions into a reserve account at the time of the Turnover Date.

**Section 11. WAIVER OF USE.** No Owner, other than Declarant, may exempt himself from personal liability for Assessments duly levied by the Association. No Owner may release the Lot owned by such Owner from the liens and charges hereof either by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of such Owner's Home.

## **ARTICLE VIII** **ARCHITECTURAL CONTROL COMMITTEE**

**Section 1. MEMBERS OF THE COMMITTEE.** The Architectural Control Committee, sometimes referred to in this Declaration as the "Committee," shall be comprised of three (3) members. The initial members of the Committee shall consist of persons designated by Declarant. Each of said persons shall hold office until all Lots and Homes have been conveyed or such earlier time as Declarant may, at its sole option, elect. Thereafter, each new member of the Committee shall be appointed by the Board and shall hold office until such time as such new member has resigned, has been removed, or such new member's successor has been appointed, as provided herein. Members of the Committee, other than those designated by Declarant, may be removed at any time without cause. The Board shall have the sole right to appoint and remove all members of the Committee other than those designated by Declarant.

**Section 2. REVIEW OF PROPOSED CONSTRUCTION.**

A. No Improvements, including, by way of example and not of limitation, accessory structures, exterior lighting fixtures, brick pavers, stamped concrete, concrete flatwork, basketball goals, gym sets and play structures, buildings, fences, walls, pools, roofs, gutters or rain spouts, antennae, aerials, microwave reception devices, mailboxes, external enclosures or attachments (including entry screen and patio screen enclosures), or landscaping (including hedges, massed plantings and trees) shall be commenced, erected, installed, altered, modified, painted, planted, or maintained on the Property, including the Lots, nor shall any canopies, shutters, or window coverings be attached to or placed upon outside walls or roofs of any Home or building by any Owner other than Declarant, unless such Improvements have been reviewed by and received the written approval of the Committee in accordance with Paragraph B below. Any Owner desiring to make Improvements shall submit two (2) complete sets of plans and specifications prepared by an architect, landscape architect, engineer or other person determined by the Committee to be qualified, showing the nature, dimensions, materials and location of the same, together with the security deposit if required by the Committee, to be held and disbursed by the Association in accordance with Section 3 below.

B. The Committee shall approve proposed plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated will not be detrimental to the appearance of the surrounding area of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The Committee may also issue and amend from time to time rules or guidelines setting forth procedures for the submission of plans and specifications. If the proposed construction, alterations or additions are to a portion of the Improvements which

the Association is obligated to maintain, said approval shall also be subject to approval by the Board. The Committee may condition its approval of proposed plans and specifications in such a manner as it deems appropriate and may require the submission of additional information prior to approving or disapproving such plans. Pursuant to the approvals for the Property granted by the County, and notwithstanding anything to the contrary in the Kingsley Creek Documents, diversity of architectural elevation and exterior color scheme for Homes in Kingsley Creek shall be that no identical Homes shall be placed next to one another (i.e., same elevation with same exterior color scheme). The Committee shall have no obligation to and shall not approve (nor grant any variances for) any plans and specifications submitted if approval of same would result in failure to comply with the foregoing requirements.

C. The Committee shall have forty-five (45) days after delivery of all required materials to give written approval or rejection of any such plans and, if written approval is not given within such forty-five (45) day period, such plans shall be deemed rejected, provided however, that, in any event, no such addition, construction or alteration shall be made by any Owner which is detrimental to or inconsistent with the harmony, appearance or general scheme of the Property as a whole.

D. No Owner shall be permitted to install any fence (or landscaping) within any drainage easement whatsoever (Refer to Article X, Section 18 for additional restrictions regarding fences).

E. Notwithstanding any provision in this Article to the contrary, the approval of the Committee shall not be required for any additions, changes or alterations within any Home if such additions, changes or alterations are not visible from the outside of such Home. All changes and alterations shall be subject, independently, to all applicable governmental laws, statutes, ordinances, codes, rules and regulations.

Notwithstanding anything to the contrary herein contained, no construction, reconstruction, addition or alteration by Declarant shall require the prior approval or any certificate of consent of the Committee or any security deposit.

**Section 3. COMMUNITY STANDARD.** To ensure the preservation of the existing harmonious design and to prevent the introduction of design that is not in keeping with Kingsley Creek, Declarant hereby declares that the style and form of Kingsley Creek, as originally constructed or approved by Declarant, with respect to architectural style, colors and materials as the standard. This standard shall continue in effect until the adoption and publication of new guidelines and standards.

**Section 4. SECURITY DEPOSIT FOR IMPROVEMENTS; INDEMNIFICATION.** Any Owner desiring to make Improvements may be required by the Committee, depending upon the Improvements being requested and the manner of installation of such Improvements, to provide to the Committee, at the time of the Owner's submission of plans and specifications for review and approval by the Committee, a security deposit in the amount of ten percent (10%) of the estimated costs for such Improvements to cover costs of incidental damage caused to Common Area, an adjacent Home or Lot, or any other property (whether real or personal) by virtue of such Owner's construction of Improvements. The Committee shall have the sole and absolute discretion to determine whether a security deposit is required for the Improvements being

requested. The Association shall not be obligated to place the security deposit in an interest bearing account. The Owner shall be entitled to the return of the security deposit upon: (i) such Owner's written notice to the Committee that the Improvements covered by the security deposit have been completed in accordance with the plans and specifications approved by the Committee, and (ii) the Committee's (or its duly authorized representative's) inspection of such Improvements confirming completion; provided, however, should any incidental damage be caused to Common Area by virtue of such Owner's construction of Improvements, the security deposit shall not be returned to Owner until such damages have been repaired. In the event that Owner has not repaired such damages to the Common Area to the satisfaction of the Committee, Association shall have the right (but not the obligation), after five (5) days' notice to the offending Owner, to repair such incidental damage and to use so much of the security deposit held by the Association to reimburse itself for the costs of such work. Further, the offending Owner hereby agrees to indemnify and reimburse the Association for all reasonable costs expended by the Association that exceed the security deposit, including Legal Fees, if any, incurred in connection therewith. Should any incidental damage be caused to an adjacent Lot or Home by virtue of such Owner's construction of Improvements, the Owner of the adjacent Lot (the "Adjacent Lot Owner") may, at such Adjacent Lot Owner's sole option: (a) remedy such damage and submit to the Association a receipt, invoice or statement therefor for reimbursement from the offending Owner's security deposit; or (b) allow the offending Owner to repair such incidental damage to the Adjacent Lot Owner's Lot or Home, at the offending Owner's sole cost and expense, and upon receipt by the Association of written notice from the Adjacent Lot Owner that such incidental damage has been repaired, the offending Owner shall be entitled to a return of the balance of the security deposit being held by the Association, if any.

Notwithstanding anything contained in this Section to the contrary, the Association's return of the security deposit being held by it for any such Improvements shall be based solely on considerations set forth above. The Association's return of the security deposit does not and shall not be construed to constitute a determination by members and representatives of the Committee, Declarant, and/or the Association of the structural safety, approval or integrity of any Improvement, conformance with building or other codes or standards, or the proper issuance of governmental permits and approvals for any Improvement. By submitting a request for review and approval of proposed plans and specifications, along with the security deposit required hereunder, an Owner shall be deemed to have automatically agreed to hold harmless and indemnify the members and representatives of the Committee, Declarant, and the Association generally, from any loss, claim, damage or liability connected with or arising out of the Improvements or alterations, and/or the security deposit (including, without limitation, the disbursement thereof).

The Association shall not be liable or responsible to anyone for any damages, losses or expenses resulting from the Association's holding of the security deposit or disbursement thereof unless same shall be caused by the gross negligence or willful malfeasance of the Association. In the event of any disagreement relating to the security deposit held by the Association or the disbursement thereof, the Association shall be entitled (but not obligated) to refuse to disburse the security deposit (or any portion thereof) as long as such disagreement may continue, and the Association shall not become liable in any way for such refusal. The Association shall have the right, at any time, after a dispute has arisen, to pay the security deposit (or any portion thereof) held by it into any court of competent jurisdiction for payment to the appropriate party,

whereupon the Association's obligations hereunder shall terminate and the Association shall be automatically released of any and all obligations.

**Section 5. MEETINGS OF THE COMMITTEE.** The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Article VIII, Section 10 below. In the absence of such designation, the vote of any two (2) members of the Committee shall constitute an act of the Committee.

**Section 6. NO WAIVER OF FUTURE APPROVALS.** The approval of the Committee of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant. Similarly, the denial of approval by the Committee of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to approve or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant.

**Section 7. COMPENSATION OF MEMBERS.** The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

**Section 8. INSPECTION OF WORK.** Inspection of work and correction of defects therein shall proceed as follows:

A. Upon the completion of any work for which approved plans are required under this Article, the submitting party shall give written notice of completion to the Committee.

B. Within thirty (30) days after written notice of completion, the Committee or its duly authorized representatives may inspect such Improvement. If the Committee finds such work was not done in substantial compliance with the approved plans, it shall notify the submitting party in writing of such noncompliance within such thirty (30) day period, specifying the particulars of noncompliance, and shall require the submitting party to remedy such noncompliance.

C. If upon the expiration of fifteen (15) days from the date of such notification the submitting party shall have failed to remedy such noncompliance, notification shall be given to the Board in writing of such failure. Upon such notice, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the submitting party shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board's ruling. If the submitting party does not comply with the Board's ruling within such period, the Board, at its option, may remove the Improvement, remedy the noncompliance, or proceed in court to compel compliance and the submitting party shall reimburse the Association, upon demand, for all expenses incurred in connection therewith,

including Interest and Legal Fees. If such expenses are not promptly repaid by the submitting party to the Association, the Board shall levy an Assessment against such submitting party for reimbursement, and said Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as liens for Operating Expenses.

D. If, for any reason, notification is not given to the submitting party of acceptance within thirty (30) days after receipt of said written notice of completion from the submitting party, the Improvement and/or alteration shall be deemed to be in compliance with said approved plans.

**Section 9. NON-LIABILITY OF COMMITTEE MEMBERS.** Neither the Committee nor any member thereof, nor its duly authorized Committee representative, nor Declarant, shall be liable to the Association or to any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of a member and only that member shall have any liability. The Committee's review and approval or disapproval of plans submitted to it for any proposed Improvement shall be based solely on considerations of the overall benefit or detriment to the community as a whole. The Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes or standards, and no member or representative of the Committee or the Association, nor Declarant, shall be liable for the safety, soundness, workmanship, materials or usefulness for any purpose of any such Improvement or alteration proposed by the plans. By submitting a request for review and approval by the Committee, an Owner shall be deemed to have and does automatically agree to indemnify, defend and hold harmless the Committee, the Association and Declarant (and each of their respective officers, directors, partners, affiliates, representatives and members) from and against any and all claims, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, Legal Fees) arising from, relating to or in any way connected with the Improvement or alterations for which such request was submitted and/or the security deposit (including, without limitation, the disbursement thereof). Furthermore, approval by the Committee of any request does not excuse any Owner from also obtaining approvals from all applicable governmental authorities.

**Section 10. VARIANCE.** The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require; provided, however, the Committee shall not give or authorize (and the Committee is hereby prohibited from giving or authorizing) any variance with respect to: (i) the diversity of architectural elevation and exterior color scheme requirements of Section 2.B of this Article VIII above; (ii) the type of fencing permitted by this Declaration; and/or (iii) the displaying of any signs for the sale or renting of the Home as prohibited in Article X, Section 12 below. If such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the Improvements for which the variance was granted.

**Section 11. DECLARANT EXEMPTION.** Declarant is hereby exempt from having to comply with the requirements of this Article VIII in their entirety.

**ARTICLE IX**  
**MAINTENANCE AND REPAIR OBLIGATIONS**

**Section 1. BY THE ASSOCIATION.**

A. The Association, at its expense, shall be responsible for the operation, maintenance, repair and replacement of all of the Improvements and facilities located over, through and upon the Common Area as otherwise provided herein (except public utilities and Community Systems, to the extent same have not been made Common Area). Should any incidental damage be caused to any Home by virtue of the Association's failure to maintain the Common Area as herein required or by virtue of any work which may be performed or caused to be performed by the Association in the maintenance, repair or replacement of any Common Area, the Association shall, at its expense, repair such incidental damage. The Association shall not, however, be responsible for any loss of use, any hardship, an Owner's time or any other consequential or punitive damages.

B. The Association shall operate, maintain, repair and replace the Irrigation System(s) serving the Common Area. The Association shall be responsible for the costs of operation, maintenance, repair and replacement of such Irrigation System(s), including any monthly fees and other costs of water and/or electric usage, if any. There is hereby reserved in favor of the Association, the right to enter upon the Common Area for the purpose of operating, maintaining, repairing and replacing the Irrigation System(s) over, through and upon the Common Area. Each Owner shall be responsible for any damage caused to said Irrigation System(s) caused by such Owner and/or such Owner's family members, tenants, guests and invitees and Owner shall indemnify, defend and hold Association harmless from and against any and all losses, claims, damages and/or liabilities resulting from any such damage.

C. The Association shall operate, maintain and repair the Surface Water and Storm Water Management System constructed over, through and upon the Property. There is hereby reserved in favor of the Association the right to enter upon the Common Area and the Lots for the purpose of operating, maintaining, repairing, and replacing the Surface Water and Storm Water Management System over, through and upon the Property. The Association shall be responsible for all costs associated with its obligations relating to the cleaning, maintenance, repairs and replacement of any portion of the Surface Water and Storm Water Management System as may be necessary to maintain the system in its original condition and use, including all yard drains. In the event the Association fails to maintain the Surface Water and Storm Water Management System in accordance with this Declaration and/or the Water Management District Permit, then the Water Management District and/or the County shall have the right to commence an enforcement action against the Association, including, without limitation, a civil action for injunction and penalties, to compel the Association to maintain the Surface Water and Storm Water Management System in accordance with this Declaration and/or the Water Management District Permit. The Water Management District Permit, together with any action(s) taken by the Water Management District or the County with respect to the Water Management District Permit, shall be maintained by the Association.

It is prohibited to alter the grade of or original drainage plan for any parcel, Lot or tract, or change in the direction of, obstruct, or retard the flow of surface water drainage, or alter or remove of any berm, pipe, ditch, weir, manhole, swale, and stormwater collection, storage and

conveyance system unless expressly authorized by the Water Management District and the County. This provision shall be considered a restrictive covenant in favor of and enforceable by the Water Management District and the County and in the event of a violation of this provision, the Water Management District and the County shall have the right to obtain injunctive relief, seek damages, and assess fines and liens in the amount of the cost to remedy the prohibited action (including administrative costs and attorneys' fees and costs) against the violating person or entity and any property owned by such violating person or entity; provided however, such right shall not limit the Water Management District's and the County's other available enforcement actions permitted by law or equity.

D. The Association shall be responsible for the maintenance, repair and replacement of all common sidewalks located upon the Property and there is hereby reserved in favor of the Association the right to enter upon any and all parts of the Property and Lots for such purpose.

E. Neither the Association nor any Owner shall alter the slopes, contours, or cross-sections of the retention areas or littoral zones, or chemically, mechanically, or manually remove, damage or destroy any plants in any of the littoral zones or drainage easements except upon the written approval from Declarant, the Water Management District, the County and any other applicable governmental authority. The Association shall be responsible for maintaining the required survivorship and coverage of any planted littoral areas, to ensure the ongoing removal of prohibited and invasive non-native plant species from these areas, and to comply with all governmental regulations, including, without limitation, all permits issued by governmental and/or quasi-governmental authorities, applicable to the littoral zones, if any.

F. After the Turnover Date, the Association, by action of its Board, may make any minor and insubstantial alteration or Improvement to the Common Area having a cost not in excess of Twenty Five Thousand Dollars (\$25,000). All other alterations and Improvements must first be approved by at least two-thirds (2/3) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. No alteration or Improvement may be made to the Common Area which materially and adversely affects the rights of the Owner of any Lot to the enjoyment of such Owner's Lot or the Common Area unless the Owner and all mortgagees holding recorded mortgages on such Lot consent thereto in writing. Prior to the Turnover Date, all alterations and Improvements to the Common Area shall be in Declarant's sole and absolute discretion.

G. All expenses incurred by the Association in connection with the services, operation, maintenance, repair and replacement described in Paragraphs A through F, inclusive, are Operating Expenses, payable by each Owner under the provisions of this Declaration concerning Assessments. Should the maintenance, repair or replacement provided for in Paragraphs A through F of this Section 1 be caused by the negligence of or misuse by an Owner, such Owner's family, guests, servants, invitees, or tenants, such Owner shall be responsible therefor, and the Association shall have the right to levy an Assessment against such Owner's Lot and said Assessment shall constitute a lien upon the appropriate Lot and Home with the same force and effect as liens for Operating Expenses.



H. The Association has a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of Kingsley Creek.

Section 2. BY THE OWNERS.

A. The Owner of each Lot must keep and maintain the Lot and the Improvements thereon, including the landscaping, irrigation, equipment and appurtenances in good order, condition and repair, and must perform promptly all maintenance and repair work within, upon and outside of such Owner's Lot and Home which, if omitted, could adversely affect Kingsley Creek, the other Owners or the Association and its Members. The Owner of each Lot shall be responsible for any damages caused by a failure to so maintain such Lot, Improvements and Home. The Owners' responsibility for maintenance, repair and replacement shall include, but not be limited to, all of the physical structures constructed in, upon, above or below the Lot, and physical items attached or connected to such structures that run beyond the boundary line of the Lot which exclusively service or benefit the Lot and Home, and all landscaping installed on the Lot. Without limiting the generality of the foregoing, the Owner of each Lot shall keep all drainage structures (such as catch basins) located on the Owner's Lot clear of grass, leaves and other debris. Additionally, the painting, caulking and maintenance of the exterior surface of all walls, doors, windows and roof of the physical structure of the Home shall be performed by the Owner, and the exterior surface of such walls, doors, windows and roof shall at all times be maintained in a good and serviceable condition with no damage or other defect therein by the Owner. The Owner of a Lot further agrees to pay for all utilities (including, without limitation, those provided by the Community Systems), such as telephone, cable or satellite television, water, sewer, sanitation, electric, etc., that may be separately billed or charged to each Home. The Owner of each Lot shall be responsible for insect and pest control within the Home and the Lot. Whenever the maintenance, repair and replacement of any items which an Owner is obligated to maintain, repair or replace at such Owner's own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or otherwise, reduce the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

All landscaped and grassed open areas on each Lot shall be irrigated by means of an automatic underground irrigation or sprinkling system capable of regularly and sufficiently watering all lawns and plantings within such open areas. The Owner of each Lot shall be responsible for the maintenance, repair and replacement of such automatic underground irrigation or sprinkling system servicing such Owner's Lot at such Owner's own expense.

In addition to the foregoing, the Owner of each Home shall be required to maintain appropriate climate control, keep his or her Home clean, promptly repair any leaks and take necessary measures to retard and prevent mold, fungi, mildew and mycotoxins from accumulating in the Home. Each Owner shall be required to clean and dust such Owner's Home on a regular basis and to remove visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces as soon as reasonably possible and must not block or cover

any heating, ventilation or air-conditioning ducts, and to properly maintain and have serviced on a regular basis, the Home's HVAC system. Each Owner of a Home shall be responsible for damage to such Owner's Home and personal property as well as any injury to the Owner of a Home and/or occupants of the Home resulting from the Owner's failure to comply with these terms. Each Owner of a Home shall be responsible for the repair and remediation of all damages to the Home caused by mold, fungi, mildew and mycotoxins. While the foregoing are intended to minimize the potential developments of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of same. Declarant does not make any representations or warranties regarding the existence or development of molds, fungi, mildew or mycotoxins, and each Owner on behalf of themselves and their family members, guests, invitees, tenants, successors and assigns shall be deemed to and by acceptance of a deed or title to the Home or by use of the Home, waives and expressly releases any such warranty and claims for loss or damages (including, without limitation, property damage and/or personal injury) resulting from the existence and/or development of same.

