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**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS  
FOR  
SOLTERRA RESORT**

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**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS  
FOR  
SOLTERRA RESORT**

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**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR SOLTERRA RESORT** (the "Declaration") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date"), by AK OAKMONT LLC, a Florida limited liability company, whose address is 701 South Olive Avenue, Suite 104, West Palm Beach, Florida 33401 ("Declarant").

**WITNESSETH:**

**WHEREAS**, on January 29, 2008, Oakmont Grove Venture, LLC, a Delaware limited liability company ("Oakmont"), filed that certain Declaration of Master Covenants, Conditions and Restrictions for Oakmont Resort, recorded in Official Records Book 7542, Page 249 of the Public Records of Polk County, Florida ("Original Declaration"); and

**WHEREAS**, Oakmont incorporated under the laws of the State of Florida as a corporation not-for-profit, Oakmont Resort Owners Association, Inc. ("Association"), as the homeowners association for the community encumbered by the Original Declaration; and

**WHEREAS**, neither Oakmont nor the Association own any of the property encumbered by the Original Declaration; and

**WHEREAS**, the Declarant and the CDD are now the owners and successors in interest of Oakmont as the "Developer" under, and with respect to all of the property encumbered by, the Original Declaration, which property is more particularly described in **Exhibit A**; and

**WHEREAS**, Declarant desires to amend and restate the Original Declaration and impose this Declaration on the real property encumbered thereby and, accordingly, pursuant to the laws of the State of Florida, prepared this document to amend and restate the Original Declaration.

**NOW, THEREFORE**, in consideration of the premises and the covenants herein contained, the Declarant hereby declares that henceforth the Original Declaration is merged into and is superseded and completely replaced by this Declaration such that the real property encumbered hereunder, and all additions thereto, to the extent permitted by law, shall be owned, held and conveyed subject to the covenants, restrictions, easements, reservations and liens herein established, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of said real property,

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and all of which, to the extent permitted by law, shall be covenants running with the land and shall be binding and inure to the benefit of the Association and the owners of land, their respective successors and assigns, and any other party having any right, title or interest in the real property.

## ARTICLE 1 - DEFINITIONS

**Section 1.01** Definitions. The following words and terms when used in this Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

- A. "Additional Property" shall mean and refer to any real property, other than the real property described in the Plat, which is made subject to the provisions of this Declaration and added to the Property, as provided in Article 2, Section 2.02 below.
- B. "Annual Assessments" shall have the meaning ascribed to such term in Section 6.02.
- C. "Association" shall mean and refer to Solterra Resort Homeowners Association, Inc., a Florida non-profit corporation, its successors and assigns.
- D. "Architectural Review Board" and "ARB" shall mean the committee established and described in Article 7 hereof.
- E. "Articles" shall mean and refer to the Articles of Incorporation of the Association as they may exist from time to time. The initial Articles are attached hereto as **Exhibit "B"**.
- F. "Board" shall mean the Board of Directors of the Association.
- G. "Bylaws" shall mean and refer to the Bylaws of the Association as they may exist from time to time. The initial Bylaws are attached hereto as **Exhibit "C"**.
- H. "CDD" shall mean Oakmont Grove Community Development District.
- I. "CDD Property" shall mean and refer to those tracts of land, together with any and all improvements from time to time located thereon, which are actually and specifically dedicated or deeded to the CDD or are identified as property to be conveyed to the CDD, on a final plat recorded by Declarant in the public records of the county in which the Property is located. The term "CDD Property" shall also include easement rights which may be specifically granted to the CDD over or upon other lands, but only to the actual extent of such easement rights.
- J. "Common Expenses" shall mean and refer to expenditures for (i) the installation, construction, maintenance, repair, replacement, and operation of Common Property and any and all other similar property for which the Association is either obligated or permitted to improve, maintain, repair, replace, and/or operate, including but not limited to any and all improvements from time to time located thereon, (ii) the performance of any and all other services or other obligations required or authorized to be performed by the Association with respect to Common Property or otherwise, and (iii) the performance of any and all other rights and/or obligations which the Association may be required or permitted to perform pursuant to the terms of the Articles, Bylaws, this Declaration or by law, whether set forth herein explicitly or implicitly.

K. "Common Property" and "Common Area" shall mean and refer to those tracts of land, if any, together with any and all improvements from time to time located thereon, which are actually and specifically dedicated or deeded to the Association and designated in said dedication or deed as "Common Property," or "Common Area," or tracts of land which are a part of the Property and which are identified as "Common Property" or "Common Area" for the benefit of the Property, or are identified as property to be conveyed to the Association on a final plat recorded by Declarant in the County and actually owned by the Association, but shall not include any CDD Property, including tracts of land originally dedicated to a prior homeowners' association and subsequently conveyed to the CDD. The term "Common Property" shall also include any personal property acquired by the Association if said property is designated as "Common Property" by the Board, and shall also include easement rights which may be specifically granted to the Association over or upon other lands, but only to the actual extent of such easement rights. As of the date of recording of this Declaration the Association does not own any Common Property or Common Areas but may in the future acquire such.

L. "County" shall mean Polk County, Florida.

M. "Declarant" shall mean AK Oakmont LLC, a Florida limited liability company. Wherever the term Declarant is used in this Declaration, the Articles or Bylaws, it shall always be deemed to include Declarant's successors and assigns, but only to the extent specifically so identified by an instrument in writing executed and recorded by the then Declarant.

N. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Solterra Resorts.

O. "District" means and refers to the Southwest Florida Water Management District, an agency created pursuant to Chapter 373, Florida Statutes.

P. "District Permit" shall mean and refer to the Environmental Resource Permit, including but not limited to the approved management plan for the Mitigation Areas and the Wetland Buffer Areas, issued by the District as ERP General Construction Permit No. 49026971, as modified from time to time with the approval of the District.

Q. "Drainage Area(s)" shall mean and refer to all of such areas so designated in the Plat, all of which are or shall be controlled by the CDD, and shall include, without limitation, any drainage easements and other areas forming a part of the Surface Water Management System.

R. "Institutional Lender" shall mean and refer to the owner and holder of a mortgage encumbering a Residential Unit, which is a bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, national banking association, an agency of the United States government, private or public pension fund, Veteran's Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a credit union, real estate or mortgage investment trust or a lender generally recognized in the community as an institutional lender.

S. "Lot" shall mean any parcel of land shown upon any recorded subdivision map or plat of all or any portion of the Property upon which a Residential Unit is constructed or upon which a Residential Unit may be constructed. Each Lot shall include all improvements from time to time located thereon.

T. "Maintenance" shall mean, but not be limited to, cleanup, landscaping, irrigation and grounds care, painting, and structural upkeep of improved Property, recreational facilities, roads, walls, entry features and rights of way, and repair and all other such functions incidental to the services of the Association and which are not the obligation of the CDD.

U. "Manager" shall mean and refer to any person or company hired by an Owner to act as a property manager, leasing agent, management company or perform similar functions with respect to such Owner's Residential Unit.

V. "Open Space" shall mean an exterior open area, if any, within the Property (not including open area on any Lot) from the ground upward which is not owned by the CDD or the County and which is devoid of residential buildings and accessory structures; except however, those buildings and structures or areas used exclusively for recreational purposes may be included in the Open Space.

W. "Owner" shall mean and refer to the owner as shown by the records of the Association (whether it be the Declarant, one or more persons, firms or legal entities) of fee simple title to any Lot, Residential Unit or other real property other than Common Property or CDD Property located within the Property. Owner shall not mean or refer to the holder of a mortgage or security interest, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

X. "Plat" shall initially mean and refer to the Plat of Oakmont Phase I, as recorded in Plat Book 148, Pages 16 through 30, Public Records of Polk County, Florida, and any and all other recorded plats or replats of all or any portion of the Property, as the same may be changed, amended, replatted and/or otherwise modified from time to time, in whole or in part. Notwithstanding anything herein to the contrary, Declarant reserves the right to make such modifications to any part of the Property owned by the Declarant as the Declarant deems necessary and/or desirable, including, but in no event limited to, changing the location, size, dimensions and number of Tracts within the initial Plat and/or any and all future Plats, to the extent permitted by applicable governmental authorities.

Y. "Prohibited Deletions" shall have the meaning ascribed to such term in Section 2.03 hereof.

Z. "Property" shall mean and include the real property described in the Plat.

AA. "Public Areas" shall mean areas (if any) within the Property dedicated for use by the general public and not limited to use by residents of Solterra Resort.

BB. "Residential Unit" shall mean and refer to any platted and developed single family dwelling home, or other improved property intended for use as a residential dwelling, for which a certificate of occupancy has been issued by the appropriate governmental authorities.

CC. "Short Term Rental" shall have the meaning ascribed to such term in Section 13.01 hereof.

DD. "Solterra Resort" shall mean the Property.

EE. "Surface Water Management System" or "Stormwater Management System" means a system which is designed and constructed or implemented with respect to the Property to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C., and includes, without limitation, Drainage Areas.

FF. "Tract" shall mean any portion of the Property established as a Tract in any Plat.

## **ARTICLE 2 - PROPERTY SUBJECT TO DECLARATION**

**Section 2.01** Existing Property. The real property initially subject to this Declaration is the property described in Exhibit "C".

**Section 2.02** Additional Property. Declarant, from time to time, may, in its sole, absolute and unfettered discretion, cause Additional Property to become subject to this Declaration and to be a part of the Property but under no circumstance shall Declarant be required to make such additions, and no other real property shall in any way be affected by or become subject to this Declaration, or become a part of the Property, until such time, if ever, such real property is added to the Property pursuant to the terms of this Article 2. If the subdivision has been approved by FHA/VA for the purpose of guaranteeing mortgages, Declarant must obtain the consent of FHA/VA before causing any Additional Property to become subject to this Declaration and to be a part of the Property.

B. Any additions to the Property authorized under this Declaration shall be made by the filing of record, from time to time, of an amendment to this Declaration or a Supplemental Declaration of Covenants, Conditions, Easements and Restrictions, executed by Declarant, which shall extend the covenants, conditions and restrictions contained herein to such property. Such amended Declaration or Supplemental Declaration of Covenants, Conditions, Easements and Restrictions may contain such amendments or additional provisions as Declarant may deem necessary and as are not inconsistent with the purposes of this Declaration. Declarant shall not be required to obtain the approval or consent of the Association or any Owner or any person claiming by, through, or under any Owner to add any property to the Property pursuant to this Section.

**Section 2.03** Deletions from Property. Declarant may at any time delete any portion of the Property from encumbrance by this Declaration by executing and filing of record a Notice of Deletion from Declaration of Covenants, Conditions, Easements and Restrictions; provided, however, that in no event shall Declarant make any Prohibited Deletions without first obtaining the written consent of the



Owners of the portion of the Property being deleted. "Prohibited Deletions" shall consist of: (a) deletions of any portion of the Property owned or leased by an Owner other than Declarant, other than to the extent any such portion of the Property is being deleted to correct a scrivener's error whereby the portion of the Property being deleted was not intended to be a part of the Property; and (b) deletions of any portion of the Property which contain Common Property (unless such deletion is to correct a scrivener's error as described above), unless appropriate easements are granted or other arrangements are made which ensure that remaining portions of the Property which are served by the subject Common Property continue to receive substantially the same service (from the Common Property or their substantial equivalents) after deletion of such Common Property occurs and without additional cost or expense to the Owners. No Owner, or any person claiming by, through, or under any Owner, shall have any right to claim detrimental reliance upon this Declaration with regard to any portion of the Property deleted herefrom by Declarant pursuant to this Section.

**Section 2.04** Effect of Declaration. Each Owner of a Lot, Residential Unit or any other portion of the Property, by acceptance of a deed or other instrument evidencing its ownership interest, accepts and acknowledges the authority of this Declaration and of the Association created herein, and agrees to abide by and be bound by the provisions of this Declaration, the Articles, the Bylaws and other rules and regulations of the Association. In addition to the foregoing, the family, guests, invitees and tenants of said Owners shall, while in or on the Property, abide and be bound by the provisions of this Declaration, the Articles, the Bylaws and other rules and regulations of the Association.

### **ARTICLE 3 - THE ASSOCIATION**

**Section 3.01** Membership. Every Owner of a Lot other than the Association shall be a Member of the Association. Membership shall be appurtenant to, run with, and may not be separated from ownership of a Lot.

**Section 3.02** Classes of Voting Membership. The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When any Lot entitling the Owner to membership in the Association is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants by the entirety or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote of the individual shall be considered to represent the will of all the Owners of that Lot. In the circumstance of such common ownership, if the Owners fail to designate their voting representative then the Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owners of such Lot. Upon such notification, the Owner may not vote until the Owner(s) appoint their representative pursuant to this paragraph.

**Class B:** The Class B Member(s) shall be Declarant and shall be entitled to nine (9) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership once Turnover has occurred in accordance with Article 9 hereunder.

**Section 3.03** Notice and Quorum for Any Action Authorized Under This Declaration. Written notice of any meeting called for the purpose of taking any action authorized under this Declaration shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast thirty percent (30%) or such lesser amount as may be allowed by law, of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

#### **ARTICLE 4 - FUNCTIONS OF THE ASSOCIATION**

**Section 4.01** Services. The Association shall have the powers provided herein and in the Articles and Bylaws from time to time, and such other powers as may be vested in the Association by law, and shall provide (or cause to be provided) the following services:

- A. Maintenance of all Open Space and Common Property, if any.
- B. Adopting, publishing and enforcing such reasonable rules and regulations as the Board deems necessary.
- C. Mowing, fertilizing, exterior pest control, landscape maintenance and irrigation system maintenance for each Residential Unit.
- D. The Association may provide exterior or other maintenance upon any portion of the Property (including any Residential Unit) and/or any improvement from time to time located thereon which, in the Board's reasonable opinion, requires such maintenance because said property is being maintained in a sub-standard manner or otherwise violates any of the covenants and restrictions contained herein. The Association shall notify the Owner responsible for the property in writing, specifying the nature of the condition to be corrected, and if the Owner has not caused the same to be corrected within fifteen (15) days after the date Owner receives said notice, the Association may correct such condition. Said maintenance and/or other corrective action necessary to bring the property into compliance with this Declaration shall include but not be limited to painting, repairs, removal of any fencing, replacement and maintenance of roofs, gutters, downspouts, exterior building surfaces, windows, trees, shrubs, grass, driveways, walks, irrigation systems for proper yard irrigation and other exterior improvements. If an Owner of any Residential Unit fails to pay the County for water/irrigation service, the Association may establish an account with the County for such Residential Unit so that proper yard irrigation is maintained.

The cost of such maintenance or corrective actions shall be assessed by the Association against the Owner on whose behalf such maintenance or corrective actions are performed, but shall not be considered part of the annual maintenance assessment or charge. Any such special assessment or

charge shall be a lien upon the subject Property (including a Residential Unit), as the case may be, and an obligation of the Owner and shall become immediately due and payable in all respects, together with attorneys' fees, court costs, interest and other fees or costs of collection as provided for other assessments of the Association.

E. Entering into agreements with service providers for the furnishing to all Residential Units and to all other appropriate locations on the Property of trash valet service, cable or similar services for television, radio, internet services (including wi-fi, wired/wireless broadband, voice over IP, etc.) and other communication or data transmission services, security systems, fire alarm systems and other similar systems and amenities.

F. Constructing improvements on Common Property and granting easements and licenses as may be required, permitted, recommended or desirable, as determined by the Board in its sole option and discretion to provide the services authorized in this Article.

G. At the sole option and discretion of the Board, employment of attendants and other personnel, maintenance of control centers for the protection of persons and property within the Property, installation, operation and maintenance of communication systems by the Association or a contractual designee of the Association, and assistance in the apprehension and prosecution of persons who violate any applicable laws within the Property.

H. The Board shall have the right, in its discretion, to enter into contracts on behalf of the Association for the purpose of carrying out its duties hereunder or which will otherwise be of benefit to the Owners in general. The terms of any such contracts shall be negotiated by the Board in its discretion. The Board shall enter into a contract with the CDD's management company or a separate management company for the purpose of managing the day to day affairs of the Association and for carrying out the Association's maintenance obligations with respect to the Common Property. Any expenses associated with contracts entered into by the Board on behalf of the Association shall constitute Common Expenses.