In addition to the above, Owners of all Homes shall be responsible to: fix leaks in and otherwise maintain and repair the roofs of their Homes; replace any dead or obviously dying trees on their Lots; and maintain, repair and replace any approved fences on their Lots. Owners of Homes shall also clean, maintain, repair and replace the driveways located on their Lots and keep the sidewalks, if any, located on or contiguous to their Lots clean and free from any stains, trash, debris and/or impediments to pedestrian traffic.

B. If a Home is damaged by fire or other casualty, its Owner shall properly and promptly restore it to at least as good a condition as it was before the casualty occurred. Any such work shall be in accordance with the original plans and specifications of the Home unless otherwise authorized by the Board and shall be otherwise subject to all provisions of Article VIII hereof.

C. Each Owner shall keep such Owner's Home insured in an amount not less than its full insurable value against loss or damage by fire or other hazards. Evidence of such coverage shall be furnished to the Association promptly upon the Board's request.

D. Declarant has constructed a drainage swale upon each Lot for the purpose of managing and containing the flow of excess surface water if any, found upon such Lot from time to time. Each Owner shall be responsible for the maintenance, operation and repair of the swales on the Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the Water Management District and the County. Filling, excavation, or the construction of fences on any Lot encumbered by a drainage easement upon which a drainage swale is located shall result in that Owner being solely responsible for the repair and maintenance of such drainage swale. Alteration, filling, obstruction or removal of any drainage swale or drainage control facility or structure is expressly prohibited. No alteration of the drainage swale shall be authorized and any damage to the drainage swale, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale returned to its former condition as soon as possible by the Owner(s) of the Lot(s) upon which the drainage swale is located.

E. The Owners shall be responsible for the sod, landscaping and irrigation system to the edge of the roadway, notwithstanding the fact that same may be included within any public right-of-way.

F. If an Owner fails to comply with the foregoing provisions of this Section 2, the Association may proceed in court to compel compliance. Further, if the failure to comply relates to the Owner's obligations to maintain insurance, the Association shall be entitled, although not obligated, to obtain the required coverage itself and to levy on the offending Owner an Assessment equal to the cost of premiums, and any such Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses.

G. If a failure to comply with the provisions of this Section 2 relates to the Owner's obligation to maintain and care for the Home, landscaping or any other area required to be maintained and cared for by the Owner, then, in addition to the exercise of all other remedies, the Association or Declarant shall have the right but not the obligation, upon fifteen (15) days written notice, to enter upon the Lot of the Owner for the purpose of performing the maintenance and care referred to, set forth and described in the notice, and to levy on the offending Owner an Assessment equal to the cost of performing such maintenance and care. Any such Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses. The determination of whether an Owner is failing to properly maintain and care for the property for which he has the maintenance responsibility under this Declaration or any of the other Kingsley Creek Documents shall be determined in the sole discretion of the Association or Declarant.

**Section 3. DAMAGE TO BUILDINGS.** The Owner of any Home which has suffered damage may apply to the Committee for approval for reconstruction, rebuilding, or repair of the Improvements therein. The Committee shall grant such approval only if, upon completion of the work, the exterior appearance of the Improvement(s) will be substantially similar to that which existed prior to the date of the casualty. If the obligation for repair falls upon the Association, the Committee approval will not be required prior to the commencement of such work, so long as the exterior appearance of the Improvement(s) will be substantially similar to that which existed prior to the date of the casualty.

The owner or owners of any damaged building (including, without limitation, the Owner of a Lot and/or Home), the Association, and the Committee shall be obligated to proceed with all due diligence hereunder and the responsible parties shall commence reconstruction within three (3) months after the damage occurs and complete reconstruction within one (1) year after the damage occurs, unless prevented by causes beyond his or its reasonable control.

Declarant shall be exempt from the provisions of this Section 3, provided that any such reconstruction, rebuilding or repairs made by Declarant shall be consistent, as to the exterior appearance, with the Improvements as they existed prior to the damage or other casualty.

## **ARTICLE X**

### **USE RESTRICTIONS**

All of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions, and any and all additional rules and regulations which may, from time to time, be adopted by the Association, except as provided in Article X, Section 32 below:

**Section 1. ENFORCEMENT.** Failure of an Owner to comply with any limitations or restrictions in this Declaration or any of the Kingsley Creek Documents or with any rules and regulations promulgated by the Association shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. Without limiting the generality of the foregoing, an Owner shall also be responsible for the payment of any and all Legal Fees incurred by the Association in connection with the enforcement of this Declaration or any of the Kingsley Creek Documents or with any rules or regulations promulgated by the Association, whether or not an action is actually begun. Any such Legal Fees shall be paid not later than thirty (30) days after written notice thereof and if not paid within such thirty (30) day period, shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses.

In addition to all other remedies, the Association may suspend, for a reasonable period of time, any or all of the rights of an Owner or an Owner's tenants, guests or invitees to use Common Area and facilities (including, without limitation, cable television and other services provided by Community Systems); may suspend the voting rights of an Owner if such Owner is delinquent in payment of assessments for more than ninety (90) days; and may levy reasonable fines against any Owner or any Owner's tenant, guest or invitee for failure of such Owner, and/or such Owner's family, guests, invitees, tenants or employees to comply with any of the Kingsley Creek Documents, provided the following procedures are adhered to:

A. **Notice.** The Association shall notify the Owner in writing of the noncompliance and set forth the corrective action to be taken. A fine or suspension of use rights may not be imposed without notice of at least fourteen (14) days to the Owner sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director, or employee of the Association. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. At the Association's option, any fine may be levied on a daily basis in the event of a continuing violation without the necessity of a new hearing and without any limitation on the amount of such fine.

B. **Hearing.** Should the Owner still be in noncompliance, the noncompliance shall be presented to the Board after which the Board shall hear reasons why a fine should or should not be imposed. A written decision of the Board shall be submitted to the Owner, as applicable, not later than twenty-one (21) days after said meeting.

C. **Payment.** A fine shall be paid not later than thirty (30) days after notice of the imposition of the fine.

D. Fines. A fine shall be treated as an Assessment subject to the provisions of the collection of Assessments as otherwise set forth herein. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration.

E. Failure to Pay Assessments. Notice and Hearing as provided in Subparagraphs A and B above shall not be required with respect to the imposition of suspension of use rights or fines upon any Owner because of such Owner's failure to pay Assessments or other charges when due.

F. Access. Suspension of use rights to Common Area shall not impair the right of an Owner or tenant of a Lot and/or Home to have vehicular and pedestrian ingress to and egress from such Lot and/or Home, including, but not limited to, the right to park.

Section 2. SINGLE-FAMILY USE. The Homes shall be for single-family use only. No commercial occupation or activity may be carried on in Kingsley Creek except as such occupation or activity is permitted to be carried on by Declarant under this Declaration. A single-family is defined to mean any number of persons related by blood, marriage or adoption or not more than two (2) unrelated persons living as a single housekeeping unit.

Section 3. HOMES OWNED BY ENTITIES OR UNRELATED PERSONS. It is the intention that Homes be occupied for single-family use. In the event an entity owns a Home, the entity shall notify the Association in writing with the names of the family members who shall occupy the Home. In the event the Owners of the Home are unrelated either through blood or marriage, they shall be permitted to occupy the Home provided they live as a family unit similar to a husband and wife. No Home may be used as a rooming house, hostel, or hotel. Timesharing or other arrangements involving more than three ownership interests in a Lot (including ownership by more than three persons as joint tenants or tenants-in-common), or assigning separate use periods of less than seven (7) months' duration, are prohibited.

Section 4. NUISANCES. Subject to allowances for reasonable construction activities, no obnoxious or offensive activity shall be carried on, in or about the Lots or in or about any Improvements, Homes, or on any portion of Kingsley Creek nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. No use or practice shall be allowed in or around the Homes which is a source of annoyance to Owners or occupants of Homes or which interferes with the peaceful possession or proper use of the Homes or Lots or the surrounding areas. No loud noises or noxious odors shall be permitted in any Improvements, Homes or Lots. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), large power equipment or large power tools, noisy or smoky vehicles, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Owner shall be located, used or placed on any Lot, or exposed to the view of other Owners without the prior written approval of the Board.

Section 5. PARKING AND VEHICULAR RESTRICTIONS. No Owner shall keep any vehicle on any Lot which is deemed to be a nuisance by the Board. No Owner shall conduct repairs taking more than twenty-four (24) hours (except in an emergency or except within the garage of the Home with the garage door closed) or restorations of any motor vehicle, boat, trailer, or other vehicle upon any Lot. No commercial vehicle (excluding all police, fire and

other public safety vehicles), trailer, recreational vehicle, boat or boat trailer may be parked or stored on the Property except in the garage of a Home located upon a Lot. No bus or tractor-trailer or any other truck larger than a full-size pickup truck may be parked on the Property, except temporarily as in the case of a moving van or other such vehicle necessary to provide service to an Owner and with the exception of any vehicles necessary for any construction activity being performed by or on behalf of Declarant and/or a Builder.

All powered vehicles capable of exceeding five (5) miles per hour are prohibited from use on Kingsley Creek property unless they are licensed, registered, and insured. Specifically, any motorcycle, moped, or motorized scooter used in Kingsley Creek may only be driven by a licensed driver, and must be registered and insured in accordance with Florida law. Specifically exempted from this regulation are electric personal assistive mobility devices as defined under Florida Statute, Section 316.003(83); and any other bona-fide "assistive technology devices" as defined in Florida Statute, Section 427.802(1); and any special mobile equipment as defined under Florida Statute, Section 316.003(48) provided that such equipment may not be operated in a manner that creates a traffic hazard, or which poses a threat of harm to the user of such equipment.

Motorized skateboards are prohibited from use on Kingsley Creek property.

Section 6.     **NO IMPROPER USE.** No improper, offensive, hazardous or unlawful use shall be made of any Home nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. All valid laws, zoning ordinances, orders, rules, regulations, codes and other requirements of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, ordinances, orders, rules, regulations, codes or other requirements of any governmental agency having jurisdiction thereover relating to any Home or Lot shall be corrected by, and at the sole expense of the Owner of said Home and/or Lot.

Section 7.     **LEASES.** No portion of a Home (other than an entire Home) may be rented. All leases must be in writing and shall have a term of no less than seven (7) months. No Owner may lease his or her Home more than one (1) time in any twelve (12)-month period, even if a tenant defaults on a lease or abandons the Home before expiration of the lease term. To preserve the non-transient, single family residential, nature of the Property, no Home, or portion of a Home, may be listed or advertised as being available for rent, lease, sublease, license, use or occupancy, on any internet website or web-based platform, including, without limitation, airbnb.com, vrbo.com, homeaway.com or any other similar website or web-based platform, regardless of the term or duration of such rental, lease, sublease, license or occupancy. This restriction shall not prohibit the use of an MLS listing service or similar internet website or web-based platform by Owners for leasing activities permitted under this Section 7. No lease shall provide for an early lease termination which would reduce a lease term to a period of less than said seven (7) months, except in the event of a default by the tenant. Any lease terminated as a result of a default or otherwise, shall nevertheless still count towards the foregoing rental limitations. The restrictions on lease terms set forth in this paragraph shall not apply to Homes owned or leased by Declarant, its Affiliates, or Persons Declarant approves, in connection with their development, construction, or sale of property in Kingsley Creek. Any short-term rental of the Home (less than seven (7) months) shall be considered a business use of the Home and a violation of this Declaration as well as a violation of the zoning of the Property. All leases shall provide, and if they do not so

provide then the leases shall be deemed to provide, that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles, the Bylaws, applicable rules and regulations, or of any other agreement, document or instrument governing the Lots or Homes. The Owner of a leased Home shall be jointly and severally liable with such Owner's tenant for compliance with the Kingsley Creek Documents and to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinate to any lien filed by the Association whether before or after such lease was entered into.

All leases shall include an acknowledgment by the tenant that the tenant and all occupants of the leased Home are bound by and obligated to comply with the Kingsley Creek Documents and that the tenant has received a copy of the Kingsley Creek Documents. The Association may require that the lease contain an addendum approved by the Association. The Owner shall be responsible for providing a copy of the Kingsley Creek Documents to the tenant prior to execution of the lease and shall monitor enforcement and compliance with the Kingsley Creek Documents by the tenant.

In the event that an Owner is delinquent in the payment of his or her Assessments or other sums due and owing to the Association, the Home shall not be leased until such amounts are paid in full or unless the Association consents, in writing, to any such lease. If the Home is leased in violation of this provision, the Association may terminate the lease and evict the tenants in addition to imposing all other available remedies. In the event an Owner is in default in the payment of Assessments or other sums due and owing to the Association and the Owner's Home is leased, the Association shall have the right and authority to collect the rent to be paid by the tenant to the Owner directly from the tenant. In the event such tenant fails to remit said rent directly to the Association within ten (10) days (but no later than the day the next rental payment is due) from the day the Association notified such tenant in writing that the rents must be remitted directly to the Association, the Association shall have the right to terminate the lease and evict the tenant. All sums received from the tenant shall be applied to the Owner's account for the leased Home according to the priority established in Section 720.3085, Florida Statutes, until the Owner's account is current. All leases entered into by an Owner shall be deemed to automatically incorporate this provision and all the Owners hereby appoint the Association its agent for such purpose. The Association may, without further approval of the Owner of the leased Home, terminate the lease for violations of the Declaration by the tenants, or the tenant's family or guests and thereafter evict the tenants from the Home.

In addition to any notice to a tenant of a Home permitted to be given by law, an Owner by acceptance of a deed to a Lot, does hereby irrevocably grant to the Association (and its officers, directors, designees, agents, and employees) and to any professional management or accounting firm providing management or accounting services to the Association, the right to notify, in writing, the tenant of the Home of any delinquency by the Owner of the Home in payment of any monetary obligations due to the Association, including but not limited to the amount thereof. Further each Owner hereby agrees and acknowledges that the disclosure of any of Owner's delinquent monetary obligations due to the Association, as provided in the preceding sentence, shall not be construed or be deemed to be a violation of the Fair Debt Collection Practices Act ("FDCPA") 15 U.S.C. Section 1692 et. seq.

Each lease shall set forth the name, address, and telephone number of the Home's Owner and of the tenant(s); the date the tenant's occupancy commences and ends; a description of each motor vehicle owned or operated by the tenant or members of the tenant's household; and a description of all pets to be kept at the Home.

If an Owner elects to permit a tenant to sublease during the term of the lease, such sublease shall be subject to the limitations and requirements established in this Declaration to the same extent and effect as the original lease.

Within five (5) days following execution of a lease for a Home, but in no event later than occupancy of the Home by a tenant, Owner shall: (a) notify the Association and any management company then engaged by the Association in writing with the name of the tenant and all of tenant's family members or others that will be occupying the Home, (b) provide the Association and management company with a true, correct and complete copy of the lease agreement, and (c) pay the management company a lease review and management fee in the amount of \$100.00. In the event Owner fails to timely comply with the foregoing, such lease shall be null and void and of no further force or effect, and Owner shall be in violation of this Declaration.

No Owner may assign or otherwise transfer the Owner's obligations under this Declaration to any tenant. The Association shall have the right to enforce the covenants, conditions, and restrictions set forth in this Declaration against the Owner, the tenant, or any member of the tenant's household, individually or collectively. The Association shall not be bound by any provision in the lease or other agreement between Owner and his or her tenant requiring prior notice or imposing other conditions on the rights of the Association.

The Association shall be deemed a third party beneficiary of all leases of Homes, and shall have the right, but not the obligation, to enforce the terms and conditions of such leases against the tenant or the Owner. Notwithstanding the foregoing, the Association's failure to object to any term or condition of a lease or occupancy arrangement shall not be deemed to be consent or approval of any term or condition of the lease, nor shall the Association have any obligation whatsoever for the performance of any obligation of Owner or tenant contained in the lease or otherwise.

Notwithstanding any condition of any lease to the contrary, each Owner, by acceptance of the deed to a Lot, hereby covenants and agrees with the Association and all other Owners in the Community, including, but not limited to, Declarant, that the Owner shall be responsible for any violation of the Kingsley Creek Documents resulting from the acts or omissions of his or her tenant, other occupants of the leased Home, and their respective guests to the same extent that Owner would be liable for such violation if it had resulted from the acts or omissions of the Owner or a member of the Owner's household or guests. The Owner's obligations hereunder shall be deemed a guaranty of performance by his or her tenant, and the Association shall have the right to take any action or seek any remedy for the tenant's failure or refusal to comply with the Kingsley Creek Documents directly from or against the Owner without first taking such action or obtaining such remedy from or against the tenant.



The Association may, without further approval of the Owner of the leased Home, terminate the lease for violations of the Kingsley Creek Documents by the tenants, or the tenant's family or guests and thereafter evict the tenants from the Home.

**Section 8. ANIMALS AND PETS.** Only common domesticated household pets may be kept on any Lot or in a Home, but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, horses, reptiles or poultry of any kind shall be kept, raised, bred or maintained on any portion of the Property. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Board. Any pet must be carried or kept on a leash when outside of a Home or fenced-in area. No pet shall be kept tied up outside of a Home or in any screened porch or patio, unless someone is present in the Home. An Owner shall immediately pick up and remove any solid animal waste deposited by such Owner's pet on the Property. An Owner is responsible for the cost of repair or replacement of any Common Area damaged by such Owner's pet.

Notwithstanding the foregoing, under no circumstances shall a Pit Bull (as hereinafter defined), Rottweiler, Doberman Pinscher and Presa Canario (canary dog), or which has been deemed a "Dangerous dog" pursuant to Florida Statutes Chapter 767.11 be permitted on the Property. As used in this Declaration: (i) a "Pit Bull" is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying a majority of the physical traits of any one (1) or more of the above breeds, or any dog exhibiting those distinguishing characteristics.

Each Owner who determines to keep a pet hereby agrees to indemnify the Association and Declarant and hold each of the Association and Declarant harmless against any loss or liability of any kind or character whatsoever arising from or growing out of such Owner having any animal on the Property.

**Section 9. ADDITIONS AND ALTERATIONS.** No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any Improvement, addition, or alteration to the exterior of such Owner's Home, including, without limitation, the painting, staining, or varnishing of the exterior of the Home, including doors, garage doors, driveways and walkways, unless being painted, stained or varnished using the same color as originally installed, or if replacing the roof, garage door or entry doors using the same color and type as originally installed, without the prior written approval of: (i) the Committee as set forth in Article VIII of this Declaration, which approval may be withheld for purely aesthetic reasons, and (ii) all applicable governmental entities. Without limiting the generality of the foregoing, no planting, landscaping and/or Improvements whatsoever shall be installed or constructed in any drainage easements.

**Section 10. INCREASE IN INSURANCE RATES.** No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

**Section 11. SLOPES AND TREES.** No Owner may engage in any activity which will change the slope or drainage of a Lot including, without limitation, retention area slopes. No additional trees are permitted to be planted on the Property and no trees are permitted to be removed from the Property (other than dead or dying trees which are being replaced with trees of the same

species) without the prior written consent of Declarant for as long as Declarant owns a Lot, and thereafter, without the prior written consent of the Committee. No Owner may alter the slopes, contours or cross-sections of the retention areas or littoral zones, or chemically, mechanically or manually remove, damage or destroy any plants in any littoral zones.

**Section 12. SIGNS.** No sign, display, poster, advertisement, notice, lettering or other advertising device of any kind whatsoever (including, without limitation, "For Sale", "For Rent" or "By Owner" or any other signs for the sale or renting of homes) may be exhibited, displayed, inscribed, painted or affixed in public view of any portion of any building or other Improvement in the Property (including, without limitation, a Home) without the prior written consent of the Board, which consent may be given, withheld or conditioned in the sole and absolute discretion of the Board. Neither the Board nor the Committee shall consent to any type of "For Sale", "For Rent", "By Owner" or similar sign for the renting or sale of a Home so long as Declarant owns a Lot in Kingsley Creek or so long as Declarant or any of Declarant's affiliates (or any of their respective successors or assigns) are conducting sales and marketing of Homes in Kingsley Creek or other communities developed or marketed by Declarant or its affiliates, whichever is later, unless Declarant consents in writing. Signs, regardless of size, used by Declarant or any of Declarant's affiliates, or any of their successors or assigns, for advertising or marketing during the construction and sale period of Kingsley Creek or other communities developed and/or marketed by Declarant or its affiliates and other signs authorized by Declarant shall be exempt from this Section 12. Such sign or signs as Declarant may be required to erect under the terms of an Institutional Mortgage shall also be exempt from this Section 12. An Owner may display a security sign, provided by a contractor for security services, as permitted by the HOA Act. This provision may not be amended without the prior written consent of Declarant.

**Section 13. TRASH AND OTHER MATERIALS.** No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on the Lots and/or Common Area, or other portions of the Property, except in sanitary, self-locking containers located in appropriate areas (i.e., areas not visible from the street or any other Lot other than at times of scheduled trash pick-up), and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, offensive, detrimental or a nuisance to Owners or to any other property in the vicinity thereof or to its occupants. No clothing or other household items shall be hung, dried, or aired in such a way as to be visible from the Common Area or another Lot. No stripped vehicles, lumber or other building materials, grass, tree clippings, metals, scrap, automobile pieces or parts, refuse, or trash shall be stored or allowed to accumulate on any portion of the Property (except when accumulated during construction by Declarant and/or a Builder, during construction approved by the Committee, or when accumulated by the Association for imminent pick-up and discard).

**Section 14. TEMPORARY STRUCTURES.** No tent, shack, shed or other temporary building or Improvement, other than separate construction, service and sales trailers to be used by Declarant, Declarant's affiliates, and/or their respective agents and contractors, for the construction, service and sale of Kingsley Creek or other communities, shall be placed upon any portion of the Property, either temporarily or permanently. Except as provided above, no trailer, motor home or recreational vehicle shall be: (a) used as a residence, either temporarily or permanently, or (b) parked upon the Property.

**Section 15. OIL AND MINING OPERATIONS.** No oil drilling, oil development operations, oil refining, boring or mining operations of any kind shall be permitted upon or on any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

**Section 16. SEWAGE DISPOSAL.** No individual sewage disposal system shall be permitted on any of the Property when a central sewage disposal system is being operated in accordance with the requirements of the governmental regulatory body having jurisdiction thereof.

**Section 17. WATER SUPPLY.** No individual water supply system shall be permitted on any of the Property, provided that one or more central water supply systems are being operated in accordance with requirements of the governmental body having jurisdiction over said central system.

**Section 18. FENCES.** Any fence placed upon any Lot must be approved by the Committee, as provided in Article VIII hereof, prior to installation. Any fences installed by Declarant shall not be altered, modified or changed without the Committee's prior written consent. The Owner assumes complete responsibility to maintain the fence, including, but not limited to, trimming any grass, ivy or other plants from the fence and the gate. In the event the Committee approves the installation of a fence, it shall also have the right to require installation of landscaping, also subject to the Committee's approval, at the time the fence is installed, which if approved, is required to be placed on the inside of the fence. No Owner shall be permitted to attach to any perimeter fence or wall located within any of the Buffers, or to otherwise fence-in or enclose any portion of a Buffer or other Common Area.

Notwithstanding that an Owner has obtained the approval of the Committee to install a fence or landscape materials, as provided hereinabove, such installation shall be at the Owner's sole risk so long as Declarant has not yet begun or is engaged in the construction of a Home on an adjacent Lot. In the event such construction activity on an adjacent Lot causes damage to or destruction of such Owner's fence or landscape materials or any part thereof, the Owner on whose Lot the fence and/or landscaping has been damaged shall be required, at the Owner's expense, to repair or replace such fence and/or landscape materials in conformance with the requirements of the Committee's approval of the initial installation of the fence and/or landscape materials and Declarant shall have no liability for any such damage or destruction. Such repair or replacement shall commence as soon as construction on the adjacent Lot has been completed and shall be pursued to completion with due diligence. For purposes of this paragraph, the term "landscape materials" shall include landscape materials located on or adjacent to any property line of a Lot, including, by way of example and not of limitation, hedges, shrubs and trees, whether associated with a fence or not.

In addition, the installation of any fence placed upon any Lot is subject to easements which run with the land. In the event that any fence is approved by the Committee and is permitted to cross any such easements, if the grantee of such easements (i.e., utility provider or the County) requires the removal of any fence upon the Lot, then the Owner of said Lot shall, at the Owner's sole cost and expense, immediately remove the fence. Notwithstanding the foregoing or any permit or governmental approval to the contrary, no fence may be installed within any drainage easement(s) on the Property. The Owner of a Lot, when installing any fence

upon the Lot, shall comply with all valid laws, zoning ordinances, codes, rules and regulations of all applicable governmental bodies, as applicable, in addition to the Committee approval required by Article VIII hereof.

**Section 19. ANTENNAE.** No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any portion of the Property or upon any improvements thereon, unless expressly approved in writing by the Association, except that this prohibition shall not apply to those satellite dishes that are one (1) meter (39.37 inches) in diameter or less, and specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association is empowered to adopt, and amend from time to time, rules governing the types of antennae which may be permitted and restrictions relating to safety, location and maintenance of antennae. The Association may also adopt (and amend from time to time) and enforce reasonable rules limiting installation of permissible satellite dishes or antennae to certain specified locations, not visible from the street or neighboring properties, and integrated with the Property and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation of permissible satellite dishes or antennae. Any permissible satellite dishes or antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. Further, any Owner desiring to install permissible satellite dishes or antennae may, but is not obligated to, submit plans and specifications for same to the Committee to ensure compliance with the Association's rules governing the types of permissible satellite dishes and antennae and restrictions relating to safety, location and maintenance of satellite dishes and antennae. This Section 19 shall not apply to Declarant.

**Section 20. IMPROVEMENTS.** No Improvements of any kind including, without limitation, any building, walkways, recreation areas and facilities, parking areas, berms, fountains, sprinkler systems, gatehouses, streets, drives, roads, roadways, driveways, fences, retaining walls, underground footers and other foundation supports, stairs, landscaping, trees, hedges, plantings, poles, shed, play structure, tennis court, basketball courts, backboards and hoops, soccer goals, jogging, bicycling and walking paths, swing sets, gym sets, athletic/play equipment, site and perimeter walls, gazebos, benches, mailboxes, topographical feature, landscaping, lawn sculpture, fence, swimming pool, covered patios, screened enclosure, Street Lights and signs, shall be erected, placed or maintained, and no addition, alteration, modification or change to any such Improvement shall be made without the prior written approval of the Committee, including, but not limited to, painting the Home in a color other than the color originally placed by Declarant on the painted surface, replacing the roof using a different type or color than the roof originally installed, or replacing a garage door or entry doors using a different color and type than originally installed.

**Section 21. FLAGS.** An Owner may display one portable, removable United States flag in a respectful manner, and one portable, removable official flag in a respectful manner, not larger than 4½ feet by 6 feet, that represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. An Owner may erect a freestanding flagpole no more than 20 feet high on any portion of the Owner's Lot if the flagpole does not obstruct sightlines at

intersections and is not erected within or upon an easement. The Owner may further display in a respectful manner from that flagpole, one official United States flag, not larger than 4½ feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the County and all setback and locational criteria contained in this Declaration.

**Section 22. GARAGES.** No garage shall be erected which is separate from the Home. No garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage space and no garage opening shall have a screen covering without the consent of the Association. All garage doors shall remain closed when vehicles are not entering or leaving the garage.

**Section 23. HURRICANE SHUTTERS.** No hurricane shutters may be installed without the prior written consent of the Association and the Committee, which consent may not be unreasonably withheld. If the installation of hurricane shutters is made which does not conform to the specifications approved by the Association and the Committee, then the hurricane shutters will be made to conform by the Association at the Owner's expense or they shall be removed.

Approved hurricane shutters shall not be installed or closed, as applicable, before the issuance of a hurricane watch by the National Hurricane Center encompassing Kingsley Creek location, and shall be removed no later than ten (10) days after the cessation of a hurricane watch or warning for same ("Hurricane Shutter Time Period").

Each Owner who plans to be absent from his or her Home during the hurricane season must prepare his or her Lot prior to such Owner's departure by (a) removing all furniture, potted plants and other movable objects from his or her porch, balcony or patio, if any; (b) designating a responsible firm or individual satisfactory to the Association to install and remove approved hurricane shutters in accordance with the Hurricane Shutter Time Period requirements; and (c) designating a responsible firm or individual satisfactory to the Association to care for the Home should the Home suffer hurricane damage. Such firm or individual shall contact the Association for clearance to install or remove hurricane shutters.

**Section 24. DRONES.** Drones are prohibited from being flown on or over any portion of Kingsley Creek property.

**Section 25. WINDOW DECOR.** No newspaper, aluminum foil, sheets or other temporary window treatments shall be permitted. Window tinting is permitted provided that the type and method of tinting is first approved by the Committee.

**Section 26. BASKETBALL BACKBOARDS.** No garage, roof mounted, or in-ground mounted basketball backboards are permitted. Portable basketball backboards shall be permitted so long as stored in the garage or out of view when not in use.

Section 27. YARD SALES. No yard sales, garage sales or neighborhood sales shall be permitted on any Lot or any other area in Kingsley Creek unless approved in writing by the Board.

Section 28. ENERGY CONSERVATION EQUIPMENT. All solar heating apparatus must conform to the standards set forth in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating, and domestic Water Systems. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as reasonably determined by the Committee. No solar panel, vents, or other roof-mounted, mechanical equipment shall project more than 1.5 feet above the surface of the roof of a Home; and all such equipment shall be painted consistent with the color scheme of the roof of the Home. This provision is not intended to prohibit the use of solar energy devices.

Section 29. BOARD'S RULE MAKING POWER. The foregoing use restrictions shall not be deemed to be all inclusive nor restrict the right of the Association to adopt such reasonable rules and regulations governing the use of Kingsley Creek as the Board may determine from time to time, provided that such rules and regulations: (i) are not in conflict with the provisions hereof; (ii) apply equally to all lawful residents of Kingsley Creek without discriminating on the basis of whether a Home is occupied by an Owner or his or her lessee; and (iii) for so long as Declarant holds any Homes within Kingsley Creek for sale in the ordinary course of its business, have the prior written approval of Declarant. Declarant has the right to approve any rule or modification thereof.

Section 30. COMPLIANCE WITH DOCUMENTS. Each Owner and their family members, guests, and invitees shall be bound by and abide by the Kingsley Creek Documents. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within Kingsley Creek. Such Owner shall be liable to the Association and shall pay the cost of any maintenance, repair or replacement of any real or personal property located on the Property rendered necessary by his or her act, neglect or carelessness, or by that of any other of the foregoing parties as a Special Assessment.

Section 31. NO IMPLIED WAIVER. The failure of the Association or Declarant to object to an Owner's or other party's failure to comply with the covenants or restrictions contained herein or any other Kingsley Creek Document (including the rules now or hereafter promulgated) shall in no event be deemed a waiver by Declarant or the Association or of any other party having an interest in the Property of its right to object to same and to seek compliance in accordance with the provisions of the Kingsley Creek Documents.

Section 32. DECLARANT EXEMPTION. Declarant plans to undertake the work of constructing Homes and Improvements upon the Property and may undertake the work of constructing other buildings upon adjacent land or other property being developed or marketed by Declarant or its affiliates. The completion of the aforementioned work and the sale, rental and other transfer of Homes by Declarant and Declarant's affiliates are essential to the establishment and welfare of the Property as a residential community. In order that such work may be completed and a fully occupied community established as rapidly as possible, neither the Owners, the Association, nor the Committee shall do anything whatsoever to interfere with any

of Declarant's or Declarant's affiliates' activities relating to the selling or constructing of Homes and Improvements upon the Property, the selling or constructing of other buildings upon adjacent land or any other property being developed or marketed by Declarant or any of Declarant's affiliates, or the sale, rental and/or other transfer of Homes by Declarant or any of Declarant's affiliates. In this respect, Declarant hereby reserves the right for itself and its employees, agents, licensees, and invitees to come upon any and all portions of the Property (including, without limitation, the Common Area as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient to enable Declarant to carry on its work and other activities including, without limitation, Declarant's development and construction of Kingsley Creek and the Homes therein.

In general, the restrictions and limitations set forth in this Article X shall not apply to Declarant or to Lots and Homes owned by Declarant. Declarant shall specifically be exempt from any restrictions which interfere in any manner whatsoever with Declarant's plans for development, construction, sale, lease, or use of the Property and to the Improvements thereon. Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Article X in addition to whatever remedies at law to which it might be entitled.

#### **ARTICLE XI** **DAMAGE OR DESTRUCTION TO COMMON AREA**

Damage to or destruction of all or any portion of the Common Area shall, notwithstanding any provision in this Declaration to the contrary, be handled as follows:

A. If insurance proceeds are sufficient to effect total restoration of damaged or destroyed Common Area, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.

B. If insurance proceeds are insufficient to effect total restoration, and the cost of restoration exceeds such proceeds by Twenty-Five Thousand Dollars (\$25,000.00) or less, then the Association shall cause the Common Area to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment proportionately against each of the Lots in accordance with the provisions of Articles VI and VII herein.

C. If the insurance proceeds are insufficient to effect total restoration and the cost of restoration of the Common Area exceeds said proceeds by over Twenty-Five Thousand Dollars (\$25,000.00), then by the written consent or vote of a majority of the voting interests, they shall determine whether: (i) to rebuild and restore either: (a) in substantially the same manner as the Improvements existed prior to the damage or destruction; or (b) in a manner less expensive, and in the event of (a) or (b) to raise the necessary rebuilding and restoration funds by levying pro rata restoration and construction Special Assessments against all Lots; or (ii) to not rebuild and to retain available insurance proceeds. In the event it is decided that the damaged or destroyed Common Area shall not be rebuilt, the remains of any structure or structures shall be torn down and hauled away, so as not to be a safety hazard or visual nuisance, and the land shall be fully sodded and landscaped or otherwise treated in an attractive manner. Notwithstanding anything contained herein to the contrary, any decision not to rebuild or to rebuild in a manner which would result in a change in the Improvements shall not be effective without the prior

written approval of Declarant (which approval shall be given, conditioned or withheld in Declarant's sole and absolute discretion) as long as Declarant owns any portion of the Property.

D. Each Owner shall be liable to the Association for any damage to the Common Area not fully covered or collected by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of such Owner's family, tenants, invitees and guests, both minors and adults.

E. In the event that the repairs and replacements were paid for by any Special Assessments as well as insurance proceeds and regular Assessments, then, if after the completion of and payment for the repair, replacement, construction or reconstruction there shall remain any excess in the hands of the Association, it shall be presumed that the monies disbursed in payment of any repair, replacement, construction and reconstruction were first disbursed from insurance proceeds and regular Assessments and any remaining funds shall be deemed to be the remaining Special Assessments which shall be returned to the Owners by means of a *pro rata* distribution in accordance with the collection of such Special Assessments.

## **ARTICLE XII**

### **INSURANCE AND CONDEMNATION**

The Association shall purchase and maintain the following insurance coverages subject to the following provisions, and the cost of the premiums therefor shall be a part of the Operating Expenses:

**Section 1. CASUALTY INSURANCE.** Property and casualty insurance in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all Improvements and personal property which are owned by the Association and now or hereafter located upon the Common Area, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Common Area in developments similar to Kingsley Creek in construction, location and use.

**Section 2. PUBLIC LIABILITY INSURANCE.** A comprehensive policy of public liability insurance naming the Association, the County and, until Declarant no longer owns any Lot with the Property, Declarant as named insureds thereof insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance and use of the Common Area and any Improvements located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000.00) for damages incurred or claimed by any one person for any one occurrence; not less than Three Million Dollars (\$3,000,000.00) for damages incurred or claimed by more than one person for any one occurrence; and for not less than Fifty Thousand Dollars (\$50,000.00) property damage per occurrence with no separate limits stated for the number of claims. The insurance shall not include any exclusion that would deny coverage from the operation of sewer lines and shall provide thirty (30)- day written notice to the County prior to cancellation or modification of any insurance referred to herein. The Association may also obtain worker's compensation insurance and other liability insurance including, but not limited to, insurance for lawsuits related to employment contracts in which the Association is a party, as it may deem desirable.



Section 3. FIDELITY COVERAGE. Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Board and all others who handle and are responsible for handling funds of the Association shall be maintained in the form of fidelity bonds, which requirements shall be reasonably determined by the Board.

Section 4. DIRECTORS' COVERAGE. Adequate directors' and officers' liability coverage, which coverage shall be effective from and after the date the Association is created.

Section 5. OTHER INSURANCE. The Board may obtain such other forms of insurance as the Board may determine and in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Common Area and any Improvements now or hereafter located thereon or in the best interests of the Association and/or its officers and directors.

Section 6. CANCELLATION OR MODIFICATION. All insurance policies purchased by the Association shall provide that they may not be canceled (including for nonpayment of premiums) or substantially modified without at least ten (10) days prior written notice to the Association and to each first mortgage holder, if any, named in the mortgage clause.

Section 7. FLOOD INSURANCE. If determined appropriate by the Board or if required by an Institutional Mortgagee, a master or blanket policy of flood insurance covering the Common Area, if available under the National Flood Insurance Program, shall be purchased, which flood insurance shall be in the form of a standard policy issued by a member of the National Flood Insurers Association, and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available under such program, or one hundred percent (100%) of the current replacement cost of all buildings and other insurable property located in the flood hazard area.

Section 8. CONDEMNATION. In the event the Association receives any award or payment arising from the taking of any Common Area or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and improvements thereon to the extent deemed advisable by the Board and approved by at least two-thirds (2/3) of the total voting interests, and the remaining balance thereof, if any, shall then be distributed pro rata to Owners and mortgagees of Lots as their respective interests may appear.

Section 9. WAIVER OF SUBROGATION. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement of said persons, but only to the extent that such insurance proceeds are received in compensation for such loss.

### **ARTICLE XIII**

#### **GENERAL PROVISIONS**

**Section 1. CONFLICT WITH OTHER KINGSLEY CREEK DOCUMENTS.** In the event of any conflict between the provisions of this Declaration and the provisions of the Articles and/or Bylaws and/or rules and regulations promulgated by the Association, the provisions of this Declaration, the Articles, the Bylaws and the rules and regulations shall control, in that order.