I. Unless otherwise constructed by Declarant or the CDD on Common Property or CDD Property, the Association shall install a garbage compactor on Common Property or CDD Property for use by Owners, and the Association shall further maintain and perform all relevant functions with respect thereto.

**Section 4.02** Mortgage and Pledge. With the approval of at least two-thirds (2/3) of the Owners and the consent of Declarant (to the extent Declarant still owns any portion of the Property), the Board shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its functions.

**Section 4.03** Conveyance by Association. Subject to the provisions hereof, the Association shall be empowered to delegate or convey any of its functions or Property to any governmental unit, public utility or private party approved by at least two-thirds (2/3) of the Owners and, to the extent Declarant still owns any portion of the Property, by the Declarant, which approval may be withheld by the Declarant in its sole discretion.

**Section 4.04**      **Security.** The CDD 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. For example, the CDD may engage an attendant to monitor or control pedestrian and vehicular traffic at any gated entry to the Property, in addition to performing other functions on or about the Property. Any such attendant shall be a gate attendant only, however, and shall not be deemed a security guard, and in no event shall the Association, CDD or the Declarant in any way be considered insurers or guarantors of security within the Property, nor shall either of them be held liable for any loss or damage by reason of the lack of adequate security or the ineffectiveness of any security or safety measures undertaken. The roads within the Property are public and access must be granted to the public. If the CDD engages an attendant to monitor or control pedestrian and vehicular traffic at any gated entry, such attendant may, but shall not be required to, request identification, such as a driver's license, to grant access to the Property, but may not deny access to the Property. No representation or warranty is made that any fire protection system, burglar alarm 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, nor that any person acting as a gate attendant shall provide security services or prevent unauthorized persons from entering upon the Property. Each Owner therefore acknowledges, understands and agrees that the Declarant, the CDD, the Association, and their officers and directors are not insurers and that each person entering upon the Property assumes all risks of loss or damage to persons and property resulting from the acts of third parties.

## **ARTICLE 5 - EASEMENTS**

**Section 5.01**      **Appurtenant Easements.** Declarant reserves unto itself, its successors, assigns, guests, lessees and invitees, and grants to all Owners, and their respective successors, assigns, guests, lessees and invitees, as an appurtenance to and as part of the ownership held by such Owner, but subject to the Declaration, the Articles and Bylaws and the rules and regulations promulgated by the Association, a perpetual non-exclusive easement for ingress and egress over, across and through and for the use and enjoyment of, all Common Property; such easements of ingress, egress, use and enjoyment to be shared in common with Declarant, the CDD, the other Owners and their respective successors, assigns, guests, lessees and invitees.

**Section 5.02**      **Utility Easements.** Declarant reserves to itself, its successors and assigns, the right to grant easements to any private company and/or to any public or private utility or governmental authority providing utility and other services to the Property upon, over, under and across all portions of the Property. Said easements shall be given for the purpose of maintaining, installing, repairing, altering, replacing and operating sewer lines, irrigation lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal lines and systems, pipes, wires, power lines, telephone service, fiber optic cable lines and facilities, communications lines and facilities, electro-magnetic spectrum-based communications and data services and related facilities, gas lines, siphons, valves, gates, pipelines, cable television service, alarm systems and all machinery and apparatus appurtenant to all of the foregoing as may be necessary or desirable for the installation and maintenance of utilities and providing services to Owners and the various portions of the Property. All such easements shall be of a size, width, and location as Declarant, in its discretion, deems best. Notwithstanding the foregoing, such easements shall be reasonably located by Declarant so as not to unreasonably impair the value or

intended use of the Residential Unit or unreasonably prohibit the development of improvements on any Lot.

**Section 5.03**      **Declarant Easements.** The Declarant hereby reserves to itself, its successors and assigns, and to such other persons, including the CDD, as Declarant may from time to time designate in writing, a perpetual non-exclusive easement, privilege and right in and to, over, under, on and across any Common Property for ingress and egress to any roads, other Common Property and adjacent properties, including those owned by the CDD; provided, however, that such access and use does not unreasonably interfere with the reasonable intended use and enjoyment of the Common Property and facilities located thereon by the Owners.

**Section 5.04**      **Wall and Fence Easement.** Declarant reserves unto itself, its successors and assigns and hereby grants to the Association and the CDD a perpetual non-exclusive easement over, across and through any easements for walls or fences shown on the Plat, for the purpose of construction and maintenance of a wall and/or fence along the perimeter boundary of the Property. The Association shall be responsible for the maintenance and repair of the wall/fence and the cleaning and painting of the exterior side of the wall/fence, and any interior sides of the wall/fence located on Property owned and maintained by the Association. Each Owner shall be responsible for the maintenance and painting of the interior side of the wall/fence located on such Owner's Lot.

**Section 5.05**      **Service Easements.** Declarant hereby grants to people and entities affiliated with delivery, pickup and fire protection services, police and other authorities of the law, United States Mail carriers, representatives of electrical, telephone, cable television and other utilities authorized by the Declarant or the Association, and to such other persons as the Declarant or the Association from time to time may designate, a nonexclusive, perpetual easement for ingress and egress over and across the Common Property for the purposes of performing their authorized services, to service all or any portion of the Property and to perform any investigation related thereto.

**Section 5.06**      **Drainage Easements.** Drainage flow shall not be obstructed or diverted from drainage easements. The Declarant hereby reserves for itself, its successors and assigns, and hereby grants to the Association and the CDD, easements for and may, but shall not be required to, cut swales and drainways for surface water wherever within the Property and whenever such action may appear to the Declarant or the Association, as the case may be, to be necessary to maintain reasonable standards of health, safety and/or appearance provided that any such action is in compliance with any permit from time to time issued by the District, as such permits are amended or supplemented from time to time. These easements include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other action reasonably necessary to install drainage facilities and maintain reasonable standards of health, safety and/or appearance, but shall not include the right to disturb any improvements erected within the Property (including, without limitation, any Lot) which are not located within the specific easement areas designated on the Plat or in this Declaration. Except as provided herein, existing drainage and drainage channels (or areas reserved for such purposes) shall not be altered so as to divert the flow of water onto adjacent parcels or into sanitary sewer lines. Following the initial construction of a Residential Unit on a Lot consistent with the approved grading plan for the Property, no Owner of a Residential Unit may alter any elevations and slopes except upon written consent of the Association. Notwithstanding anything herein to the contrary, the Surface Water Management System makes use of certain portions of the Property for water management purposes.

Declarant hereby grants to the CDD a perpetual non-exclusive easement over, under, and upon that portion of the Property which may be utilized for the Surface Water Management System to make use of such Surface Water Management System for the surface water drainage, retention, and detention necessary to develop the Property.

**Section 5.07**      **Conservation Easements.** Declarant reserves the right to grant conservation easements to qualified grantees over and across Common Property or Open Space from time to time; provided, however, that unless otherwise required by a governmental entity such easements shall be reasonably located by Declarant so as not to unreasonably impair the value or intended use of a Residential Unit, unreasonably prohibit the development of improvements on any Lot or unreasonably restrict the use by the Owners of the Common Property or Open Space for their intended use.

**Section 5.08**      **Right of Entry.** The Association and the CDD shall have the right, but not the obligation, to enter onto any part of the Property for emergency, security, and safety, which right may be exercised by the Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include any right of the Association set forth herein to enter a Residential Unit to cure any condition which may increase the possibility of a fire or other hazard, or otherwise violated the covenants and restrictions contained herein, in the event an Owner fails or refuses to timely cure the condition upon request by the Board.

**Section 5.09**      **Easements of Encroachment.** Reciprocal appurtenant easements of encroachment are hereby reserved, created and granted as between each Common Property, Lot, Tract and such portion or portions of the Common Property, Lots, and/or Tracts adjacent thereto due to the unintentional placement or settling or shifting of the improvements from time to time constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, its successors and/or assigns, a tenant, or the Association. Encroachments of improvements into the Common Property by more than three (3) feet shall be allowed if such encroachments do not unreasonably interfere with the use of the Common Property and facilities located thereon by the Owners, and are approved by the Declarant or the Board.

**Section 5.10**      **Natural Gas Easements.** Declarant (or its successor or assigns) shall have the right, but not the obligation, to install a natural gas system to serve the Property. In connection with the installation, maintenance and operation of such system, if applicable, Declarant reserves access, installation and service easements over, across and under the Common Property, Open Space and such other portions of the Property including Lots as is necessary to provide such natural gas service to all Owners; provided, however, that such easements shall be reasonably located by Declarant so as not to unreasonably impair the value or intended use of the Residential Unit or unreasonably prohibit the development of improvements on any Lot.

**Section 5.11**      **Extent of Easements.** The rights and easements of enjoyment created in this Article 5 shall be subject to the following:

A. The right of the Association to borrow money from any lender for the purpose of improving and/or maintaining the Open Space, Common Property, and any improvements from time to time located or to be located thereon, and providing services authorized herein and, in aid thereof, to mortgage said Property; but only with the approval of the Owners and the Declarant (so long as the Declarant owns any property within the Property) as required by Article 4, Section 4.02 above. Declarant's approval may be withheld in the Declarant's sole discretion.

B. The right of the Association to suspend the rights and easements of enjoyment, but not access to their Residential Unit and Lot, of any Owner or any tenant of any Owner for any period during which any assessment remains unpaid, and for any period, not to exceed the time period specified in § 8.02 under this Declaration, for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or breach of any rules and regulations of the Association shall not constitute a waiver or discharge of the Owner's obligation to pay the assessment.

C. The right of the Association to give, dedicate, mortgage or sell all or any part of the Common Property (including leasehold interests therein) to the CDD or any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be reasonably determined by the Association; provided that no such gift or sale or determination of such purposes or conditions shall be effective unless the same shall be authorized by the Board and the Declarant (so long as the Declarant owns any property within the Property) as required by Article 4, Section 4.02 above, which authorization may be withheld in the Board's or the Declarant's sole discretion, as the case may be.

**Section 5.12** Discharge into Water Bodies. So long as Declarant owns any portion of the Property, nothing other than storm water and irrigation waters may be discharged into any lake, canal, or other body of water located within or adjacent to the Property without Declarant's prior written consent, which consent, may be withheld by Declarant in Declarant's sole discretion. The construction and/or installation by any party other than the Declarant of any device through which water is drawn shall be subject to the prior written approval of the Architectural Review Board as herein below established in Article 7 of this Declaration. Irrigation water may not be withdrawn from any body of water within the Property or from the ground by any party other than the Declarant without the consent of the Board or the Declarant (so long as the Declarant owns any portion of the Property), which consent may be withheld in the Board's or the Declarant's sole discretion, as the case may be.

**Section 5.13** Access. If ingress or egress to and from any parcel within the Property is through any Common Area, any conveyance or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of such parcel.

**Section 5.14** Reclaimed Water. Each Owner is hereby advised that reclaimed water shall be used within the Property. Any use of reclaimed water within the Property shall be in accordance with the requirements of the applicable County regulations, including but not limited to Chapter 6 of the County's Utilities Standards and Specifications Manual, as may be amended from time to time.

## **ARTICLE 6 - ASSESSMENTS**

**Section 6.01** Creation of the Lien; Personal Obligations of Assessments. The Declarant covenants, and each Owner of a Residential Unit shall by acceptance of a deed therefor, regardless of whether it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay the Association any and all annual and special assessments, and any and all other assessments to be established and collected as hereinafter provided. Notwithstanding anything herein to the contrary, for so long as Declarant retains control of the Association, Residential Units owned by Declarant (and builders of Residential Units approved by Declarant, in its sole and absolute discretion) shall be excused from the payment of all assessments for any budget year in which Declarant agrees to pay any actual operating expenses incurred by the Association that exceed the assessments receivable from other Owners and other income of the Association for such budget year (including initiation fees). Declarant shall not be responsible for deficits created by any Owner's non-payment of assessments.

The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Residential Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them. In the case of co-ownership of a Residential Unit, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment. The Association shall, upon demand, at any time, furnish to any Owner liable for an assessment a certificate in writing signed by an officer or other authorized representative of the Association, setting forth whether said assessment has been paid. Such certificate shall be prima facie evidence of payment of any assessment therein stated to have been paid.

**Section 6.02** Annual Assessments. The Association shall levy against Lots containing Residential Units, and the Owners thereof, annual assessments as provided herein (the "Annual Assessments"). The Annual Assessments shall be used for the improvement, maintenance, enhancement and operation of the Open Spaces and Common Property, and to perform all obligations and services which the Association is authorized or required to provide including, but not limited to, the payment of taxes and insurance premiums, construction, repair or replacement of improvements, payment of the costs to acquire labor, equipment, materials, management and supervision necessary to carry out its authorized functions, the payment to any service provider for the cost of cable television, radio, internet access or other communication or data transmission service which is uniformly provided to all Lots, without separate charge to the recipient, and for the payment of principal, interest and any other charges connected with loans made to or assumed by the Association for the purpose of enabling the Association to perform its authorized or required functions. The Association may, but shall not be obligated to, establish reserve funds to be held in reserve in an interest bearing account or investments as a reserve for (a) major rehabilitation or major repairs to Common Property that must be replaced on a periodic basis, (b) emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss, and (c) insurance premiums or taxes, (d) maintenance, repair and repaving of all private roads for which the Association is responsible (including, without limitation, landscaping and lighting on and around such roads), and (e) such other items as the Board may deem appropriate. Notwithstanding anything herein to the contrary, Association has the authority to levy varying Annual Assessments based on factors, including but not limited to, product type and location within the Property.



**Section 6.03**     Special Assessments. In addition to the Annual Assessments, the Association may levy against Lots containing Residential Units, and the Owners thereof, special assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction or reconstruction, unexpected repair or replacement of a described capital improvement upon Common Property, Open Space, or easements, including the necessary fixtures and personal property related thereto, or for other purposes as determined by the Board. Each Residential Unit, regardless of the unit-type, shall be responsible for an equal pro rata share of the special assessment.

**Section 6.04**     Individual Assessments. In addition to any other Assessments for which provisions are made in this Declaration, the Association shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect against and from a particular Lot and the Owner of such Lot an Individual Lot Assessment for:

A. costs and expenses incurred by the Association in bringing a particular Owner or his/her/its particular Lot into compliance with the provisions of this Declaration, including any action taken or cost or expense incurred by the Association to cure and eliminate any violation of or noncompliance with the provisions of this Declaration, following the failure of such Owner, within thirty (30) days following written notice from the Association of the nature of the violation of or non-compliance with this Declaration, to cure or remedy such violation or non-compliance

B. costs and expenses incurred by the Association for an Owner's failure to maintain an active and properly functioning irrigation system;

C. costs and expenses, including reasonable attorneys' fees, whether or not suit be brought, incurred by the Association in the enforcement of the provisions of this Declaration against a particular Lot or the Owner of such Lot;

D. costs and expenses incurred by the Association in furnishing or providing labor, services and materials which benefit a particular Lot or the Owner of a particular Lot;

E. expenses associated with contracts entered into by the Board and affecting only particular Lots; and

F. reasonable overhead expenses of the Association associated with any Individual Lot Assessment, established, made, levied, imposed, collected and enforced pursuant to this Section 6.04, in an amount not to exceed ten percent (10%) of the actual costs and expenses incurred by the Association for any Individual Assessment specified in subparagraph (a) or (b) of this Section 6.04.

**Section 6.05**     Annual Assessment Budget. Prior to the beginning of each fiscal year, the Board shall prepare and adopt an itemized budget which sets forth the estimated revenues and expenses (for both operations and reserves) of the Association for the upcoming fiscal year. Each Residential Unit, with the exception of the exempt property described in Section 6.11 below and subject to the requirements of Section 6.01 above and Section 6.08 below, regardless of the unit-type, shall be responsible for an equal pro rata share of the Annual Assessment. The format of the budget for Annual Assessments shall be determined by the Board from time to time, subject to any provisions of applicable law. A copy of the budget, along with written notice of each Residential Unit's share of

Annual Assessments, shall be sent to Owners prior to the date on which the payment of the first installment of the annual assessment is due, but a failure to do so shall not in any event excuse an Owner's obligation to pay such Annual Assessment.