**Section 2. NOTICES.** Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) each Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; (ii) the Association, certified mail, return receipt requested, at 551 North Cattlemen Road, Suite 200, Sarasota FL 34232, or such other address as the Association shall hereinafter notify Declarant and the Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at 551 North Cattlemen Road, Suite 200, Sarasota FL 34232, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Owners.

**Section 3. ENFORCEMENT.** The covenants and restrictions herein contained may be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any Lot and/or Home), the Association, any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Property in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to reimbursement of all costs thereof including, but not limited to, Legal Fees, from the non-prevailing party.

**Section 4. INTERPRETATION.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of Common Area. Article, Section and Paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Declaration.

Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

**Section 5. SEVERABILITY.** In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way

affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. In the event that any court should hereafter determine that any provision of this Declaration is in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Association.

Section 6. CERTAIN RIGHTS OF DECLARANT. Notwithstanding anything to the contrary herein contained, no Improvements constructed or installed by Declarant shall be subject to the approval of the Association or the Owners or the provisions and requirements of this Declaration, although it is the intent of Declarant to create a community with a common scheme of development. Notwithstanding the other provisions of this Declaration, Declarant reserves for itself and its affiliates, and Declarant, its affiliates and its nominees shall have, the right to enter into and transact on the Property any business necessary to consummate the sale, lease or encumbrance of Homes or real property within or outside Kingsley Creek, including, but not limited to, the right to maintain models and a sales and/or leasing office, a construction office and/or a service office, place signs, employ sales, leasing, construction and service personnel, use the Common Area and show Homes, and Declarant further reserves the right to make repairs to the Common Area and to carry on construction activity for the benefit of the Property. Declarant, its successors and/or assigns, shall have access to the Common Area and other facilities at all times during the Development and Sale Period and the Association shall not impede any such access, and no Owner or the Association shall do any act which may interfere with Declarant having access to the Common Area and other facilities. Until such time as Declarant no longer owns any portion of the Property, Declarant shall be allowed to use the Common Area and other facilities for sales meetings and sales related functions and for other business purposes or functions Declarant determines in its sole discretion. Declarant, its affiliates and their respective nominees, may exercise the foregoing rights without notifying the Association and/or the Owners. Any such models, sales and/or leasing office, construction office, service office, signs and any other items pertaining to such sales, leasing, construction or service efforts shall not be considered a part of the Common Area and shall remain the property of Declarant. In addition, Declarant hereby has, shall have and hereby reserves the right to enter upon the Common Area (including, without limitation, all drainage easements and utility easements, whether located on a Lot or Common Area) in order for Declarant to final-out and/or close-out any and all approvals, permits, orders, conditions and/or requirements that have been issued or imposed by any governmental entity in connection with the development and construction of Kingsley Creek and all Improvements therein, and for Declarant to comply and adhere to the same, and such rights shall survive the date of Turnover and continue for such period of time as is necessary for Declarant to fully comply with all such governmentally issued approvals, permits, orders, conditions and/or requirements. Without limiting the generality of the foregoing, in exercising any such rights, Declarant shall have the right to remove and/or relocate any and all items (including, without limitation, landscape materials, fences and/or other Improvements) that may be required to be removed and/or relocated to final-out and/or close-out any and all such approvals, permits, orders, conditions and/or requirements without compensation to the Association or the Owners. This Section 6 may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such

amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Kingsley Creek Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section 6 and the terms of Article II applicable to the annexation of Additional Property hereunder by Declarant, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to acquire or construct Improvements upon the Property, or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Property as a result of the foreclosure of any mortgage encumbering any portion of the Property securing any such loan to Declarant, or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Section 6 are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Kingsley Creek Documents.

Declarant shall also have the right, but not the obligation, to conduct inspections and tests from time to time of all or any portion of the Common Area in order to ascertain the physical condition of the Improvements and to determine if maintenance, repair or replacement of any such Improvement is necessary. If Declarant conducts any such tests or inspections, it shall pay all costs thereof and restore the affected portion of the Property to its condition immediately prior to the inspections and tests. Declarant shall have such rights of entry on, over, under, across and through the Property as may be reasonably necessary to exercise the rights described in this Section 6. Declarant's right of inspection shall exist whether or not the Turnover Date has occurred. In the event Declarant exercises its inspection right, it is acknowledged by the Association and all Owners that Declarant is performing any such inspection for its own benefit and not for the benefit of the Association and/or the Owners and further, Declarant shall have no obligation to inform the Association and/or the Owners of the result of any such inspection.

ALL OWNERS, OCCUPANTS AND USERS OF KINGSLEY CREEK ARE HEREBY PLACED ON NOTICE THAT DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES MAY BE, FROM TIME TO TIME, CONDUCTING EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO KINGSLEY CREEK. BY THE ACCEPTANCE OF THEIR DEED, TITLE OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF KINGSLEY CREEK, EACH SUCH OWNER, OCCUPANT AND USER, FOR THEMSELVES AND EACH OF THEIR RESPECTIVE HEIRS, LEGAL REPRESENTATIVES AND ASSIGNS AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES AS FOLLOWS: (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO KINGSLEY CREEK WHERE THE AFORESAID ACTIVITIES ARE BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) THAT THE OWNER, OCCUPANT OR USER IS AT RISK OF SUFFERING INJURY TO BOTH THEIR PERSON AND/OR PROPERTY AS A RESULT OF ENTRY UPON ANY PROPERTY WITHIN OR IN PROXIMITY TO KINGSLEY CREEK WHERE THE AFORESAID ACTIVITIES ARE BEING CONDUCTED. EACH OWNER, OCCUPANT AND USER EXPRESSLY ASSUMES FULL RESPONSIBILITY FOR THE RISK OF BODILY INJURY, DEATH OR PROPERTY

DAMAGE SUFFERED AS A RESULT OF THE AFORESAID CONSTRUCTION AND OTHER ACTIVITIES; (iv) THAT EACH OWNER, OCCUPANT AND USER HEREBY RELEASES, WAIVES, DISCHARGES AND HOLDS HARMLESS DECLARANT, ITS PARTNERS AND AFFILIATES, AND EACH OF THEIR RESPECTIVE PARTNERS, AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS, AND ANY SUBSEQUENT DECLARANT (THE "RELEASED PARTIES") FROM ALL LOSSES, CLAIMS, COSTS, LIABILITIES, DAMAGES (INCLUDING COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE AND INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE, BODILY INJURY OR DEATH, WHETHER CAUSED BY NEGLIGENCE ON THE PART OF ANY OR ALL OF THE RELEASED PARTIES OR ANYONE ELSE), AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH THE AFORESAID CONSTRUCTION AND OTHER ACTIVITIES; (v) ANY PURCHASE OR USE OF ANY PORTION OF KINGSLEY CREEK HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (vi) THAT THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT TO SELL, CONVEY, LEASE AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF KINGSLEY CREEK.

Section 7. DISPUTES AS TO USE. In the event there is any dispute as to whether the use of the Property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Notwithstanding anything to the contrary herein contained, any use by Declarant of the Property shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

Section 8. AMENDMENT AND MODIFICATION. The process of amending or modifying this Declaration shall be as follows:

A. Until the Turnover Date, all amendments or modifications shall only be made by Declarant without the requirement of the Association's consent or the consent of the Owners so long as such amendments or modifications do not materially impair the common plan of development of Kingsley Creek; provided, however, that the Association shall, forthwith upon request of Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as Declarant shall, from time to time, request.

B. After the Turnover Date, this Declaration may be amended by: (i) the consent of the Owners owning two-thirds (2/3) of all Lots; together with (ii) the approval or ratification of a majority of the Board. The aforementioned consent of the Owners owning two-thirds (2/3) of the Lots may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the Bylaws and evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

C. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent of the Owners.

D. Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Association or of any Institutional Mortgagee under the Kingsley Creek Documents without the specific written approval of such party affected thereby. In addition, and notwithstanding anything to the contrary contained herein, no amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Section 6 of this Article XIII and any such amendment shall be deemed to impair and prejudice the rights of Declarant.

E. A true copy of any Amendment to this Declaration shall be sent certified mail by the Association to Declarant and to all Institutional Mortgagees holding a mortgage on any portion of the Property requesting notice. The amendment shall become effective upon the recording amongst the Public Records of the County of said amendment or any Supplemental Declaration to this Declaration which sets forth any amendment or modification to this Declaration.

F. Notwithstanding anything contained herein to the contrary, Declarant may, without the consent of any Owners, file any amendments to this Declaration which may be required by an Institutional Mortgagee for the purpose of satisfying such Institutional Mortgagee's development criteria or such other criteria as may be established by such mortgagee's secondary mortgage market purchasers, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; provided, however, any such Declarant's filed amendments must be in accordance with any applicable rules, regulations and other requirements promulgated by the United States Department of Housing and Urban Development.

G. Any proposed amendment to the Declaration which would affect the Surface Water and Storm Water Management System (including environmental conservation areas and the water management portions of the Common Area), shall be submitted to the Water Management District and the County if necessary and any other governmental or quasi-governmental agency having jurisdiction over the Surface Water and Storm Water Management System for a determination of whether the proposed amendment necessitates a modification of the Water Management District Permit for the Property.

H. Section 12 of this Article XIII below may not be amended without the approval of eighty percent (80%) of all Members.

Section 9. DELEGATION. The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant.

Section 10. TERM. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the Property, and inure to the benefit of Declarant, the Association and the Owners and their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date of recording this Declaration amongst the Public Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten

(10) years each unless at least one (1) year prior to the termination of such fifty (50)-year term or any such ten (10)-year extension there is recorded amongst the Public Records of the County an instrument agreeing to terminate this Declaration signed by Owners owning two-thirds (2/3) of the Lots and Institutional Mortgagees holding first mortgages encumbering two-thirds (2/3) of all Lots encumbered by first mortgages held by Institutional Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the fifty (50)-year term or the ten (10)-year extension during which such instrument was recorded.

**Section 11. RIGHTS OF MORTGAGEES.**

A. Right to Notice. The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Kingsley Creek Documents and the books, records and financial statements of the Association to Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Property. In addition, evidence of insurance shall be issued to each Owner and mortgagee holding a mortgage encumbering a Home upon written request to the Association.

B. Rights of Listed Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor (such holder, insurer or guarantor is herein referred to as a "Listed Mortgagee") of a mortgage encumbering a Lot and the legal description of such Lot, the Association shall provide such Listed Mortgagee with timely written notice of the following:

(1) Any condemnation, loss or casualty loss which affects any material portion of the Common Area;

(2) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(3) Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Lot; and

(4) Any failure by an Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform such Owner's obligations under the Kingsley Creek Documents, including, but not limited to, any delinquency in the payment of Assessments, or any other charge owed to the Association by said Owner where such failure or delinquency has continued for a period of sixty (60) days.

C. Right of Listed Mortgagee to Receive Financial Statement. Any Listed Mortgagee shall, upon written request made to the Association, be entitled to financial statements of the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

**Section 12. APPROVAL OF ASSOCIATION LAWSUITS BY OWNERS.** Notwithstanding anything contained herein to the contrary, in order to prevent the Board from incurring expenses not contemplated by the Kingsley Creek Documents, the Association shall be required to obtain the approval of three-fourths (3/4) of the total voting interests (at a duly called meeting of the Owners at which a quorum is present) prior to engaging persons or entities for the purpose of

suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which Owners are obligated to pay pursuant to the Kingsley Creek Documents;
- (c) the enforcement of the use and occupancy restrictions contained in the Kingsley Creek Documents;
- (d) the enforcement of Association rules;
- (e) the enforcement of the architectural guidelines;
- (f) the enforcement of a contract entered into by the Association with vendors providing services to the Association;
- (g) dealing with an emergency when waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Common Area or to Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths [3/4] of the Owners); or
- (h) filing a compulsory counterclaim.

**Section 13. COMPLIANCE WITH PROVISIONS.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot except as elsewhere herein provided does consent and agree to, and shall be conclusively deemed to have consented and agreed to, every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property. Declarant shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than Declarant.

**Section 14. SECURITY.** The Association may, but shall not be obligated to, maintain or support various activities within the Property which are intended to foster or promote safety or security. No representation or warranty is made that any fire protection system, burglar alarm system, gate system or other security system installed or security measures undertaken on or about the Property cannot be compromised or circumvented, nor that any such systems or security measures will prevent loss or provide the detection or protection for which they may be designed or intended. Each Owner acknowledges, understands, and covenants to inform all occupants of its Home, and their respective families and invitees, that the Association, the Board, Declarant, committees, or any other persons involved with the governance, maintenance, and management of the Property are not insurers of safety or security within the Property. All Owners and occupants, and their respective families and invitees, assume all risks of personal injury and loss or damage to persons, units, and the contents of units, and further acknowledge that neither the Association, its Board and committees, the management company of the Association, any neighborhood association nor Declarant have made representations or warranties regarding any attended or unattended entry gate, patrolling of the property, any fire



protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the property. All Owners and occupants, and their respective families and invitees, further acknowledge that they have not relied upon any such representations or warranties, expressed or implied.

Any gate house or gate attendant service which may exist for the community is intended to limit access to the Property but is not intended to constitute any assurance that the Property is secure from entry or intrusion by non-owners and non-occupants. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. However, neither the Association, the Board, the management agent of the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of the above-mentioned parties be held liable for any loss or damage by reason of failure to provide adequate security or for the ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the property (or onsite roving patrol or resources, if applicable) cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

NEITHER DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE. ALL OWNERS, BY ACCEPTANCE OF A DEED OR TITLE TO A LOT, AGREE TO HOLD DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY, AND NEITHER THE ASSOCIATION, DECLARANT NOR ANY SUCCESSOR DECLARANT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH MONITORING SYSTEM OR SECURITY SERVICE, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES, DAMAGE, INJURY, DEATH OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME. THE ASSOCIATION, DECLARANT, AND ANY SUCCESSOR DECLARANT SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY, EVEN IF CAUSED BY THE NEGLIGENCE OF THE ASSOCIATION, DECLARANT AND/OR ANY SUCCESSOR DECLARANT. ALL MEMBERS, OWNERS AND OCCUPANTS OF ANY LOT OR HOME, AND TENANTS, GUESTS, AND INVITEES OF ANY OWNER ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD, DECLARANT, AND ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT: (a) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE), IF ANY, RECOMMENDED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE COMMITTEE MAY NOT BE

COMPROMISED OR CIRCUMVENTED, OR (b) THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEM (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE) WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD AND THE COMMITTEE, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS OR GUARANTORS AND THAT EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY MEMBER OR OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS OR HOMES, AND TO THE CONTENTS OF LOTS OR HOMES AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD AND THE COMMITTEE, DECLARANT, AND ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS, WARRANTIES AND/OR GUARANTIES, NOR HAS ANY OWNER, MEMBER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE) RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

**Section 15. COVENANT RUNNING WITH THE LAND.** All provisions of this Declaration shall, to the extent applicable and unless otherwise expressly provided herein to the contrary, be construed to be covenants running with the Lots and Homes and the Property and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon and inure to the benefit of Declarant and subsequent Owner(s) of the Homes, Lots and Property or any part thereof, or interest therein, and their respective heirs, successors, and assigns. However, the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary. All present and future Owners, tenants, and occupants of the Lots and Homes, as applicable, shall be subject to and shall comply with the provisions of this Declaration and the Articles, Bylaws and applicable rules and regulations as they exist and may from time to time be amended. The acceptance of a deed of conveyance of a Lot, or the entering into a lease of or occupancy of a Home, shall constitute an adoption and ratification by such Owner, tenant, or occupant of the provisions of this Declaration, and the Articles, Bylaws, and applicable rules and regulations of the Association, as they may be amended from time to time. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

**Section 16. NO PUBLIC RIGHT OR DEDICATION.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Common Area to the public, or for any public use.

**Section 17. NO REPRESENTATIONS OR WARRANTIES.** NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY

PORTION OF THE COMMON AREA, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION.

**Section 18. CERTAIN RESERVED RIGHTS OF DECLARANT WITH RESPECT TO COMMUNITY SYSTEMS.** Without limiting the generality of any other applicable provisions of this Declaration, and without such provisions limiting the generality hereof, Declarant hereby reserves and retains to itself:

- (a) the title to any Community Systems and a perpetual exclusive easement over, under and across the Property for the placement and location thereof;
- (b) the right to connect, from time to time, the Community Systems to such receiving or intermediary transmission source(s) as Declarant may in its sole discretion deem appropriate, in location(s) on the Property as Declarant may determine in its sole discretion, including, without limitation, companies licensed to provide CATV or satellite service(s) in the County, for which service(s) Declarant shall have the right to charge any users a fee (which shall not exceed any maximum allowable charge provided for in the applicable ordinances of the County);
- (c) the continuing right to air conditioned space within and/or on the Common Area, if any, as Declarant may determine in its sole discretion to install, operate, maintain, repair and replace the equipment serving, providing or running the Community Systems, which location may include, without limitation, room(s) within any Improvements constructed on the Common Area, if any; and
- (d) the exclusive right to offer and provide from time to time to the Association, the Lots and the Lot Owners, any and all Bundled Services through the Community Systems.

Neither the Association nor any officer, director, employee, committee member or agent thereof (including any management company) shall be liable for any damage to property, personal injury or death arising from or connected with any act or omission of any of the foregoing during the course of performing any duty or exercising any right or privilege (including, without limitation, performing maintenance work which is the duty of the Association or exercising any remedial maintenance or alteration rights under this Declaration) required or authorized to be done by the Association, or any of the other aforesaid parties, under this Declaration or otherwise as required or permitted by law.

**Section 19. ASSOCIATION AND DECLARANT AS ATTORNEY-IN-FACT.** Each Owner, by reason of having acquired ownership of a Lot, whether by purchase, gift, operation of law or otherwise, and each occupant of a Home, by reason of his or her occupancy, is hereby declared to have acknowledged and agreed to his or her automatic consent to any rezoning, replatting, covenant in lieu of unity of title, change, addition or deletion made in, on or to Kingsley Creek by Declarant (hereinafter, collectively, the "Modifications") and, in respect thereto, each Owner of a Lot and occupant of a Home hereby designates the Association to act as agent and attorney in fact on behalf of such Owner or occupant to consent to any such Modification. If requested by Declarant, each Owner shall evidence his or her consent to a Modification in writing (provided,

however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). Further, each Owner, by reason of having acquired ownership of a Lot, hereby agrees to execute, at the request of Declarant, any document and/or consent which may be required by any government agency to allow Declarant and/or its affiliates to complete the plan of development of Kingsley Creek, as such plan may be hereafter amended, and each such Owner hereby further appoints Declarant as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of each such Owner, any and all of such documents and/or consents. This power of attorney is irrevocable and is coupled with an interest. The provisions of this Section 19 may not be amended without Declarant's prior written consent.

**Section 20. DECLARANT'S RESERVATION OF RIGHTS.** Notwithstanding anything contained herein or in any of the other Kingsley Creek Documents to the contrary, Declarant reserves the right to change the zoning of any portion of the Property now existing or hereafter changed to be other than single-family residential (e.g., multi-family residential or commercial) and/or to make such uses of all or any part of the Property as shall be permitted by applicable zoning regulations as they may exist from time to time. Declarant, however, is not obligated by this Declaration to cause any portion of the Property to be rezoned or developed for any such uses. In the event Declarant changes the zoning of the Property, Declarant hereby reserves the right to amend this Declaration or to create one or more sub-declarations subjecting such property(ies) to additional or different specified or prohibited uses.