**Section 6.06** Date of Commencement of Annual Assessments; Due Dates. The obligation to pay Annual Assessments shall commence as to each Residential Unit upon the later to occur of (i) the date of the issuance of a certificate of occupancy for such Residential Unit or (ii) the date of the closing of the conveyance from Declarant or another builder to an Owner. The Annual Assessments provided for herein shall be due and payable in advance in equal quarterly installments on the first day of each calendar quarter, or such other period as may be approved by the Association. If, as to a particular Residential Unit, the Annual Assessments are to commence at the time of the closing of the conveyance of such Residential Unit, then a pro-rata portion of the quarterly (or other periodic) installment of the Annual Assessment shall be collected from the buyer of such Residential Unit and shall be remitted to the Association.

**Section 6.07** Initiation Fee. At the closing of the sale of each Residential Unit, the purchaser thereof shall pay an Initiation Fee to the Association, which shall be used by the Association to offset administration costs in connection with the change in membership as well as pay operating or any other expenses of the Association. The Initiation Fee shall be an amount equal to two (2) months assessments, or in such amount as may be set by the Association from time to time, and shall apply uniformly to all Residential Units. Notwithstanding the foregoing, sales of Lots from Declarant to others purchasing Lots without a Residential Unit constructed thereon shall be exempt from paying the Initiation Fee with respect to such Lots.

**Section 6.08** Maximum Annual Assessment. For the first budget year of the Association, the Annual Assessment amount shall not exceed the sum of thirteen hundred dollars and zero cents (\$1,300.00) per year, per Lot (the "Maximum Annual Assessment"). The annual Assessments provided for herein shall be due and payable in advance in equal quarterly installments on the first day of each calendar quarter, or such other period as may be approved by the Association. The foregoing annual Assessment is in addition to any and all assessments and other financial obligations which an Owner may have to the Association.

From and after the conclusion of the first budget year of the Association, the maximum Annual Assessment may be increased each subsequent fiscal year either: (a) upon approval by a majority of the Association's board of directors without a vote of the Members, by an amount not greater than fifteen percent (15%) per year, compounded annually; or (b) upon approval of two-thirds (2/3) of each class of Members voting in person or by proxy at a meeting duly called for such purpose, by an amount greater than fifteen percent (15%) per year, compounded annually, as hereinabove provided. The Board may fix the Annual Assessment only at an amount not in excess of the maximum.

**Section 6.09** Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien: Remedies of Association. If assessments are not paid on the dates due (being the dates specified in this Article 6) then such assessments shall become delinquent and shall, together with interest thereon and costs of collection thereof as hereinafter provided, become due and payable and be a continuing lien on the property which shall bind such property and the then Owner, the Owner's heirs, devisees, personal representatives, successors and assigns. The obligation of the Owner to pay such

assessment, however, shall remain a personal obligation. The Association may record a notice of lien for delinquent assessments among the public records of the county in which the Property is located, and foreclose the lien in the same manner as a mortgage. The lien shall not be valid against subsequent bona fide purchasers or mortgagees for value unless so recorded. Upon recording, the lien shall secure the amount of delinquency stated therein, the cost of preparing and recording any such notice of lien (including, but not limited to reasonable attorneys' fees), all additional costs of enforcement (including, but not limited to reasonable attorneys' fees), all interest and late fees from time to time assessed on such delinquencies and all unpaid assessments thereafter until satisfied of record.

If any assessment is not paid within fifteen (15) days after the date such assessment is due, the Association may impose a late charge of not more than Fifty and No/100 Dollars (\$50.00) and the assessment shall bear interest from such date of delinquency at the highest lawful rate of interest per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property or Unit, and there shall be added to the amount of such assessment all costs and reasonable attorneys' fees incurred in connection therewith at all pre-trial, trial, appellate and post judgment levels, including, but not limited to, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court together with the costs of the action.

**Section 6.10**     Subordination of the Lien to Mortgages; Mortgagees' Rights. The lien of assessments provided for herein is subordinate to the lien of any first mortgage given to an Institutional Lender now or hereafter placed upon a Residential Unit; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Residential Unit from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. An institutional first mortgagee, upon request, shall be entitled to written notification from the Association of any default of an Owner of any obligation hereunder which is not cured within sixty (60) days. The Association may provide such notice without receiving a request from the institutional first mortgagee.

**Section 6.11**     Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all Common Property as defined in Article 1 hereof; (b) all property dedicated or owned by the CDD; (c) property designated as Open Space or which is used in the Surface Water Management System (excluding, however, any Lots); (d) all other portions of the Property which have not been developed as Residential Units; and (e) Residential Units owned by Declarant or another builder until such time as they are conveyed to individual Owners.

**Section 6.12**     Collection of Assessments. Assessments allocated to any Residential Unit shall be billed by the Association and collected by the Association. The Owners shall be liable for the payment of the Association assessments, together with its costs of collection and attorney's fees from any Owner against whom an assessment must be enforced.

## **ARTICLE 7 - ARCHITECTURAL CONTROL**

**Section 7.01**      **Establishment of Architectural Review Board.** There is hereby established an Architectural Review Board (“ARB”). Notwithstanding anything herein to the contrary, in no event shall the terms of this Article in any way apply to the Declarant.

**Section 7.02**      **Duties and Functions of ARB.** The duties, powers and responsibilities of the ARB shall be as follows:

A.      The ARB shall consist of three (3) or more persons designated by Declarant. Until the last Residential Unit is constructed and Declarant no longer owns any Lot within the Property (or earlier at Declarant’s option), the rights, powers, duties and obligations of the ARB shall be vested solely in the Association, whereupon the Board shall appoint the members of the ARB and shall provide for the terms of the members of the ARB. Members of the ARB need not be officers, directors or Members of the Association. A majority of the ARB may take any action of the ARB and may designate a representative to act for it. In the event of death, disability or resignation of any member of the ARB, a successor shall be designated as provided in this Section.

B.      The ARB shall have the right of specific approval or veto of all architectural, engineering, platting, planning, drainage and landscaping aspects of the improvement or development of any individual Residential Unit or subdivision, tract, or parcel of land within the Property, other than for any architectural, engineering, platting, planning, drainage and/or landscaping aspects of the improvements or development of any individual Residential Unit constructed on a Lot or subdivision tract or parcel of land within the Property by Declarant, or by any licensed homebuilder after turnover as set forth in Article 9 hereof.

C.      No building, wall, walk, dock, pool, enclosure or addition to a house or other structure shall be constructed, erected, removed or maintained nor shall any addition to nor any change or alteration therein be made until the plans showing the nature, kind, shape, height, materials, floor plans, color scheme and the location of same shall have been submitted to and approved in writing by the ARB. In approving or disapproving plans, the ARB shall consider the suitability of the proposed building, improvements, structure or landscaping and materials, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the ARB shall fail to specifically approve or disapprove the plans submitted in final and complete form, within thirty (30) days after written request for approval or disapproval, such plans shall be deemed approved.

D.      There is specifically reserved unto the ARB, the right of entry and inspection upon any Residential Unit for the purpose of determination by the ARB as to whether there exists any construction of any improvement which violates the terms of any approval by the ARB or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference.

E.      The ARB has the right, but not the obligation, to grant waivers for minor deviations and infractions of these covenants. The granting of any waiver for any portion of the Property may be given or withheld in the ARB’s sole discretion and a prior grant of a similar waiver shall not impose upon the ARB the duty to grant new or additional requests for such waivers.

F. The Association, Declarant, ARB or any officer, employee, director or member thereof shall not be liable in any way to any persons submitting plans for approval or any other person or entity by reason of mistake in judgment, negligence or non-feasance arising out of or in connection with the approval, disapproval or failure to approve any plans or the taking of any action described in this Article. Every person who submits plans for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit whatsoever against the Association, Declarant or ARB or any officer, employee, director, shareholder, partner or member thereof.

## **ARTICLE 8 - ENFORCEMENT OF RULES AND REGULATIONS**

**Section 8.01** **Compliance by Owners; Initial Rules and Regulations.** Every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations adopted by the Board. Notwithstanding the foregoing, or anything in this Declaration to the contrary, Declarant shall be exempt from any ARB consent or approval required pursuant to this Article or anywhere else in this Declaration. After turnover as described in Article 9 hereof, all licensed homebuilders constructing the initial Residential Unit on a Lot shall be exempt from any ARB consent or approval required pursuant to this Article or anywhere else in this Declaration. The following are the initial Rules and Regulations of the Association which may be amended, modified or added to from time to time as provided in the Bylaws.

A. **Residential Units.** Except as otherwise provided herein or approved by Declarant, all Residential Units constructed on the Property shall be used for residential purposes only. Upon approval of the Board (which approval may be withheld in the Board's sole and unfettered discretion), and subject to applicable local government ordinances, Residential Units may also be used for certain designated home occupations. Residential Units may not be used as models or as real estate sales offices without the prior written consent of Declarant. Any violation of the foregoing rule against use of any Residential Unit as a model or real estate sales office, and continuance of such violation after written notice from Declarant to quit such use, shall constitute a violation of a restrictive covenant for the benefit of Declarant, which violation will result in damages of an amount which is impossible to ascertain with certainty, in consequence of which each person violating such restriction agrees by the acceptance of a deed, lease, or any right of occupancy in the Property that the Declarant shall be entitled to recover from any such violator liquidated damages in an amount equal to \$1,000.00 per day from and after the 10<sup>th</sup> day after written notice of such violation and demand to quit is delivered to the violator or posted on the Lot on which such violation shall occur. The provisions of this Section requiring the consent of the Declarant and consequences of a violation thereof shall not be amended or modified without the written consent of the Declarant.

B. **Common Property.** Common Property shall be improved, maintained, used and enjoyed for the common recreation, health, safety, welfare, benefit and convenience of all owners and residents of the Property and their guests and invitees.

C. **Temporary Buildings.** No structure of a temporary nature or character, including but not limited to, tents, shacks, sheds, barns, carports, or temporary or accessory buildings or structures shall be erected or permitted to remain on the Property. Notwithstanding the foregoing, however, storage sheds may be permitted in backyards if the ARB approves the same. Notwithstanding anything contained herein to the contrary, the foregoing shall not restrict or prevent the construction and

maintenance of temporary sales models and such other temporary facilities as are essential to the development, construction and sale of the facilities created, including, but not limited to, construction trailers, sheds and material compounds, provided that the same are in compliance with appropriate governmental requirements applicable thereto.

D. Trash and Garbage. No lumber, metals, bulk materials, refuse, rubbish or trash shall be kept, stored or allowed to accumulate on the Property except building materials during the course of construction of any approved structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, sealed containers may be placed in the open on any day that a pickup is to be made at such place as will be accessible to persons making such pick-up, provided that said containers shall not be permitted to remain in the open for more than twelve (12) hours on said day. At all other times, such containers shall be stored so that they cannot be seen from surrounding property or from the street(s) adjacent to the Lot. All containers shall conform to such specifications as the Association may from time to time adopt. A common garbage disposal site shall be located on the Property for the benefit of the Owners.

E. Burial of Pipe and Tanks. Without the prior written consent of the Declarant (so long as Declarant owns any portion of the Property) and, other than for the Declarant, licensed homebuilders during the time of the initial construction of Residential Units on the Lots, and the Association: (i) no water pipe, gas pipe, sewer pipe, drainage pipe or storage tank shall be installed or maintained on the Property above or below the surface of the ground, except hoses and movable pipes used above-ground for irrigation purposes; and (ii) no portion of the Property shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, phosphates, minerals, gravel or earth; provided, however, that nothing contained herein shall prohibit or restrict removal of fill or earth materials to construct or create approved drainage structures or landscaped berms, Residential Units, or any other improvements contemplated and permitted by this Declaration or in connection with the initial grading and development of any Tract. Notwithstanding anything contained herein to the contrary, storage tanks installed above ground shall be adequately screened from view from adjacent roads.

F. Nuisance. Nothing shall be done on the Property which is illegal or which may be or may become an annoyance or nuisance, including, but not limited to, offensive odors and noises. In the event of any questions as to what may be or become a nuisance, such questions shall be submitted to the ARB for a decision in writing and its decision shall be final.

G. Weeds and Underbrush:

(a) All Lots shall be landscaped with St. Augustine grass, or any other grass approved by the ARB, and shall have underground sprinkler systems providing one hundred percent (100%) coverage of grass and landscaping, with operating rain sensors.

(b) No weeds, underbrush, or other unsightly growths (such as, without limitation, grass which is more than six (6) inches tall) shall be permitted to grow or remain upon the Property and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Prior to the Association's assumption of responsibility for the maintenance of grass, irrigation, and landscaped areas on a Lot pursuant to subsection P of this Section 8.01, in the event an

Owner shall fail or refuse to keep his Lot free of weeds, underbrush, sight obstruction, refuse piles or other unsightly growths or objects, then the Association may enter upon said Lot and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass; except, however, that the Owner shall be given fifteen (15) days prior written notice of such action. In such event, the rights of the Association set forth in Article 4 shall apply.

H. Vehicle Parking. The Board may from time to time promulgate rules which restrict, limit or prohibit the use of any parking area which may be in front of, adjacent to or part of any Lot as a parking place for personal passenger vehicles, commercial vehicles, buses, trailers, recreational vehicles, self-propelled motor homes, motorcycles and boats. All commercial vehicles, recreational vehicles, trailers, self-propelled motorhomes, motorcycles and boats shall be parked in enclosed garages at all times. All such rules, if and when promulgated by the Board, shall have the same force and effect as if promulgated and initially made a part of this Declaration. No unregistered or inoperable motor vehicle or trailer of any kind may be disassembled, serviced or repaired on the Property except in an enclosed garage with the garage door remaining closed at all times. No vehicles longer than twenty-one feet (21') or taller than eight feet (8') shall be permitted. Nothing herein shall be construed as a restriction on Declarant or any builder or developer during the time of construction of a Residential Unit on a Lot.

I. Clothes Drying Area. No portion of any of the Property shall be used as a drying or hanging area for laundry of any kind unless the area is fully screened by landscaping from view from adjacent property or streets.

J. Antennas, Aerials and Storm Shutters. There shall be no exterior radio, television, dish antenna or other antenna or device for sending or receiving electromagnetic signals erected or maintained on the Property without the prior written approval of the ARB, except as otherwise allowed by law, and except that an antenna system or systems may be constructed and maintained by the Association or its designee. No hurricane or storm shutters shall be installed unless the same are of a type and color approved by the Association.

K. Drainage. No changes in elevations of any portion of the Property subject to this Declaration shall be made which will cause undue hardship to adjoining real property within the Property.

L. Underground Wires. Other than for the installation of lines or wires for communication or data transmission or the transmission of electrical current in conjunction with the original construction of Residential Units and/or the original construction of other original improvements to be constructed within the Property, no lines or wires for communication or the transmission of electrical current shall be constructed, placed or permitted to be placed on any Lot unless the same shall be underground and specifically permitted in writing by the ARB.

M. Animals. Except for dogs, cats and aquarium kept fish which may be kept, raised and maintained on the Property, no reptiles, livestock, poultry, pets or animals of any kind, nature or description shall be kept, raised or maintained on the Property. In addition, in no event may any animal be bred or otherwise maintained on the Property for business or commercial purposes. Dogs, cats and aquarium kept fish, raised or maintained on any Lot or within any Residence, may only be so

kept, raised and maintained in numbers deemed reasonable by the Declarant or the Association, in the exercise of their sole discretion. More than two (2) dogs and/or cats kept, raised or maintained on any Lot and/or within any Residence shall prima facia be considered unreasonable. Notwithstanding the foregoing, no such dogs, cats or aquarium kept fish may be kept, raised or maintained on the Property under circumstances, which, in the sole judgment of the Declarant or the Association, shall constitute an unreasonable annoyance, hazard, or nuisance to residents in the vicinity or an unreasonable interference with the comfortable and quiet use, occupation and enjoyment of other Lots or portions of the Property. All dogs must be on leashes when they are not in a Residential Unit or within a permitted fenced yard. In addition, any person walking a pet within the Property shall not allow any such pet to trespass on any other Owner's Lot and shall remove and properly dispose of any pet waste deposited on any portion of the Property by such Owner's pet.