**Section 21. ANIMAL, REPTILE AND WILDLIFE HAZARDS.** Florida's natural areas, which include conservation areas, conservation easement property, wetland preservation areas and lakes, provide habitat for many wild animals and reptiles, including possible bears, poisonous snakes and alligators. Animals can be upset by human presence and unexpectedly become aggressive or harmed by efforts to avoid you. Always keep your distance and avoid interaction with all wildlife.

All Owners, and their family members, guests, invitees and lessees, should always follow the suggestions listed below to assist in human protection from a potentially unpleasant experience as well as the protection of our wildlife:

- (a) Any wild animal can be dangerous. Always be cautious and observant.
- (b) Do not feed the wildlife. Food meant for human consumption can harm an animal. Animals that get food from humans may become aggressive.
- (c) Help keep wildlife "wild" by keeping your distance. Move away from animals without disturbing them and do not block an animal's path.
- (d) Photograph and observe wildlife from a safe distance, by using binoculars, spotting scopes or telephoto lenses.
- (e) If an animal or reptile approaches you, move away and maintain a safe distance.
- (f) Do not walk pets within or near any natural area, or near any bodies of water.

- (g) Keep young children at a safe distance from natural areas and bodies of water.

#### **ARTICLE XIV** **DISPUTE RESOLUTION**

**Section 1. IN GENERAL.** This Article XIV contains procedures concerning disputes between an Owner and the Association, as well as between (i) an Owner and/or Declarant and (ii) the Association and Declarant, related to Kingsley Creek or each other. Regarding disputes between an Owner and Declarant, the procedures in this Article XIV do not replace Declarant's customer or warranty service procedures, and Owners are encouraged to resolve disputes through those procedures prior to initiating any procedures hereunder.

**Section 2. DISPUTES BETWEEN ASSOCIATION AND OWNERS.** All disputes, controversies, claims and demands between the Association and any Owner pertaining to the subject areas described in Section 4 below shall be governed by the procedures set forth in Section 4 below.

**Section 3. DISPUTES BETWEEN ASSOCIATION/OWNER AND DECLARANT.** Any and all claims, disputes and/or other controversy between the Association or any Owner and Declarant (or any Affiliated general contractor or Affiliated contractor, or any officer, director, member, shareholder, partner, employee or agent thereof, individually and collectively referred to as "Declarant" for purposes of this Article) or any non-Affiliated general contractor, non-Affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other person or entity that provided materials, labor or other services to the Property or a Home on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation, budgeting and/or performance of any Improvements in the Common Area or the Home, whether based in contract, tort or statute violation, shall be subject to the provisions set forth in Section 4 below, and/or, with respect to any such disputes between an Owner and Declarant, the provisions of the purchase agreement between such Owner and Declarant and/or the provisions of any warranty provided by Declarant to such Owner.

**Section 4. DISPUTE RESOLUTION.** ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES OR DISPUTES BY OR BETWEEN ANY OWNER AND THE ASSOCIATION AND/OR DECLARANT (COLLECTIVELY REFERRED TO AS THE "BOUND PARTIES" AND INDIVIDUALLY AS A "BOUND PARTY"), ARISING OUT OF OR RELATED TO THE PROPERTY, THE SUBDIVISION OR COMMUNITY OF WHICH THE PROPERTY IS A PART, THE SALE OF THE PROPERTY BY DECLARANT, OR ANY TRANSACTION RELATED THERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE, OR EQUITY, INCLUDING WITHOUT LIMITATION, ANY DISPUTE OVER (a) BREACH OF CONTRACT, (b) NEGLIGENT OR INTENTIONAL MISREPRESENTATION OR FRAUD, (c) NONDISCLOSURE, (d) BREACH OF ANY ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING, (e) ALLEGATIONS OF LATENT OR PATENT DESIGN OR CONSTRUCTION DEFECTS, INCLUDING WITHOUT LIMITATION, PURSUANT TO THE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES, (f) THE PROPERTY,

INCLUDING WITHOUT LIMITATION, THE PLANNING, SURVEYING, DESIGN, ENGINEERING, GRADING, SPECIFICATIONS, CONSTRUCTION OR OTHER DEVELOPMENT OF THE PROPERTY, THE PARCEL/TRACT OR KINGSLEY CREEK OF WHICH THE PROPERTY IS A PART, (g) DECEPTIVE TRADE PRACTICES OR (h) ANY OTHER MATTER ARISING OUT OF OR RELATED TO THE INTERPRETATION OF ANY TERM OR PROVISION OF THIS DECLARATION, OR ANY DEFENSE GOING TO THE FORMATION OR VALIDITY OF THIS DECLARATION, OR ANY PROVISION OF THIS DECLARATION OR ANY EXHIBITS HERETO (EACH A "DISPUTE"), SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES SET FORTH AS FOLLOWS:

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

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

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

d. This arbitration agreement shall inure to the benefit of, and be enforceable by, each Owner, Declarant and Declarant's Affiliates and related entities, the Association, and each of their respective employees, officers, directors, agents, representatives, contractors,

subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom any Owner or the Association contends is responsible for any alleged defect in or to the Property or any improvement or appurtenance thereto. The Bound Parties contemplate the inclusion of such Bound Parties in any arbitration of a Dispute and agree that the inclusion of such Bound Parties will not affect the enforceability of this arbitration agreement.

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

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

g. The decision of the arbitrator shall be final and binding. The Bound Parties expressly agree that an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the County in which the Property is located.

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

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

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

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

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

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

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

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

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

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

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

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

NOTICE: THE BOUND PARTIES AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS ARBITRATION AGREEMENT (ARTICLE XV OF THIS DECLARATION) ENTITLED, "DISPUTE RESOLUTION - ARBITRATION" DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT, AND THE BOUND PARTIES ARE GIVING UP ANY RIGHTS THE



BOUND PARTIES MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. THE BOUND PARTIES ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION AGREEMENT. IF ANY OWNER OR DECLARANT AND/OR THE ASSOCIATION REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THE OWNER OR DECLARANT AND/OR THE ASSOCIATION MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT. THE BOUND PARTIES' AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

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

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

#### **ARTICLE XV** **SURVEILLANCE CAMERAS**

Each Owner, by acceptance of a deed or title to a Lot in Kingsley Creek, acknowledges and agrees without the need for any further consent or acknowledgement that there may be surveillance cameras located within and directed towards the Common Area of Kingsley Creek (inclusive of select areas within and outside of its facilities) and that such surveillance cameras are neither a violation of or an infringement upon any privacy rights Owners may have (if any) nor are the recordings from such cameras intended to capture private property. The installation of surveillance cameras is not a service to the Owners and such cameras are merely installed as an access control measure, as well as a potential deterrent to crime and possibly to aid in criminal identification. The surveillance cameras will be placed in such locations within the Common Area as the Board determines in its sole discretion from time to time, subject to the limitations herein. The surveillance cameras are intended to be visible and not hidden from view. Cameras will not be installed in "private" places where residents would have a reasonable expectation of privacy, such as changing rooms, locker rooms or bathrooms.

The surveillance cameras may be real or fake (operational or non-operational). Fake surveillance cameras are not recording activity. The real surveillance cameras will not be monitored by individuals, but rather will visually record activity within the area the surveillance cameras are installed. The surveillance cameras will not record sound. All recordings will be

kept by the Association for such period of time as determined by the Board in its sole discretion or as may be required by law.

Each Owner also acknowledges and agrees that the surveillance cameras cannot prevent crime and may not be of assistance in solving a crime. Further, the Association, the Board and its Committees, the Association's management company and Declarant offer no guaranty of additional protection, safety or security and assume no further or unintended liability by virtue of installing and operating such surveillance cameras.

Recordings from the surveillance cameras have restricted access for a limited time period and may only be viewed by "Authorized Viewers" (as hereinafter defined) if something unexpectedly happens within Kingsley Creek such as a crime, damage to property, injury to a person or an alleged rule violation. Such recordings are not deemed official records under Florida statutes to which an Owner has a right of access. For purposes of the foregoing sentence, viewing can be done by the following only: Board members, Declarant, the property manager and/or law enforcement personnel investigating an actual or alleged crime, damage to property, injury to a person or rule violation and to others who can either produce a subpoena or articulate a compelling and legitimate reason for needing access as determined in the Association's sole discretion (collectively, the "Authorized Viewers"). Owners do not have the right to view the recordings without a subpoena. Notwithstanding the foregoing sentence, the Board reserves the right, but not the obligation, to appoint an "access control committee" with approved access to view the video footage for the reasons set forth above only.

The Association shall post signage prominently at the entrance to Kingsley Creek informing anyone who enters that there are surveillance cameras recording activities within Kingsley Creek, are solely for deterrence, access control and evidence-gathering, and that the cameras have not been installed to provide any guarantee of protection, safety or security. The purpose of such signage is to communicate to the residents (and their invitees) that the security cameras are solely for deterrence, access control and evidence-gathering, the cameras have not been installed to provide any guarantee of protection, safety or security and are not a substitute or the equivalent of those measures personally taken by an Owner in protecting his/her own property. If surveillance cameras are installed within the pool area, the Association shall post signage informing that there are surveillance cameras within the pool area.

Each Owner further acknowledges, understands, and covenants to inform all occupants of its Home, and their respective families and invitees, that neither the Association, its Board and committees, the Association's management company, nor Declarant, nor any other persons involved with the governance, maintenance, and management of the Property are insurers of safety or security within the Property. All Owners and occupants, and their respective families and invitees, assume all risks of personal injury and loss or damage to persons, homes, and the contents of homes, and further acknowledge that neither the Association, its Board and committees, the Association's management company, nor Declarant have made representations or warranties regarding the surveillance cameras within the Property. All Owners and occupants, and their respective families and invitees, further acknowledge that they have not relied upon any such representations or warranties, expressed or implied.

Any surveillance cameras which may exist for the Community are intended to monitor access to the Property but are not intended to constitute any assurance that the Property is secure


from entry or intrusion by non-owners and non-occupants. Neither the Association, the Board and its Committees, the Association's management company, nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of the above-mentioned parties be held liable for any loss or damage whatsoever by reason of failure of the surveillance cameras to record any activity or prevent a crime, injury or damage. No representation or warranty is made that the surveillance cameras cannot be compromised or circumvented, nor that the surveillance cameras will prevent loss or provide detection or protection.

ALL OWNERS, BY ACCEPTANCE OF A DEED OR TITLE TO A LOT, AGREE TO HOLD THE ASSOCIATION, THE BOARD AND ITS COMMITTEES, THE ASSOCIATION'S MANAGEMENT COMPANY, DECLARANT AND/OR ANY SUCCESSOR DECLARANT HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT WITHIN THE COMMUNITY. THE ASSOCIATION, THE BOARD OR ITS COMMITTEES, THE ASSOCIATION'S MANAGEMENT COMPANY, DECLARANT, AND ANY SUCCESSOR DECLARANT SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY. THE ASSOCIATION, THE BOARD AND ITS COMMITTEES, THE ASSOCIATION'S MANAGEMENT COMPANY, DECLARANT, AND ANY SUCCESSOR DECLARANT SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE OF THE SURVEILLANCE CAMERAS TO PROVIDE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY, EVEN IF CAUSED BY THE NEGLIGENCE OF THE ASSOCIATION, THE BOARD AND ITS COMMITTEES, THE ASSOCIATION'S MANAGEMENT COMPANY, DECLARANT AND/OR ANY SUCCESSOR DECLARANT.

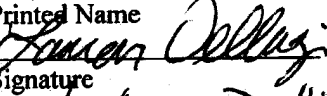
IN WITNESS WHEREOF, this Declaration has been signed by Declarant and joined in by the Association on the respective dates set forth below.

**DECLARANT:**


**AVH NORTH FLORIDA, LLC,  
a Florida limited liability company**

  
Signature

SHAWN BUDD  
Printed Name

  
Signature

Lauren Dellinger  
Printed Name

By:   
Printed Name: Shawn Budd  
Its: 10 Land Ac. & Dev.

(CORPORATE SEAL)

STATE OF FLORIDA FL )  
COUNTY OF Nassau ) SS:

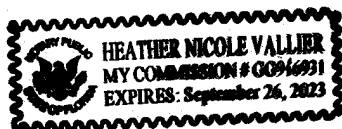
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Shawn Budd as President of AVH NORTH FLORIDA, LLC, a Florida limited liability company, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation, who is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 31<sup>st</sup> day of October, 2019.

  
Notary Public

Heather Nicole Vallier  
Typed, printed or stamped name of Notary Public

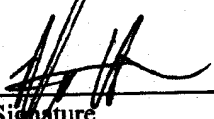
My Commission Expires:




**ASSOCIATION:**


**KINGSLEY CREEK HOMEOWNERS  
ASSOCIATION, INC.,** a Florida  
corporation not for profit

**WITNESSES AS TO ASSOCIATION:**

  
Signature  
Print Name MATTHEW NASSAU

By:   
Printed Name: Shawn Budd  
Title: President

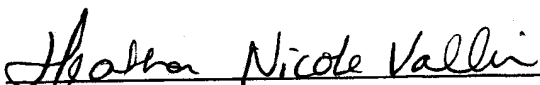
[CORPORATE SEAL]

  
Signature  
Print Name Lauren Dellinger

STATE OF FLORIDA     )  
                                  ) SS  
COUNTY OF Nassau )

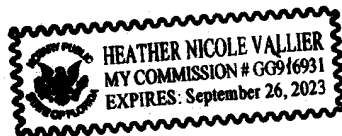
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Shawn Budd, as President of KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, freely and voluntarily under authority duly vested in him by said corporation, and that the seal affixed thereto is the true corporate seal of said corporation. He is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 31<sup>st</sup> day of October, 2019.

  
Notary Public, State of Florida at Large

My Commission Expires:

Heather Nicole Vallier  
Typed, Printed or Stamped Name of Notary Public



**EXHIBIT A**

**Legal Description of Property**

ALL LAND SHOWN ON THE PLAT OF BARNWELL MANOR – PHASE 1,  
RECORDED IN PLAT BOOK 8, PAGES 293 THORUGH 298 (INCLUSIVE),  
OF THE PUBLIC RECORDS OF NASSAU COUNTY, FLORIDA, LESS AND  
EXCEPT ANY PROPERTY DEDICATED TO THE PUBLIC THEREON.

**EXHIBIT "B"**

**ARTICLES OF INCORPORATION  
OF  
KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC.**

Inst. Number: 201845030576 Book: 2227 Page: 1084 Page 44 of 67 Date: 10/2/2018 Time: 2:37 PM  
John A. Crawford Clerk of Courts, Nassau County, Florida Doc Mort: 0.00 Doc Deed: 0.00

850-817-6381

6/6/2018 10:18:53 AM PAGE 1/001 Fax Server



June 6, 2018

FLORIDA DEPARTMENT OF STATE

Division of Corporations  
KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC.  
2420 S. LAKEMONT AVENUE, SUITE 450  
ORLANDO, FL 32814US

Re: Document Number N18000001892

The Articles of Amendment to the Articles of Incorporation of KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC., a Florida corporation, were filed on June 5, 2018.

This document was electronically received and filed under FAX audit number H18000169693.

Should you have any questions regarding this matter, please telephone (850) 245-6050, the Amendment Filing Section.

Rebekah White  
Regulatory Specialist II  
Division of Corporations

Letter Number: 518A00011733



Inst. Number: 201845030576 Book: 2227 Page: 1085 Page 45 of 67 Date: 10/2/2018 Time: 2:37 PM  
John A. Crawford Clerk of Courts, Nassau County, Florida Doc Mort: 0.00 Doc Deed: 0.00

(((H18000169693 3)))

Articles of Amendment  
to  
Articles of Incorporation  
of

Kingsley Creek Homeowners Association, Inc.

(Name of Corporation as currently filed with the Florida Dept. of State)

N18000001892

(Document Number of Corporation (if known))

Pursuant to the provisions of section 617.1006, Florida Statutes, this *Florida Not For Profit Corporation* adopts the following amendment(s) to its Articles of Incorporation:

A. If amending name, enter the new name of the corporation:

*The new name must be distinguishable and contain the word "corporation" or "incorporated" or the abbreviation "Corp." or "Inc." "Company" or "Co." may not be used in the name.*

B. Enter new principal office address, if applicable:

(Principal office address **MUST BE A STREET ADDRESS**)

C. Enter new mailing address, if applicable:

(Mailing address **MAY BE A POST OFFICE BOX**)

D. If amending the registered agent and/or registered office address in Florida, enter the name of the new registered agent and/or the new registered office address:

Name of New Registered Agent:

2420 S. Lakemont Avenue, Suite 450

(Florida street address)

New Registered Office Address:

Orlando

(City)

Florida

(Zip Code)

32814

New Registered Agent's Signature. If changing Registered Agent:

*I hereby accept the appointment as registered agent. I am familiar with and accept the obligations of the position.*

Signature of New Registered Agent, if changing

(((H18000169693 3)))

Inst. Number: 201845030576 Book: 2227 Page: 1086 Page 46 of 67 Date: 10/2/2018 Time: 2:37 PM  
John A. Crawford Clerk of Courts, Nassau County, Florida Doc Mort: 0.00 Doc Deed: 0.00

((H18000169693 3)))

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:

(Attach additional sheets, if necessary)

Please note the officer/director title by the first letter of the office title:

P = President; V = Vice President; T = Treasurer; S = Secretary; D = Director; TR = Trustee; C = Chairman or Clerk; CEO = Chief Executive Officer; CFO = Chief Financial Officer. If an officer/director holds more than one title, list the first letter of each office held. President, Treasurer, Director would be PTD.

Changes should be noted in the following manner. Currently John Doe is listed as the PST and Mike Jones is listed as the V. There is a change, Mike Jones leaves the corporation, Sally Smith is named the V and S. These should be noted as John Doe, PT as a Change, Mike Jones, V as Remove, and Sally Smith, SV as an Add.

Example:

<input checked="" type="checkbox"/> Change	PT	John Doe
<input checked="" type="checkbox"/> Remove	V	Mike Jones
<input checked="" type="checkbox"/> Add	SV	Sally Smith

Type of Action (Check One)	Title	Name	Address
1) <input type="checkbox"/> Change	SDT	Anthony Iorio	
<input type="checkbox"/> Add			
<input checked="" type="checkbox"/> Remove			
2) <input type="checkbox"/> Change	DVP	Dan Young	
<input type="checkbox"/> Add			
<input checked="" type="checkbox"/> Remove			
3) <input type="checkbox"/> Change	SDT	Lucas Morris	2420 S. Lakemont Avenue
<input checked="" type="checkbox"/> Add			Suite 450
<input type="checkbox"/> Remove			Orlando, FL 32814
4) <input type="checkbox"/> Change	DVP	William Morgan	2420 S. Lakemont Avenue
<input checked="" type="checkbox"/> Add			Suite 450
<input type="checkbox"/> Remove			Orlando, FL 32814
5) <input type="checkbox"/> Change			
<input type="checkbox"/> Add			
<input type="checkbox"/> Remove			
6) <input type="checkbox"/> Change			
<input type="checkbox"/> Add			
<input type="checkbox"/> Remove			

((H18000169693 3)))

Inst. Number: 201845030576 Book: 2227 Page: 1087 Page 47 of 67 Date: 10/2/2018 Time: 2:37 PM  
John A. Crawford Clerk of Courts, Nassau County, Florida Doc Mort: 0.00 Doc Deed: 0.00

(((H18000169693 3)))

**E. If amending or adding additional Articles, enter change(s) here:**  
(attach additional sheets, if necessary). (Be specific)

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or printed text on the paper.