N. Business. Except as expressly contemplated in this Declaration or the Plat, no manufacturing, trade, business, commerce, industry, profession or other occupation whatsoever will be conducted or carried on or upon any Lot or within any Residential Unit.

O. Maintenance of Parking Areas, Etc. All setback areas, yards, walkways, driveways and parking areas and drainage swales shall be maintained and kept in a neat and clean condition, free of refuse and debris.

P. Maintenance of Landscaped Areas. All landscaped areas on Lots (including, but not limited to, those portions of any roadway Tracts or Common Area Tracts adjoining Lots which are located between the Lot line and the curb or edge of the paved roadway or Common Area Tract adjoining any Lot) shall be maintained in live, healthy, and growing condition and properly watered, weeded, mowed, edged, and/or trimmed, as applicable. During the initial construction of each Residential Unit, Owner shall be responsible for properly installing sod to cover any portion of any roadway Tract or Common Area Tract located between the Lot line and the curb or edge of the paved roadway or the established landscaping within the Common Area Tract adjoining any Lot, and to properly install the irrigation system to irrigate such areas. Notwithstanding anything in this Declaration to the contrary, the Association shall maintain the grass, irrigation, and landscaped areas from time to time located on all Lots in a neat and attractive manner at no additional cost or expense to Owners above the amount of Annual Assessments. In the event any landscaping, including, without limitation, grass, shrubs or trees, become dead or badly damaged, the Association shall be responsible for the replanting, repair, and/or replacement of such landscaping with similar sound, healthy plant materials, except in the case of freeze damage or damage from any other natural disaster or damage from lack of water due to an improperly maintained irrigation system. Notwithstanding the foregoing, to the extent that any Owner, or any of Owner's agents, employees, guests, invitees or licensees, causes damage to any improvement for which the Association is obligated to maintain, repair and/or replace, then any cost incurred by the Association to maintain, repair or replace such damaged improvements shall be charged to such Owner as an individual assessment, which individual assessment shall be subject to the same collection, lien and lien enforcement rights in favor of the Association as exist for annual Assessments.

Q. Fences. Except as approved by the ARB, no fences of any kind shall be permitted, except for temporary fences installed by the Declarant or a licensed homebuilder.



R. Air Conditioners. No window or wall-mounted air conditioning units shall be permitted.

S. Signs. No sign of any kind shall be displayed to the public view on the Property, except any sign used by the Declarant or a licensed homebuilder to advertise the company or builder, project, sales or other matters during the construction and sales period. No sign of any kind shall be permitted to be placed inside a home or on the outside walls of the home so as to be visible from the exterior, nor on any Common Area, nor on any dedicated streets, drainage easement areas or any other dedicated areas, if any, nor on entryways or any vehicles within the Property, except such as are placed by the Declarant or a licensed homebuilder. Provided, however, one (1) discreet, professionally prepared "For Sale" or "For Lease" sign of not more than eighteen (18) inches by twenty-four (24) inches may be placed on the interior of a window of any dwelling located on a Lot, for a period of up to sixty (60) calendar days, upon the filing of a written notice of same with the Secretary of the Association. Such notice will contain the street address of the dwelling where the sign will be placed, a statement that the sign complies with all signage requirements contained in this paragraph, a beginning and end date of such sign's display, which end date may not exceed sixty (60) calendar days from the beginning date. The notice must be executed by the Owner or Manager of the Residential Unit to which it pertains.

T. Lighting. No exterior lighting fixtures shall be installed on any Residential Unit without adequate and proper shielding of fixtures and without ARB approval.

U. Stormwater. No structure or landscaping that interferes with the stormwater drainage and retention system within the boundaries of the Property shall be permitted and no refuse shall be placed upon or allowed to remain on any part of any Lot within any easement area for storm water drainage or retention, and the storm water drainage and retention areas, including drainage swales or retention ponds, shall not be filled or otherwise changed, nor shall any improvements be installed therein, so as to alter or block the flow or the quantity of water. Owners of Lots within which any easement for stormwater drainage or retention lines or swales are located may be required by the Association to be responsible for the maintenance of such easement areas to permit the flow and retention of water in accordance with the stormwater drainage and retention system approved by applicable governmental authorities. If any Owner shall fail to comply with any part or all of the restrictions contained in this Section, the Association shall notify the Owner in writing, shall have the right to correct such failure to comply herewith, and to assess and collect the cost thereof and shall have a lien upon the Lot upon which the work was performed.

V. Wells. No wells of any kind shall be permitted. Irrigation systems for each Residential Unit shall be from reclaimed water provided by the County.

W. Garages and Garage Doors. All detached single family Residential Units shall have an attached enclosed garage for a minimum of one (1) automobile, and all garage doors of any Residential Unit shall remain closed at all times when not in use for entry and exit to and from the garage.

X. Swimming Pools. Any swimming pool or screening related thereto to be constructed on any Residential Unit shall be subject to the approval and requirements of the ARB. Aboveground swimming pools are prohibited. Pool screening shall be limited to a bronze color.

Y. Mailboxes. No mailboxes of any kind shall be permitted on a Lot. It shall be the responsibility of an Owner or tenant to arrange for off-site access to mail facilities, such as post office boxes.

Z. Use of Common Areas. In order to promote the health, safety and welfare of the Owners and occupants of the Property and provide for the maintenance and preservation of the Common Areas and Property, the Declarant and the Association shall be entitled (but not obligated) to establish and enforce reasonable, non-discriminatory conditions governing the use of the Common Areas by third parties, including (without limitation) parties providing utility or other services to the Property. Accordingly, all third parties utilizing the Common Areas shall be required to comply with such conditions as may be determined by the Association and/or the Declarant, as applicable, to be reasonable and necessary to maintain, preserve and protect the Common Areas and the Property, and to preserve and protect the safety of persons and property from time to time located upon or within the Property. Conditions may be imposed, in particular, on any person or entity utilizing the Common Areas for the installation, maintenance, repair or replacement from time to time of utilities or any other improvements or facilities (a "Service Provider") pursuant to any easement, permit, license, right of use or similar right or privilege granted by either the Declarant or the Association (whether or not pursuant to this Declaration, a plat of the Property or any other agreement or instrument) in order to accomplish the foregoing purposes and in order to avoid, if possible, the installation of improvements which interfere with the use of the Common Areas and/or detract from the appearance of the Common Areas and the Property. Such conditions may include, without limitation, the right of the Association or Declarant to:

- (a) Require that the Service Provider submit a written request for authorization to utilize the Common Areas, in form and content (and accompanied by such additional documents and information) as are reasonably required by the Association or the Declarant to adequately review and process same;
- (b) Require the Service Provider to pay a processing fee in an amount reasonably determined by the Association or the Declarant to compensate it for the cost of processing, reviewing and approving such request;
- (c) Require that improvements be installed below ground to the maximum extent practicable;
- (d) Approve the location of any improvements;
- (e) Approve the size and composition of any above-ground improvements;
- (f) Approve the plans and specifications for all improvements;
- (g) Supervise construction, installation, repair and other activities;
- (h) Establish appropriate times for such activities to be conducted;
- (i) Require screening or landscaping around above-ground improvements;

- (j) Minimize interference with other uses of the Common Areas and Property;
- (k) Impose safety, security and traffic control requirements;
- (l) Establish and enforce reasonable rules and regulations;
- (m) Require the Service Provider to reimburse the Association or the Declarant for any actual, out-of-pocket expenses incurred or payable by the Association or the Declarant to others in order to perform any activities contemplated in this Section, including, without limitation, costs or fees of consultants, contractors and others who may be engaged to perform such activities or to monitor or enforce the provisions of this Section with respect to such Service Provider; and
- (n) Take such other actions as are reasonable or appropriate in furtherance of the foregoing.

Nothing contained herein, however, shall be construed to impose upon the Declarant or the Association an affirmative obligation to establish such conditions, nor any particular condition listed above, nor shall either the Declarant or the Association be liable to each other or any Owner or other person for failure to establish or enforce any such conditions.

AA. Non-Waiver. No delay in enforcing these covenants and restrictions as to any breach or violation thereof shall impair, damage or waive the right of the Association to enforce the same, to obtain relief against or recovery for continuation or repetition of such breach or violation, or of any similar breach or violation thereof at a later time or times.