((H18000169693 3)))

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John A. Crawford Clerk of Courts, Nassau County, Florida Doc Mort: 0.00 Doc Deed: 0.00

((H18000169693 3)))

The date of each amendment(s) adoption: \_\_\_\_\_, if other than the  
date this document was signed.

Effective date if applicable: May 4, 2018  
(no more than 90 days after amendment file date)


**Note:** If the date inserted in this block does not meet the applicable statutory filing requirements, this date will not be listed as the document's effective date on the Department of State's records.

Adoption of Amendment(s) (CHECK ONE)

☒ The amendment(s) was/were adopted by the members and the number of votes cast for the amendment(s) was/were sufficient for approval.

☐ There are no members or members entitled to vote on the amendment(s). The amendment(s) was/were adopted by the board of directors.

Dated May 18, 2018

Signature   
(By the chairman or vice chairman of the board, president or other officer-if directors have not been selected, by an incorporator - if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

Shawn Budd

(Typed or printed name of person signing)

President & Director

(Title of person signing)

((H18000169693 3)))

Inst. Number: 201845030576 Book: 2227 Page: 1089 Page 49 of 67 Date: 10/2/2018 Time: 2:37 PM  
John A. Crawford Clerk of Courts, Nassau County, Florida Doc Mort: 0.00 Doc Deed: 0.00

850-617-8381 2/21/2018 3:00:33 PM PAGE 1/1 Fax Server



February 21, 2018

FLORIDA DEPARTMENT OF STATE

Division of Corporations  
KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC.  
2420 S. LAKEMONT AVENUE, SUITE 450  
ORLANDO, FL 32814US

The Articles of Incorporation for KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC. were filed on February 20, 2018, and assigned document number N18000001892. Please refer to this number whenever corresponding with this office.

This document was electronically received and filed under FAX audit number E18000058044.

To maintain "active" status with the Division of Corporations, an annual report must be filed yearly between January 1st and May 1st beginning in the year following the file date or effective date indicated above. It is your responsibility to remember to file your annual report in a timely manner.

A Federal Employer Identification Number (FEI/EIN) will be required when this report is filed. Apply today with the IRS online at:

<https://sa.www4.irs.gov/modiein/individual/index.jsp>.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have any questions regarding corporations, please contact this office at (850) 245-6052.

Sincerely,  
Nadira D McClees-Sams  
Regulatory Specialist II  
New Filings Section  
Division of Corporations

Letter Number: 818A00003642

Inst. Number: 201845030576 Book: 2227 Page: 1090 Page 50 of 67 Date: 10/2/2018 Time: 2:37 PM  
John A. Crawford Clerk of Courts, Nassau County, Florida Doc Mort: 0.00 Doc Deed: 0.00

((H18000058044 3)))

**ARTICLES OF INCORPORATION  
OF  
KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC.  
(a corporation not-for-profit)**

**I. NAME AND DEFINITIONS.**

The name of this corporation shall be Kingsley Creek Homeowners Association, Inc. (the "Association"). All defined terms contained in these Articles shall have the same meanings as such terms are defined by the Declaration of Covenants and Restrictions for Kingsley Creek to be recorded in the public records of Nassau County, Florida (the "Declaration").

**II. PRINCIPAL OFFICE AND MAILING ADDRESS.**

The location of the Association's principal office and its mailing address shall 2420 S. Lakemont Avenue, Suite 450, Orlando, Florida 32814, or at such other place as may be established by resolution of the Association's Board of Directors from time to time.

**III. PURPOSES.**

The general nature, objects and purposes of the Association are:

A. To promote matters of common interest and concern of the Owners of property within the real property subject to the terms and provision of the Declaration.

B. To own, maintain, repair and replace the Common Area, including without limitation the structures, landscaping and other improvements located thereon, for which the obligation to maintain and repair has been delegated to and accepted by the Association.

C. To operate, maintain and manage the Surface Water or Stormwater Management System in a manner consistent with all permits issued by the St. Johns River Water Management District and the United States Army Corps of Engineers, and all laws and regulations pertaining thereto, and shall assist in the enforcement of the Declaration which relate to the Surface Water or Stormwater Management System.

D. To cooperate with other associations responsible for administration of adjacent or contiguous properties in matters of common interest to the Association and such other associations and to contribute to such common maintenance interests whether within or without the Property.

E. To provide, purchase, acquire, replace, improve, maintain, operate and repair such buildings, structures, landscaping, equipment, and to provide such other services for the benefit of the members of the Association, as the Board of Directors in its discretion determines necessary, appropriate, and/or convenient.

F. To operate without profit for the sole and exclusive benefit of its Members.

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G. To perform all of the functions contemplated for the Association and undertaken by the Board of Directors pursuant to the terms and conditions of the Declaration.

IV. GENERAL POWERS.

The general powers that the Association shall have are as follows:

A. To hold funds solely and exclusively for the benefit of the Members for purposes set forth in these Articles of Incorporation.

B. To promulgate and enforce rules, regulations, bylaws, covenants, restrictions and agreements to effectuate the purposes for which the Association is organized.

C. To delegate power or powers where such is deemed in the interest of the Association.

D. To purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of real or personal property, to enter into, make, perform or carry out contracts of every kind with any person, firm, corporation or association (including without limitation contracts for services to provide for operation and routine custodial maintenance of the Surface Water or Stormwater Management System); to do any and all acts necessary or expedient for carrying on any and all of the activities and pursuing any and all of the objects and purposes set forth in the Declaration and these Articles of Incorporation and not forbidden by the laws of the State of Florida.

E. To fix assessments to be levied against all or any portion of the Property to defray expenses and costs of effectuating the objects and purposes of the Association and to create reasonable reserves for such expenditures, and to authorize its Board of Directors to enter into agreements with other property owner's associations or maintenance entities for the collection of such assessments. The foregoing shall include the power to levy and collect adequate assessments against the Members for the costs of maintenance and operation of the Surface Water or Stormwater Management System. Such assessments shall be used for the maintenance and repair of the Surface Water or Stormwater Management System, including but not limited to, work within retention areas, drainage structures and drainage easements.

F. To charge recipients for services rendered by the Association and the users of the Association property where such is deemed appropriate by the Board of Directors of the Association and permitted by the Declaration.

G. To pay taxes and other charges, if any, on or against property owned, accepted, or maintained by the Association.

H. To borrow money and, from time to time, to make, accept, endorse, execute and issue debentures, promissory notes or other obligations of the Association for monies borrowed, or in payment for property acquired, or for any of the other purposes of the Association, and to secure the payment of such obligations by mortgage, pledge, or other instrument of trust, or by

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lien upon, assignment of or agreement in regard to all or any part of the property rights or privileges of the Association wherever situated.

I. To merge with any other association which may perform similar functions located within the same general vicinity of the Property.

J. In general, to have all powers conferred upon a corporation by the laws of the State of Florida, except as prohibited herein and by the terms and conditions set forth in the Declaration.

V. MEMBERS.

The members ("Members") shall consist of the Developer, each Sub-association, and each Owner who is not a member of a Sub-association.

VI. VOTING AND ASSESSMENTS.

A. Subject to the restrictions and limitations hereinafter set forth, each Member shall be entitled to the number of votes in the Association computed as follows:

1. The Members, other than the Developer, who are Owners shall have one (1) vote for each Lot owned by them. The votes of Members who are Owners shall be exercised directly by such Owners or their authorized representatives.

2. The Developer shall have the number of votes equal to the number of votes allocated to the Members other than the Developer, plus one (1) vote. The Developer shall have such voting rights until the first to occur of: (i) three (3) months after ninety percent (90%) of the Lots in all phases of Property (including any lands which may be annexed into the Property pursuant to the Declaration) have been conveyed to Members other than builders, contractors, or others who purchase a Lot for the purpose of constructing improvements thereon for resale, or (ii) such earlier date as the Developer may elect to terminate such voting rights by notice to the Association. Thereafter, the Developer shall have one (1) vote for each Lot owned by the Developer.

B. When an Owner who is a Member is comprised of one or more persons or entities, all such persons shall be Members, and the vote(s) for the applicable portions of the Property shall be exercised as they among themselves shall determine. The votes allocated to any Subassociation or Owner pursuant to these Articles, cannot be divided for any issue and must be voted as a whole, except where otherwise required by law. The affirmative vote of a majority of the votes allocated to the Members cast at any meeting of the Members duly called at which a quorum is present, or cast by written ballot by a quorum of the membership, shall be binding upon the Members and the Association.

C. The Association will obtain funds with which to operate by assessment of the Owners in accordance with the provisions of the Declaration, as supplemented by the provisions of the Articles and Bylaws of the Association relating thereto. Any Member who is delinquent



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in the payment of assessments due the Association shall be deemed to be not in good standing with the Association for the period of time that such delinquency shall continue.

**VII. BOARD OF DIRECTORS.**

A. The affairs of the Association shall be managed by a Board of Directors consisting of three (3) Directors. Directors need not be Members of the Association and need not be residents of the State of Florida. Until such time that the Members other than the Developer become entitled to elect a majority of the members of the Board of Directors pursuant to Section 720.307, Florida Statutes, as the same may be amended from time to time, the Developer shall have the right to appoint all of the Directors; provided, however, the Members other than the Developer shall become entitled to elect one (1) Director at the annual meeting of the Association following the date that fifty percent (50%) of the Lots in all phases of Property (including any lands which may be annexed into the Property pursuant to the Declaration) have been conveyed to Members other than builders, contractors, or others who purchase a Lot for the purpose of constructing improvements thereon for resale. The Developer shall be entitled to elect at least one (1) Director for so long as the Developer holds for sale in the ordinary course of business, at least five percent (5%) of the Lots in all phases of Property (including any lands which may be annexed into the Property pursuant to the Declaration). To the fullest extent permitted by law, Developer's determination of phasing and the number of Lot to be developed on the Property (as may be expanded) shall be controlling for all purposes of these Articles.

B. Elections shall be by plurality vote. At the first annual election of the Board of Directors, the terms of office of the elected Directors shall be established at one (1) year. In no event can a Board member appointed by the Developer be removed except by action of the Developer. Any Director appointed by the Developer shall serve at the pleasure of the Developer, and may be removed from office, and a successor Director may be appointed, at any time by the Developer.

C. The names and addresses of the members of the first Board of Directors who shall hold office until the first annual meeting of the Members and until their successors are elected or appointed and have qualified, are as follows:

Anthony Iorio  
2420 S. Lakemont Avenue, Suite 450  
Orlando, Florida 32814

Dan Young  
2420 S. Lakemont Avenue, Suite 450  
Orlando, Florida 32814

Shawn Budd  
2420 S. Lakemont Avenue, Suite 450  
Orlando, Florida 32814

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**VIII. OFFICERS.**

A. The Officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create. Any two (2) or more offices may be held by the same person except the offices of President and Secretary. Officers shall be elected for one (1) year terms in accordance with the procedure set forth in the Bylaws. The names of the officers who are to manage the affairs of the Association until the first annual meeting of the Members and until their successors are duly elected and qualified are:

President	Shawn Budd
Vice President	Dan Young
Secretary/Treasurer	Anthony S. Iorio

**IX. CORPORATE EXISTENCE.**

The Association shall have perpetual existence. These Articles shall become effective upon filing as prescribed by law.

**X. BYLAWS.**

The Board of Directors shall adopt Bylaws consistent with these Articles. Such Bylaws may be altered, amended, or repealed by resolution of the Board of Directors.

**XI. AMENDMENTS TO ARTICLES OF INCORPORATION AND BYLAWS.**

These Articles may be altered, amended or repealed upon the affirmative vote of Members holding a majority of the total votes allocated to the Members pursuant to these Articles.

**XII. INCORPORATOR.**

The name and address of the Incorporator is as follows:

Shawn Budd  
2420 S. Lakemont Avenue, Suite 450  
Orlando, Florida 32814

**XIII. INDEMNIFICATION OF OFFICERS AND DIRECTORS.**

A. To the extent allowed by law, the Association hereby indemnifies any Director or officer made a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding:

1. Whether civil, criminal, administrative, or investigative, other than one by or in the right of the Association to procure a judgment in its favor, brought to impose a liability

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or penalty on such person for an act alleged to have been committed by such person in his capacity as a Director or officer of the Association or as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Association, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred as a result of such action, suit or proceeding or any appeal thereof, if such person acted in good faith in the reasonable belief that such action was in the best interests of the Association, and in criminal actions or proceedings, without reasonable grounds for belief that such action was unlawful. The termination of any such action, suit or proceeding by judgment, order, settlement, conviction or a plea of nolo contendere or its equivalent shall not in itself create a presumption that any such Director or officer did not act in good faith in the reasonable belief that such action was in the best interest of the Association or that he had reasonable grounds for belief that such action was unlawful.

2. By or in the right of the Association to procure a judgment in its favor by reason of his being or having been a Director or officer of the Association, or by reason of his being or having been a director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Association, against the reasonable expenses including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein if such person acted in good faith in the reasonable belief that such action was in the best interest of the Association. Such person shall not be entitled to indemnification in relation to matters to which such person has been adjudged to have been guilty of gross negligence or misconduct in the performance of his duty to the Association unless, and only to the extent that, the court, administrative agency, or investigative body before which such action, suit or proceeding is held shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which such tribunal shall deem proper.

B. The Board of Directors shall determine whether amounts for which a Director or officer seek indemnification were properly incurred and whether such Director or officer acted in good faith in a manner he reasonably believed to be in the best interests of the Association, and whether, with respect to any criminal action or proceeding, he had no reasonable ground for belief that such action was unlawful. Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding.

C. The foregoing rights of indemnification shall not be deemed to limit in any way the powers of the Association to indemnify under applicable law.

#### **XIV. TRANSACTION IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED.**

A. No contract or transaction between the Association and one or more of its Directors or officers, or between the Association and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are Directors or officers, or in which they have a financial interest, shall be invalid, void or voidable solely for

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this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose. All such contracts or transactions shall, however, be fair and reasonable and upon terms reasonably comparable to those which could be obtained in arms-length transactions with unrelated entities. No Director or Officer of the Association shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction.

B. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorized the contract or transaction.

#### **XV. DISSOLUTION OF THE ASSOCIATION.**

A. Upon dissolution of the Association, all of its assets remaining after provisions for creditors and payment of all costs and expenses of such dissolution shall be distributed in the following manner:

1. Dedication to any applicable municipal or other governmental authority of any property determined by the Board of Directors of the Association to be appropriate for such dedication and which the authority is willing to accept.

2. Remaining assets shall be distributed among the Members, subject to the limitation set forth below, each Member's share of the assets to be determined by multiplying such remaining assets by a fraction the numerator of which is all amounts assessed by the Association since its organization against the portion of Property which is owned by the Member at that time, and the denominator of which is the total amount (excluding penalties and interest) assessed by the Association against all properties which at the time of dissolution are part of the Property. The year of dissolution shall count as a whole year for purposes of the preceding fractions.

B. The Association may be dissolved upon a resolution to that effect being approved by a majority of the Board of Directors and by two-thirds (2/3) of the Members. In the event of incorporation by annexation or otherwise, of all or part of the Property by a political subdivision of the State of Florida, the Association may be dissolved in the manner set forth above.

C. In the event of termination, dissolution, merger, or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity that would comply with Section 62-330.310, Florida Administrative Code, and be approved by the St. Johns River Water Management District prior to such termination, dissolution, merger, or liquidation. Further, such termination, dissolution, merger, or liquidation shall require the approval of the Army Corps of Engineers.

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**XVI. MERGERS AND CONSOLIDATIONS.**

Subject to the provisions of the Declaration applicable to the Property and to the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall be approved in the manner provided by Chapter 617, Florida Statutes as the same may be amended from time to time. For purposes of any vote of the Members required pursuant to said statutes, for so long as the Developer shall own any portion of the Property, any such merger or consolidation shall require the Developer's prior approval.

*[Signature on Following Page]*

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IN WITNESS WHEREOF, the Incorporator has hereto set his hand and seal this 17<sup>th</sup>  
day of January, 2018.

Signed, sealed and delivered  
in the presence of:

Lucas Morris  
(Print Name)  
Mike Lutzey  
(Print Name)

Shawn Budd  
Incorporator

STATE OF FLORIDA     }  
                                      }SS  
COUNTY OF DUVAL     }

The foregoing instrument was acknowledged before me this 18 day of Jan.,  
2018, by Shawn Budd, the Incorporator of **KINGSLEY CREEK HOMEOWNERS  
ASSOCIATION, INC.**, a not-for-profit corporation, on behalf of the corporation.



Gabrielle Barra  
(Print Name)  
NOTARY PUBLIC  
State of Florida at Large  
Commission #: 125982  
My Commission Expires: 5-22-18  
Personally Known X  
or Produced I.D. \_\_\_\_\_  
[check one of the above]  
Type of Identification Produced \_\_\_\_\_

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IN COMPLIANCE WITH SECTION 617.0501, FLORIDA STATUTES, THE  
FOLLOWING IS SUBMITTED:

KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC., DESIRING TO ORGANIZE  
UNDER THE LAWS OF THE STATE OF FLORIDA WITH ITS PRINCIPAL PLACE OF  
BUSINESS AT 5323 MILLENIA LAKES BOULEVARD, SUITE 200, ORLANDO, FLORIDA  
32839, HAS NAMED SHAWN BUDD, WHOSE ADDRESS IS 5323 MILLENIA LAKES  
BOULEVARD, SUITE 200, ORLANDO, FLORIDA 32839, AS ITS REGISTERED AGENT  
TO ACCEPT SERVICE OF PROCESS WITHIN THE STATE OF FLORIDA. SAID  
REGISTERED AGENT'S ADDRESS IS THE CORPORATION'S REGISTERED OFFICE.


**KINGSLEY CREEK HOMEOWNERS  
ASSOCIATION, INC.**

By: 

Shawn Budd  
Incorporator

Dated: Jan. 18<sup>th</sup>, 2018

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE  
NAMED CORPORATION, AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I  
HEREBY AGREE TO ACT IN THIS CAPACITY, AND I FURTHER AGREE TO COMPLY  
WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND  
COMPLETE PERFORMANCE OF MY DUTIES.

  
Shawn Budd  
Registered Agent

Dated: Jan. 18<sup>th</sup>, 2018

**EXHIBIT "C"**

**BY-LAWS  
OF  
KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC.**



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**BYLAWS**  
**OF**  
**KINGSLEY CREEK HOMEOWNERS ASSOCIATION, INC.**

**I. DEFINITIONS.**

All defined terms contained herein which are defined in the Declaration of Covenants and Restrictions for Kingsley Creek ("Declaration") to be recorded in the public records of Nassau County, Florida, and in the Articles of Incorporation of Kingsley Creek Homeowners Association, Inc., shall have the same meanings as such terms are defined in the Declaration and Articles of Incorporation.

**II. LOCATION OF PRINCIPAL OFFICE.**

The office of Kingsley Creek Homeowners Association, Inc. ("Association") shall be at 2420 S. Lakemont Avenue, Suite 450, Orlando, Florida 32814, or at such other place as may be established by resolution of the Board of Directors of the Association from time to time.

**III. VOTING RIGHTS AND ASSESSMENTS.**

A. Every person or entity who is a record fee simple owner of a Lot or any other portion of the Property, and the Developer as long as it owns any Property subject to the Declaration, shall be a member of the Association (the "Members") as provided in the Articles of Incorporation of the Association, and shall have the voting rights as set forth in the Articles of Incorporation, provided that any such person or entity who holds such interest only as a security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to, and may not be separated from, ownership of any parcel within the Property.

B. Assessments and installments thereon not paid when due shall bear interest from the date when due until paid at the highest lawful rate and shall result in the suspension of voting privileges during any period of such non-payment.

**IV. BOARD OF DIRECTORS.**

A. A majority of the Board of Directors of the Association (the "Board") shall constitute a quorum to transact business at any meeting of the Board, and the action of the majority present at a meeting at which a quorum is present shall constitute the action of the Board.

B. Any vacancy occurring on the Board because of death, resignation or other termination of services of any Director, shall be filled by the Board, except that the Developer, to the exclusion of other Members and/or the Board itself, shall fill any vacancy created by the death, resignation, removal or other termination of services of any Director appointed by the Developer. A Director elected or appointed to fill a vacancy shall be elected or appointed for the

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unexpired term of his predecessor in office and thereafter until his successor shall have been elected or appointed, and qualified.

**V. ELECTION OF DIRECTORS.**

A. Nominations for the election of Board members (other than Board members appointed by the Developer) shall be made by the Nominating Committee described in Article IX hereof, or upon petition in accordance with Section C. of this Article V. The Nominating Committee shall make as many nominations as it shall in its discretion determine.

B. The Developer shall, within fourteen (14) days of the date set for the annual meeting of the Association, notify the Secretary of the names of the Directors that such Owner is appointing to the Board.

C. Petitions for nominees shall also be accepted if signed by Members representing one-third (1/3) of the total votes held by the Members, and if received by the Secretary of the Association not less than thirty (30) days prior to the date fixed for the annual meeting of the Members. Nominations and notification of the vacancies being filled by the Developer shall be placed on the written ballot referenced in Section D of this Article V.

D. All elections to the Board shall be made on written ballots to be voted at the annual meeting, or in the discretion of the Board, by mail, provided such ballots are mailed to the Members not less than fifteen (15) days prior to the date fixed for the annual meeting. The ballots shall (i) describe the vacancies to be filled by the Members, (ii) set forth the names of those nominated for each such vacancy, and (iii) set forth the names of those appointed to the Board by the Developer. Each Member may cast the number of votes to which such Member is entitled as set forth in the Articles of Incorporation.

E. In order for an election of members of the Board to be valid and binding, the election must occur at a meeting of the Members at which a quorum is present; or if the election is conducted by mail, the Association must receive as of the date established by the Board for receipt of ballots, a number of ballots representing not less than a quorum of the Members.

F. The members of the Board elected or appointed in accordance with the procedures set forth in this Article V shall be deemed elected or appointed as of the date of the annual meeting of the Members.

**VI. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.**

A. The Board of Directors shall have power:

1. To call meetings of the Members.

2. To appoint and remove at its pleasure all officers, agents and employees of the Association; and to prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be

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construed to prohibit the employment of any Member, Officer or Director of the Association in any capacity whatsoever.

3. To establish, levy and assess, and collect the annual and special assessments necessary to operate the Association and carry on its activities, and to create such reserves as may be deemed appropriate by the Board.

4. To collect assessments on behalf of any other property owners association entitled to establish, levy and collect assessments from the Members of the Association.

5. To appoint committees, adopt and publish rules and regulations governing the use of the Common Areas or any portion thereof and the personal conduct of the Members and their guests thereon, including reasonable admission charges if deemed appropriate.

6. To authorize and cause the Association to enter into contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations.

7. To cause the financial records of the Association to be compiled, reviewed, or audited by an independent certified public accountant at such periodic intervals as the Board may determine in its sole discretion.

8. To exercise for the Association all powers, duties and authority vested in or delegated to the Association, except those reserved to Members in the Declaration or the Articles of Incorporation of the Association.

B. It shall be the duty of the Board of Directors:

1. To cause to be kept a complete record of all of its acts and corporate affairs.

2. To supervise all officers, agents and employees of this Association to insure that their duties are properly performed.

3. With reference to assessments of the Association:

(i) To fix the amount of annual assessments against each Member for each annual assessment period at least thirty (30) days in advance of such date or period;

(ii) To prepare and maintain a roster of the Members and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member; and

(iii) To send written notice of each assessment to every Member subject thereto.

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## **VII. DIRECTORS MEETINGS.**

A. Regular meetings of the Board shall be held on such date and at such time as the Board may establish. Notice of such meetings is hereby waived.

B. Special meetings of the Board shall be held when called by the President or Vice President of the Association or by any two (2) Directors, after not less than three (3) days notice to each Director.

C. Meetings of the Board of Directors shall be open to all Members and notices of meetings shall be posted in a conspicuous place within the Property at least forty-eight (48) hours in advance, except in an emergency. Notice of any meeting of the Board of Directors during which assessments are to be established, shall specifically contain a statement that the assessments shall be considered and a statement of the nature of such assessments.

D. The transaction of any business at any meeting of the Board, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice, if a quorum is present and, if either before or after the meeting, each of the Directors not present signs a waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records of the Association and made a part of the minutes of the meeting.

## **VIII. OFFICERS.**

A. The Officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as may be determined from time to time by the Board, in accordance with the Articles of Incorporation of the Association. The President shall be a member of the Board, but the other Officers need not be.

B. The Officers of the Association shall be elected by the Board at the annual meeting of the Board, which shall be held immediately following the annual meeting of the Association. New offices may be created and filled at any meeting of the Board. Each Officer shall hold office until his successor shall have been duly elected.

C. A vacancy in any office because of death, resignation, or other termination of service, may be filled by the Board for the unexpired portion of the term.

D. All Officers shall hold office for terms of one (1) year.

E. The President shall preside at all meetings of the Board, shall see that orders and resolutions of the Board are carried out and shall sign all notes, checks, leases, mortgages, deeds and all other written instruments.

F. The Vice President, or the Vice President so designated by the Board if there is more than one Vice President, shall perform all the duties of the President in his absence. The Vice President(s) shall perform such other acts and duties as may be assigned by the Board.

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G. The Secretary shall be ex officio the secretary of the Board, and shall record the votes and keep the minutes of all meetings of the Members and of the Board of Directors in a book to be kept for that purpose. The Secretary shall keep all records of the Association and shall record in the book kept for that purpose all the names of the Members of the Association together with their addresses as registered by such members.

H. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association, and shall disburse such funds as directed by resolution of the Board, provided however, that a resolution of the Board shall not be necessary for disbursement made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The Treasurer may, but need not, be a required signatory on checks and notes of the Association.

I. The Treasurer, or his appointed agent, shall keep proper books of account and cause to be prepared at the completion of each fiscal year an annual budget and an annual balance sheet statement, and the budget and balance sheet statement shall be open for inspection upon reasonable request by any Member.

J. With the approval of the Board of Directors, any or all of the Officers of the Association may delegate their respective duties and functions to a licensed and qualified property manager, provided, however, such property manager shall at all times be subject to the supervision and control of the Board of Directors.

#### **IX. COMMITTEES.**

A. The standing committees of the Association shall be the Nominating Committee and the Architectural Review Board. The Nominating Committee and Architectural Review Board shall have the duties, authority and functions as described in the Declaration and as elsewhere described in these Bylaws.

B. The Board shall have the power and authority to appoint such other committees as it deems advisable. Any committee appointed by the Board shall consist of a Chairman and two (2) or more other members and shall include a member of the Board. Committee members shall serve at the pleasure of the Board, and shall perform such duties and functions as the Board may direct.

#### **X. BOOKS AND RECORDS.**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Association shall retain the minutes of all meetings of the Members and the Board of Directors for not less than seven (7) years.

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#### **XI. MEETINGS OF MEMBERS.**

A. The annual meeting of the Members shall be held prior to April 30th of each year, at such time as the Board may designate, or at such other date and time as may be selected by the Board.

B. Special meetings of the Members for any purpose may be called at any time by the President, the Vice President, the Secretary or Treasurer, by any two or more members of the Board or upon the written request of Members holding a majority of all the votes allocated to the entire Membership.

C. Notice of all meetings of the Members shall be given to the Members by the Secretary. Notice may be given to the Member either personally or by sending a copy of the notice through the mail, postage fully prepaid, to his address appearing on the books of the Association. Each Member shall be responsible for registering his address and telephone number with the Secretary and notice of the meeting shall be mailed to him at such address. Notice of the annual meeting of the Members shall be delivered at least fourteen (14) days in advance. Notice of any other meeting, regular or special, shall be mailed at least seven (7) days in advance of the meeting and shall set forth in general the nature of the business to be transacted; provided, however, that if the business of any meeting shall involve any action as governed by the Articles of Incorporation or the Declaration in which other notice provisions are provided for, notice shall be given or sent as therein provided.

D. The presence, in person or by proxy, of the Members holding not less than thirty percent (30%) of the total votes in the Association as established by the Articles of Incorporation, shall constitute a quorum of the Membership for any action governed by the Declaration, the Articles of Incorporation, or these Bylaws.

#### **XII. PROXIES.**

A. At all meetings of the Members, each Member may vote in person or by limited or general proxy.

B. All proxies shall be in writing and shall state the date of the proxy and the date, time and place of the meeting for which the proxy is given, and must be signed by the authorized Member giving the proxy. A proxy shall be effective only for the specific meeting for which it is given, as such meeting may be lawfully adjourned and reconvened from time to time. No proxy shall extend beyond a period of ninety (90) days from the date of the meeting for which it was originally given, and every proxy shall automatically cease upon the sale by the Member of his interest in the Property. All proxies shall be revocable at any time at the pleasure of the Member who executes same, and may include powers of substitution.

C. For elections of the Board of Directors, the Members shall vote in person or by proxy at a meeting of the Members, or by a written ballot that each Member personally casts.

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**XIII. SEAL.**

The Association shall have a seal in circular form having within its circumference the words:

Kingsley Creek Homeowners Association, Inc., not for profit, 2018.

**XIV. AMENDMENTS.**

These Bylaws may be altered, amended or rescinded by majority vote of the Board of Directors at a duly constituted meeting of the Board. Amendments shall be effective on the date of passage by the Board and no amendment need be recorded in the public records of Nassau County, Florida.

**XV. INCONSISTENCIES.**

In the event of any inconsistency between the provisions of these Bylaws and the Declaration or Articles of Incorporation, the provisions of the Declaration and Articles of Incorporation shall control.

Adopted by the Board of Directors of Kingsley Creek Homeowners Association, Inc., a Florida not-for-profit corporation, effective as of Jan. 17<sup>th</sup>, 2018.

By: \_\_\_\_\_

Shawn Budd  
President

**EXHIBIT "D"**

**WATER MANAGEMENT DISTRICT PERMIT**

40225217.4 29530.0186

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
KINGSLEY CREEK





# St. Johns River

## Water Management District

Ann B. Shortelle, Ph.D., Executive Director

4049 Reid Street • P.O. Box 1429 • Palatka, FL 32178-1429 • (386) 329-4500  
On the Internet at [www.sjrwmd.com](http://www.sjrwmd.com).

August 23, 2016

William A Stanly  
Barnwell Nassau, LLC  
3675 Pine St  
Jacksonville, FL 32205-9456

SUBJECT: 146934-1  
Barnwell Estates

Dear Sir/Madam:

Enclosed is your individual permit issued by the St. Johns River Water Management District on August 23, 2016. This permit is a legal document and should be kept with your other important documents. Permit issuance does not relieve you from the responsibility of obtaining any necessary permits from any federal, state, or local agencies for your project.

### **Technical Staff Report:**

If you wish to review a copy of the Technical Staff Report (TSR) that provides the District's staff analysis of your permit application, you may view the TSR by going to the Permitting section of the District's website at [www.sjrwmd.com/permitting](http://www.sjrwmd.com/permitting). Using the "search applications and permits" feature, you can use your permit number or project name to find information about the permit. When you see the results of your search, click on the permit number and then on the TSR folder.

### **Noticing Your Permit:**

For noticing instructions, please refer to the noticing materials in this package regarding closing the point of entry for someone to challenge the issuance of your permit. Please note that if a timely petition for administrative hearing is filed, your permit will become non-final and any activities that you choose to undertake pursuant to your permit will be at your own risk.

### **Compliance with Permit Conditions:**

To submit your required permit compliance information, go to the District's website at [www.sjrwmd.com/permitting](http://www.sjrwmd.com/permitting). Under the "Apply for a permit or submit compliance data" section, click to sign-in to your existing account or to create a new account. Select the "Compliance Submittal" tab, enter your permit number, and select "No Specific Date" for the Compliance Due Date Range. You will then be able to view all the compliance submittal requirements for your project. Select the compliance item that you are ready to submit and then attach the appropriate information or form. The forms to comply with your permit conditions are available at [www.sjrwmd.com/permitting](http://www.sjrwmd.com/permitting) under the section "Handbooks, forms, fees, final orders". Click on forms to view all permit compliance forms, then scroll to the ERP application forms section and select the applicable compliance forms. Alternatively, if you have difficulty finding forms or need

#### **GOVERNING BOARD**

John A. Miklos, CHAIRMAN  
ORLANDO  
Douglas C. Bournique  
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Douglas Burnett  
ST. AUGUSTINE

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ORMOND BEACH

Carla Yetter, TREASURER  
FERNANDINA BEACH  
Ron Howse  
COCOA

copies of the appropriate forms, please contact the Office of Business and Administrative Services at (386) 329-4570.

**Transferring Your Permit:**

Your permit requires you to notify the District within 30 days of any change in ownership or control of the project or activity covered by the permit, or within 30 days of any change in ownership or control of the real property on which the permitted project or activity is located or occurs. You will need to provide the District with the information specified in rule 62-330.340, Florida Administrative Code (F.A.C.). Generally, this will require you to complete and submit Form 62-330.340(1), "Request to Transfer Permit," available at <http://www.sjrwmd.com/permitting/permitforms.html>.

Please note that a permittee is liable for compliance with the permit before the permit is transferred. The District, therefore, recommends that you request a permit transfer in advance in accordance with the applicable rules. You are encouraged to contact District staff for assistance with this process.

Thank you and please let us know if you have additional questions. For general questions contact [e-permit@sjrwmd.com](mailto:e-permit@sjrwmd.com) or (386) 329-4570.

Sincerely,



Margaret Daniels, Office Director  
Office of Business and Administrative Services  
St. Johns River Water Management District  
4049 Reid Street  
Palatka, FL 32177-2529  
(386) 329-4570

Enclosures: Permit

cc: District Permit File

**Consultant:** James M Lucas  
J. Lucas & Associates, Inc.  
1305 Cedar St  
Jacksonville, FL 32207-8553

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**  
**Post Office Box 1429**  
**Palatka, Florida 32178-1429**

**PERMIT NO:** 146934-1

**DATE ISSUED:** August 23, 2016

**PROJECT NAME:** Barnwell Estates

**A PERMIT AUTHORIZING:**

Construction of a Stormwater Management System with stormwater treatment by wet detention and swale retention for Barnwell Estates, a 119.62 - acre project to be constructed and operated as per plans received by the District on August 17, 2016.

**LOCATION:**

Section(s): 39 Township(s): 2N Range(s): 28E  
Nassau County

**Receiving Water Body:**

Name	Class
Amelia River	III Marine, IW

**ISSUED TO:**

Barnwell Nassau, LLC  
3675 Pine St  
Jacksonville, FL 32205-9456

The permittee agrees to hold and save the St. Johns River Water Management District and its successors harmless from any and all damages, claims, or liabilities which may arise from permit issuance. Said application, including all plans and specifications attached thereto, is by reference made a part hereof.

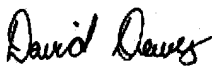
This permit does not convey to the permittee any property rights nor any rights or privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation or requirement affecting the rights of other bodies or agencies. All structures and works installed by permittee hereunder shall remain the property of the permittee.

This permit may be revoked, modified or transferred at any time pursuant to the appropriate provisions of Chapter 373, Florida Statutes.

**PERMIT IS CONDITIONED UPON:**

See conditions on attached "Exhibit A", dated August 23, 2016

**AUTHORIZED BY:** St. Johns River Water Management District  
Division of Regulatory, Engineering and Environmental Services

By: 

\_\_\_\_\_  
David Dewey  
Regulatory Coordinator

**"EXHIBIT A"**  
**CONDITIONS FOR ISSUANCE OF PERMIT NUMBER 146934-1**  
**Barnwell Estates**  
**DATED August 23, 2016**

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this permit. Any deviations must be authorized in a permit modification in accordance with Rule 62-330.315, F.A.C. Any deviations that are not so authorized may subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S.
2. A complete copy of this permit shall be kept at the work site of the permitted activity during the construction phase, and shall be available for review at the work site upon request by the District staff. The permittee shall require the contractor to review the complete permit prior to beginning construction.
3. Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be installed immediately prior to, and be maintained during and after construction as needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation June 2007), and the Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008), which are both incorporated by reference in subparagraph 62-330.050(9)(b)5, F.A.C., unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the permit.
4. At least 48 hours prior to beginning the authorized activities, the permittee shall submit to the District a fully executed Form 62-330.350(1), "Construction Commencement Notice," [10-1-13], incorporated by reference herein (<http://www.flrules.org/Gateway/reference.asp?No=Ref-02505>), indicating the expected start and completion dates. A copy of this form may be obtained from the District, as described in subsection 62-330.010(5), F.A.C. If available, an District website that fulfills this notification requirement may be used in lieu of the form.
5. Unless the permit is transferred under Rule 62-330.340, F.A.C., or transferred to an operating entity under Rule 62-330.310, F.A.C., the permittee is liable to comply with the plans, terms and conditions of the permit for the life of the project or activity.
6. Within 30 days after completing construction of the entire project, or any independent portion of the project, the permittee shall provide the following to the Agency, as applicable:
  - a. For an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex — "Construction Completion and Inspection Certification for Activities Associated With a Private Single-Family Dwelling Unit" [Form 62-330.310(3)]; or
  - b. For all other activities — "As-Built Certification and Request for Conversion to Operational Phase" [Form 62-330.310(1)].
  - c. If available, an Agency website that fulfills this certification requirement may be used in lieu of the form.

7. If the final operation and maintenance entity is a third party:
  - a. Prior to sales of any lot or unit served by the activity and within one year of permit issuance, or within 30 days of as-built certification, whichever comes first, the permittee shall submit, as applicable, a copy of the operation and maintenance documents (see sections 12.3 thru 12.3.3 of Volume I) as filed with the Department of State, Division of Corporations and a copy of any easement, plat, or deed restriction needed to operate or maintain the project, as recorded with the Clerk of the Court in the County in which the activity is located.
  - b. Within 30 days of submittal of the as- built certification, the permittee shall submit "Request for Transfer of Environmental Resource Permit to the Perpetual Operation Entity" [Form 62-330.310(2)] to transfer the permit to the operation and maintenance entity, along with the documentation requested in the form. If available, an Agency website that fulfills this transfer requirement may be used in lieu of the form.
8. The permittee shall notify the District in writing of changes required by any other regulatory District that require changes to the permitted activity, and any required modification of this permit must be obtained prior to implementing the changes.
9. This permit does not:
  - a. Convey to the permittee any property rights or privileges, or any other rights or privileges other than those specified herein or in Chapter 62-330, F.A.C.;
  - b. Convey to the permittee or create in the permittee any interest in real property;
  - c. Relieve the permittee from the need to obtain and comply with any other required federal, state, and local authorization, law, rule, or ordinance; or
  - d. Authorize any entrance upon or work on property that is not owned, held in easement, or controlled by the permittee.
10. Prior to conducting any activities on state-owned submerged lands or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees of the Internal Improvement Trust Fund shall not be considered received until it has been fully executed.
11. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any project authorized by the permit.
12. The permittee shall notify the District in writing:
  - a. Immediately if any previously submitted information is discovered to be inaccurate; and
  - b. Within 30 days of any conveyance or division of ownership or control of the property or the system, other than conveyance via a long-term lease, and the new owner shall request transfer of the permit in accordance with Rule 62-330.340, F.A.C. This does not apply to the sale of lots or units in residential or commercial subdivisions or condominiums where the stormwater management system has been completed and converted to the operation phase.

13. Upon reasonable notice to the permittee, District staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.
14. If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, work involving subsurface disturbance in the immediate vicinity of such discoveries shall cease. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section, at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Such subsurface work shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and notification shall be provided in accordance with Section 872.05, F.S.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Rule 62-330.201, F.A.C., provides otherwise.
16. The permittee shall provide routine maintenance of all components of the stormwater management system to remove trapped sediments and debris. Removed materials shall be disposed of in a landfill or other uplands in a manner that does not require a permit under Chapter 62-330, F.A.C., or cause violations of state water quality standards.
17. This permit is issued based on the applicant's submitted information that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed permit activity. If any adverse impacts result, the District will require the permittee to eliminate the cause, obtain any necessary permit modification, and take any necessary corrective actions to resolve the adverse impacts.
18. A Recorded Notice of Environmental Resource Permit may be recorded in the county public records in accordance with Rule 62-330.090(7), F.A.C. Such notice is not an encumbrance upon the property.
19. This permit for construction will expire five years from the date of issuance.
20. At a minimum, all retention and detention storage areas must be excavated to rough grade prior to building construction or placement of impervious surface within the area to be served by those facilities. To prevent reduction in storage volume and percolation rates, all accumulated sediment must be removed from the storage area prior to final grading and stabilization.
21. All wetland areas or water bodies that are outside the specific limits of construction authorized by this permit must be protected from erosion, siltation, scouring or excess turbidity, and dewatering.
22. The operation and maintenance entity shall inspect the stormwater or surface water management system once within two years after the completion of construction and every two years thereafter to determine if the system is functioning as designed and permitted. The operation and maintenance entity must maintain a record of each required inspection, including the date of the inspection, the name and contact information of the inspector, and whether the system was functioning as designed and permitted, and make such record available for inspection upon request by the District during normal business hours. If at any

time the system is not functioning as designed and permitted, then within 30 days the entity shall submit a report electronically or in writing to the District using Form 62-330.311(1), "Operation and Maintenance Inspection Certification," describing the remedial actions taken to resolve the failure or deviation.

### 23. Deed of Conservation Easement

This permit requires the recording of a conservation easement. Within 30 days of recording, the permittee shall provide the District with: (a) the original recorded easement (including exhibits) showing the date it was recorded and the official records book and page number, (b) a copy of the recorded plat (if applicable), (c) a surveyor's sketch of the easement area plotted on the appropriate USGS topographic map, and (d) the original recorded consent and joinder(s) of mortgagee (if applicable). Before recording them, the permittee shall ensure that these documents are acceptable to the District as described below.

#### Description of Conservation Easement Area.

The permittee shall provide to the District for review and written approval a copy of: (a) the preliminary plat showing the area to be encumbered by the conservation easement, or (b) a surveyor's sketch and legal description of the area to be placed under the conservation easement, per the approved mitigation plan, at least 45 days before (1) dredging, filling, or clearing any wetland or surface water for which mitigation is required; (2) clearing any upland within a Riparian Habitat Protection Zone for which mitigation is required; (3) the sale of any lot or parcel; (4) the recording of the subdivision plat; or (5) use of the infrastructure for its intended use, whichever occurs first.

If the impacts to an upland within a Riparian Habitat Protection Zone or to a wetland or surface water for which mitigation is required will occur in discrete phases, the areas to be preserved to offset such impacts may be placed under conservation easement in phases such that impacts are offset during each phase. Such phasing of preservation shall only occur if it has been proposed in the mitigation plan and approved by the permit, or if it is approved in writing by the District. A surveyor's sketch and legal description of the area to be placed under conservation easement during each phase must be submitted in accordance with the previous paragraph.

#### Recording of Conservation Easement.

Before (1) dredging, filling, or clearing any wetland or surface water for which mitigation is required, (2) clearing any upland within a Riparian Habitat Protection Zone for which mitigation is required, (3) the sale of any lot or parcel, (4) the recording of the subdivision plat, or (5) use of the infrastructure for its intended use, whichever occurs first, the permittee shall record a conservation easement. The conservation easement shall include restrictions on the real property pursuant to section 704.06, Florida Statutes, and be consistent with section 10.3.8, ERP Applicant's Handbook, Volume I(October 1, 2013) and Fla. Admin.Code R. 62-330.301(6).

The conservation easement shall be in the form approved in writing by the District and, if no plat has been submitted, the easement shall include the approved legal description and surveyor's sketch. If the District does not provide written comments on the preliminary plat or surveyor's sketch and legal description within 45 days of receipt, then the permittee may record the conservation easement with the legal description and surveyor's sketch or plat reference previously submitted. If the District provides written disapproval of the preliminary plat or surveyor's sketch and legal description, the permittee shall, within ten (10) days of receipt of the disapproval, correct all errors with the conservation easement, including the preliminary plat or legal description and surveyor's sketch, and record the conservation

easement. Pursuant to section 704.06, Florida Statutes, the conservation easement shall prohibit all construction, including clearing, dredging, or filling, except that which is specifically authorized by this permit, within the mitigation areas delineated on the final plans and/or mitigation proposal approved by the District.

The easement may not be amended without written District approval.

Additional Documents Required.

The permittee shall ensure that the conservation easement identifies, and is executed by, the correct grantor, who must hold sufficient record title to the land encumbered by the easement. If the easement's grantor is a partnership, the partnership shall provide to the District a partnership affidavit stating that the person executing the conservation easement has the legal authority to convey an interest in the partnership land. If there exist any mortgages on the land, the permittee shall also have each mortgagee execute a consent and joinder of mortgagee subordinating the mortgage to the conservation easement. The consent and joinder of the mortgagee shall be recorded simultaneously with the conservation easement in the public records of the county where the land is located. Within 30 days of recording, the permittee shall provide the District with: (a) the original recorded easement (including exhibits) showing the date it was recorded and the official records book and page number, (b) a copy of the recorded plat (if applicable), (c) a surveyor's sketch of the easement area plotted on the appropriate USGS topographic map, and (d) the original recorded consent and joinder(s) of mortgagee (if applicable).

Demarcation of Conservation Easement Area. Prior to lot or parcel sales, all changes in direction of the easement area boundaries must be permanently monumented above ground on the project site.

24. The surface water management system must be constructed and operated in accordance with plans received by the District on August 17, 2016.
25. Before the start of any construction, the permittee must provide the District with documentation demonstrating that 1.31 UMAM mitigation credits have been debited from the Longleaf Mitigation Bank ledger.
26. In the event that the permittee does not successfully complete the transaction to obtain 1.31 UMAM mitigation credits from Longleaf Mitigation Bank, the permittee must obtain a permit modification to provide alternative mitigation.
27. Wetland impacts and mitigation shall be as per plans received by the District on July 27, 2016.



### Notice Of Rights

1. A person whose substantial interests are or may be affected has the right to request an administrative hearing by filing a written petition with the St. Johns River Water Management District (District). Pursuant to Chapter 28-106 and Rule 40C-1.1007, Florida Administrative Code, the petition must be filed (received) either by delivery at the office of the District Clerk at District Headquarters, P. O. Box 1429, Palatka Florida 32178-1429 (4049 Reid St., Palatka, FL 32177) or by e-mail with the District Clerk at [Clerk@sjrwm.com](mailto:Clerk@sjrwm.com), within twenty-six (26) days of the District depositing the notice of District decision in the mail (for those persons to whom the District mails actual notice), within twenty-one (21) days of the District emailing the notice of District decision (for those persons to whom the District emails actual notice), or within twenty-one (21) days of newspaper publication of the notice of District decision (for those persons to whom the District does not mail or email actual notice). A petition must comply with Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes, and Chapter 28-106, Florida Administrative Code. The District will not accept a petition sent by facsimile (fax), as explained in paragraph no. 4 below.
2. Please be advised that if you wish to dispute this District decision, mediation may be available and that choosing mediation does not affect your right to an administrative hearing. If you wish to request mediation, you must do so in a timely-filed petition. If all parties, including the District, agree to the details of the mediation procedure, in writing, within 10 days after the time period stated in the announcement for election of an administrative remedy under Sections 120.569 and 120.57, Florida Statutes, the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, shall be tolled to allow mediation of the disputed District decision. The mediation must be concluded within 60 days of the date of the parties' written agreement, or such other timeframe agreed to by the parties in writing. Any mediation agreement must include provisions for selecting a mediator, a statement that each party shall be responsible for paying its pro-rata share of the costs and fees associated with mediation, and the mediating parties' understanding regarding the confidentiality of discussions and documents introduced during mediation. If mediation results in settlement of the administrative dispute, the District will enter a final order consistent with the settlement agreement. If mediation terminates without settlement of the dispute, the District will notify all the parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Florida Statutes, is resumed. Even if a party chooses not to engage in formal mediation, or if formal mediation does not result in a settlement agreement, the District will remain willing to engage in informal settlement discussions.
3. A person whose substantial interests are or may be affected has the right to an informal administrative hearing pursuant to Sections 120.569 and 120.57(2), Florida Statutes, where no material facts are in dispute. A petition for an informal hearing must also comply with the requirements set forth in Rule 28-106.301, Florida Administrative Code.

### Notice Of Rights

4. A petition for an administrative hearing is deemed filed upon receipt of the complete petition by the District Clerk at the District Headquarters in Palatka, Florida during the District's regular business hours. The District's regular business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Petitions received by the District Clerk after the District's regular business hours shall be deemed filed as of 8:00 a.m. on the District's next regular business day. The District's acceptance of petitions filed by e-mail is subject to certain conditions set forth in the District's Statement of Agency Organization and Operation (issued pursuant to Rule 28-101.001, Florida Administrative Code), which is available for viewing at [sjrwmd.com](http://sjrwmd.com). These conditions include, but are not limited to, the petition being in the form of a PDF or TIFF file and being capable of being stored and printed by the District. Further, pursuant to the District's Statement of Agency Organization and Operation, attempting to file a petition by facsimile is prohibited and shall not constitute filing.
5. Failure to file a petition for an administrative hearing within the requisite timeframe shall constitute a waiver of the right to an administrative hearing. (Rule 28-106.111, Florida Administrative Code).
6. The right to an administrative hearing and the relevant procedures to be followed are governed by Chapter 120, Florida Statutes, Chapter 28-106, Florida Administrative Code, and Rule 40C-1.1007, Florida Administrative Code. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means the District's final action may be different from the position taken by it in this notice. A person whose substantial interests are or may be affected by the District's final action has the right to become a party to the proceeding, in accordance with the requirements set forth above.
7. Pursuant to Section 120.68, Florida Statutes, a party to the proceeding before the District who is adversely affected by final District action may seek review of the action in the District Court of Appeal by filing a notice of appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, within 30 days of the rendering of the final District action.
8. A District action is considered rendered, as referred to in paragraph no. 7 above, after it is signed on behalf of the District and filed by the District Clerk.
9. Failure to observe the relevant timeframes for filing a petition for judicial review as described in paragraph no. 7 above will result in waiver of that right to review.

NOR.Decision.DOC.001  
Revised 12.7.11

**Notice Of Rights**

**Certificate of Service**

I HEREBY CERTIFY that a copy of the foregoing Notice of Rights has been sent to the permittee:

William A Stanly  
Barnwell Nassau, LLC  
3675 Pine St  
Jacksonville, FL 32205-9456

This 23rd day of August, 2016.

*M. Daniels*

Margaret Daniels, Office Director  
Office of Business and Administrative Services  
St. Johns River Water Management District  
4049 Reid Street  
Palatka, FL 32177-2529  
(386) 329-4570

Permit Number: 146934-1

### NOTICING INFORMATION

Dear Permittee:

Please be advised that the St. Johns River Water Management District will not publish a notice in the newspaper advising the public that it has issued a permit for this project.

Newspaper publication, using the District's notice form, notifies members of the public of their right to challenge the issuance of the permit. If proper notice is given by newspaper publication, then there is a 21-day time limit for someone to file a petition for an administrative hearing to challenge the issuance of the permit.

To close the point of entry for filing a petition, you may publish (at your own expense) a one-time notice of the District's decision in a newspaper of general circulation within the affected area as defined in Section 50.011 of the Florida Statutes. If you do not publish a newspaper notice to close the point of entry, the time to challenge the issuance of your permit will not expire and someone could file a petition even after your project is constructed.

A copy of the notice form and a partial list of newspapers of general circulation are attached for your convenience. However, you are not limited to those listed newspapers. If you choose to close the point of entry and the notice is published, the newspaper will return to you an affidavit of publication. In that event, it is important that you either submit a scanned copy of the affidavit by emailing it to [compliancesupport@sjrwmd.com](mailto:compliancesupport@sjrwmd.com) (preferred method) or send a copy of the original affidavit to:

Margaret Daniels, Office Director  
Office of Business and Administrative Services  
4049 Reid Street  
Palatka, FL 32177

If you have any questions, please contact the Office of Business and Administrative Services at (386) 329-4570.

Sincerely,



Margaret Daniels, Office Director  
Office of Business and Administrative Services

NOTICE OF AGENCY ACTION TAKEN BY THE  
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

Notice is given that the following permit was issued on \_\_\_\_\_:

(Name and address of applicant) \_\_\_\_\_  
permit# \_\_\_\_\_. The project is located in \_\_\_\_\_ County, Section  
\_\_\_\_\_, Township \_\_\_\_\_ South, Range \_\_\_\_\_ East. The permit authorizes a surface  
water management system on \_\_\_\_\_ acres for \_\_\_\_\_ known as  
\_\_\_\_\_. The receiving water body is \_\_\_\_\_.

A person whose substantial interests are or may be affected has the right to request an administrative hearing by filing a written petition with the St. Johns River Water Management District (District). Pursuant to Chapter 28-106 and Rule 40C-1.1007, Florida Administrative Code (F.A.C.), the petition must be filed (received) either by delivery at the office of the District Clerk at District Headquarters, P.O. Box 1429, Palatka FL 32178-1429 (4049 Reid St, Palatka, FL 32177) or by e-mail with the District Clerk at Clerk@sjrwmd.com, within twenty-one (21) days of newspaper publication of the notice of District decision (for those persons to whom the District does not mail or email actual notice). A petition must comply with Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes (F.S.), and Chapter 28-106, F.A.C. The District will not accept a petition sent by facsimile (fax). Mediation pursuant to Section 120.573, F.S., may be available and choosing mediation does not affect your right to an administrative hearing.

A petition for an administrative hearing is deemed filed upon receipt of the complete petition by the District Clerk at the District Headquarters in Palatka, Florida during the District's regular business hours. The District's regular business hours are 8 a.m. – 5 p.m., excluding weekends and District holidays. Petitions received by the District Clerk after the District's regular business hours shall be deemed filed as of 8 a.m. on the District's next regular business day. The District's acceptance of petitions filed by e-mail is subject to certain conditions set forth in the District's Statement of Agency Organization and Operation (issued pursuant to Rule 28-101.001, Florida Administrative Code), which is available for viewing at [www.sjrwmd.com](http://www.sjrwmd.com). These conditions include, but are not limited to, the petition being in the form of a PDF or TIFF file and being capable of being stored and printed by the District. Further, pursuant to the District's Statement of Agency Organization and Operation, attempting to file a petition by facsimile (fax) is prohibited and shall not constitute filing.

The right to an administrative hearing and the relevant procedures to be followed are governed by Chapter 120, Florida Statutes, Chapter 28-106, Florida Administrative Code, and Rule 40C-1.1007, Florida Administrative Code. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means the District's final action may be different from the position taken by it in this notice. **Failure to file a petition for an administrative hearing within the requisite time frame shall constitute a waiver of the right to an administrative hearing. (Rule 28-106.111, F.A.C.).**

If you wish to do so, please visit [http://www.sjrwmd.com/nor\\_dec/](http://www.sjrwmd.com/nor_dec/) to read the complete Notice of Rights to determine any legal rights you may have concerning the District's decision(s) on the permit application(s) described above. You can also request the Notice of Rights by contacting the Director of Regulatory Support, 4049 Reid St., Palatka, FL 32177-2529, tele. no. (386)329-4570.

## **NEWSPAPER ADVERTISING**

### **ALACHUA**

The Alachua County Record, Legal Advertising  
P. O. Box 806  
Gainesville, FL 32602  
352-377-2444/ fax 352-338-1986

### **BRAFORD**

Bradford County Telegraph, Legal Advertising  
P. O. Drawer A  
Starke, FL 32901  
904-964-6305/ fax 904-964-8628

### **CLAY**

Clay Today, Legal Advertising  
1560 Kinsley Ave., Suite 1  
Orange Park, FL 32073  
904-264-3200/ fax 904-264-3285

### **FLAGLER**

Flagler Tribune, c/o News Journal  
P. O. Box 2831  
Daytona Beach, FL 32120-2831  
386-681-2322

### **LAKE**

Daily Commercial, Legal Advertising  
P. O. Drawer 490007  
Leesburg, FL 34749  
352-365-8235/fax 352-365-1951

### **NASSAU**

News-Leader, Legal Advertising  
P. O. Box 766  
Fernandina Beach, FL 32035  
904-261-3696/fax 904-261-3698

### **ORANGE**

Sentinel Communications, Legal Advertising  
633 N. Orange Avenue  
Orlando, FL 32801  
407-420-5160/ fax 407-420-5011

### **PUTNAM**

Palatka Daily News, Legal Advertising  
P. O. Box 777  
Palatka, FL 32178  
386-312-5200/ fax 386-312-5209

### **SEMINOLE**

Seminole Herald, Legal Advertising  
300 North French Avenue  
Sanford, FL 32771  
407-323-9408

### **BAKER**

Baker County Press, Legal Advertising  
P. O. Box 598  
Macclenny, FL 32063  
904-259-2400/ fax 904-259-6502

### **BREVARD**

Florida Today, Legal Advertising  
P. O. Box 419000  
Melbourne, FL 32941-9000  
321-242-3832/ fax 321-242-6618

### **DUVAL**

Daily Record, Legal Advertising  
P. O. Box 1769  
Jacksonville, FL 32201  
904-356-2466 / fax 904-353-2628

### **INDIAN RIVER**

Vero Beach Press Journal, Legal Advertising  
P. O. Box 1268  
Vero Beach, FL 32961-1268  
772-221-4282/ fax 772-978-2340

### **MARION**

Ocala Star Banner, Legal Advertising  
2121 SW 19th Avenue Road  
Ocala, FL 34474  
352-867-4010/fax 352-867-4126

### **OKEECHOBEE**

Okeechobee News, Legal Advertising  
P. O. Box 639  
Okeechobee, FL 34973-0639  
863-763-3134/fax 863-763-5901

### **OSCEOLA**

Little Sentinel, Legal Advertising  
633 N. Orange Avenue  
Orlando, FL 32801  
407-420-5160/ fax 407-420-5011

### **ST. JOHNS**

St. Augustine Record, Legal Advertising  
P. O. Box 1630  
St. Augustine, FL 32085  
904-819-3436

### **VOLUSIA**

News Journal Corporation, Legal Advertising  
P. O. Box 2831  
Daytona Beach, FL 32120-2831  
(386) 681-2322