BB. Waivers. The ARB has the right, but not the obligation, to grant waivers for minor deviations and infractions of these covenants. The granting of any waiver for any portion of the Property may be given or withheld in the ARB's sole discretion and a prior grant of a similar waiver shall not impose upon the ARB the duty to grant new or additional requests for such waivers.

**Section 8.02** Enforcement. Failure of any Owner to comply with any restrictions, covenants, or rules and regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, the imposition of one or more fines (which may become a lien against the Lot or Residential Unit, together with interest and costs of collection), or any combination thereof, including costs and attorney's fees incurred in bringing such actions, and if necessary, costs and attorney's fees for appellate review. The Association shall have the right to suspend use of Common Property, but not access to their Residential Unit and Lot, for any Owner violating these covenants and restrictions for a period of time which is the longer of sixty (60) days or the term of continued violation. Declarant, the Association or any Owner shall have the right to enforce the provisions of this Declaration, as more particularly set forth herein.

**Section 8.03** Management of Non-Owner Occupied Residential Units. In the event that any Owner hires a Manager to manage or lease such Owner's Residential Unit, or in the event that any Owner's Manager changes, such Owner shall deliver written notice thereof to the Association and the CDD, specifying the following information:

- A. The complete name and mailing address of the Manager;

B. The telephone number, fax number and e-mail address of the Manager, to the extent applicable;

C. If the Manager is a company, the name of an individual at the company who is responsible for the account; and

D. The name and telephone number of a contact person at the Manager who should be notified in the event of an emergency involving the Residential Unit, if different than set forth above.

Upon receipt of the foregoing information, the Association shall notify the Manager in writing of the existence of this Declaration and the Association governing documents, and shall deliver copies of such documents to the Manager together with copies of any rules and regulations hereunder which are applicable to the Residential Unit. Upon request, the Manager shall be required to acknowledge receipt of such documents and to acknowledge its obligation to comply with such documents in connection with its management or leasing of the Residential Unit.

**Section 8.04** Rental of Residential Units. Except in the event the Residential Unit is offered as a Short-Term Rental as defined in Section 13.01 herein, if any Owner or Manager rents or leases a Residential Unit to a tenant or lessee (a "Tenant"), such Owner or Manager, as applicable, shall deliver written notice thereof to the Association and the CDD, specifying the following information:

A. The complete name and mailing address of the Tenant; and

B. The telephone number, fax number and e-mail address for the Tenant, to the extent applicable.

Upon receipt of the foregoing information, the Association shall notify the Tenant in writing of the existence of this Declaration and the Association governing documents, and shall deliver copies of such documents to the Tenant together with copies of any rules and regulations hereunder which are applicable to the Residential Unit. Upon request, the Tenant shall be required to acknowledge receipt of such documents and to acknowledge its obligation to comply with such documents in connection with its rental of the Residential Unit.

## **ARTICLE 9 - TURNOVER**

Members other than Declarant shall be entitled to appoint a majority of the members of the Board no later than three (3) months after ninety-five percent (95%) of all Residential Units that may ultimately be constructed on all the Property have been conveyed to Owners other than the Declarant or any builder, unless otherwise required by law. Declarant shall be entitled (but not obligated) to appoint at least one member of the Board for so long as Declarant holds any portion of the Property for sale in the ordinary course of business, unless otherwise required by law.

## **ARTICLE 10 - INSURANCE AND CASUALTY LOSSES**

**Section 10.01** Insurance. The Board shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage

shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. In addition to the foregoing, the Association shall be obligated to obtain directors' and officers' liability insurance for the directors and officers of the Association.

Insurance obtained by the Association on any portion of the Property shall at a minimum comply with the applicable provisions of this Section 10.01, including the provisions of this Article applicable to policy terms, loss adjustment and all other subjects to which this Article applies with regard to insurance on the Common Area. All such insurance shall be for the full replacement cost. All such policies shall provide for a certificate of insurance to be furnished to the Association.

The Board shall also obtain a public liability policy covering the Common Area and the Association for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least One Million Dollars (\$1,000,000.00) of coverage for bodily injury, personal injury, and property damage from a single occurrence, and, if reasonably available, Five Million Dollars (\$5,000,000.00) of umbrella liability coverage.

Premiums for all insurance obtained by the Association shall be Common Expenses of the Association and shall be included in the Annual Assessment. The policy may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board shall be written in the name of the Association as trustee for the respective benefited parties, as further identified in Subsection (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

A. All policies shall be written with a company licensed to do business in Florida which holds a Best's ranking of A or better and is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

B. All policies on the Common Area shall be for the benefit of the Association and mortgagees providing construction financing on the Common Area, if any.

C. Exclusive authority to adjust losses under policies obtained by the Association on the Property shall be vested in the Board; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

D. In no event shall the insurance coverage obtained and maintained by the Association's Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

E. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons,

at least one of whom must be in the real estate industry and familiar with construction in the vicinity of the Property.

F. The Association's Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(a) a waiver of subrogation by the insurer as to any claims against the Association's Board, its manager, Declarant, the Owners, and their respective tenants, servants, agents, and guests;

(b) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(c) a statement that no policy may be cancelled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;

(d) a statement that no policy may be cancelled, invalidated, suspended, or subject to non-renewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

(e) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(f) that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available, flood insurance, if required, and any and all other insurance required by law or determined to be reasonably necessary and/or desirable by the Board. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than three (3) months' assessments on all Residential Units, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

**Section 10.02** **Individual Insurance.** By virtue of taking title to any portion of the Property, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on such Owner's Residential Unit substantially meeting the same requirements as set forth in Section 10.01 of this Article for insurance on the Common Area. Owner shall, within 15 days of purchasing a Residential Unit, and for each subsequent renewal, provide the Association with a copy of a casualty insurance policy complying with the requirements of this Section. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his property, the Owner shall proceed

promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any and all costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the standards of the Property.

**Section 10.03**     Damage and Destruction. Immediately after damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this Section, means repairing or restoring the Property substantially the same condition which existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

B.     Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least two-thirds (2/3) of the Owners shall decide not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

C.     In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then the affected portion of the Property shall be restored to its natural state and maintained by the Association in a neat and attractive condition consistent with the standards of the Property.

**Section 10.04**     Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of any portion of the Property and may be enforced by such mortgagee.

**Section 10.05**     **Repair and Reconstruction.** If the damage or destruction to the Common Area is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall levy a special assessment against the Owners of Residential Units on the same basis as provided for annual assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

### **ARTICLE 11 - CONDEMNATION**

Any conveyance of Common Areas in lieu of and under threat of condemnation must be approved by (i) the Board acting on the authorization of at least two-thirds (2/3) of the Owners and (ii) the Declarant so long as the Declarant owns any property subject to this Declaration or which may become subject to this Declaration. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property which may become subject to this Declaration, and at least two-thirds (2/3) of the members of the Board shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article 11 hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

### **ARTICLE 12 –DISTRICT REQUIREMENTS REGARDING SURFACE WATER MANAGEMENT SYSTEM**

The CDD is the owner of certain portions of the Property used in conjunction with the Surface Water Management System, and is also the permittee of Permit No. 4402671.004 from the District regarding the Surface Water Management System. The CDD shall be responsible for the construction, maintenance, repair, and general upkeep of the Surface Water Management System in accordance with said permit and the requirements of the District and all other applicable governmental authorities, and the Association shall be required to cooperate with the CDD with respect to such construction, maintenance, repair, and general upkeep upon reasonable request from the CDD.

### **ARTICLE 13 SHORT-TERM RENTALS**

The provisions of this Article are included for purposes of regulatory compliance with respect to short-term renting of Residential Units. The provisions of this Article are intended to supplement and not replace the remaining provisions of this Declaration. However, in the event of any conflict between any provision of this Article and any other provision of this Declaration, and assuming no reasonable interpretation of such provisions reconciles such conflict, then the provisions of this Article will prevail. Furthermore, if so required by the County, the Declarant may amend this Article as may



be necessary to comply with any County ordinances governing the short-term renting of Residential Units, without the joinder or consent of any other party, including any Owner, mortgagee, or the Association.

**Section 13.01**     Definition. A “Short-Term Rental” shall mean and refer to a Residential Unit which is made available more than three times per year for periods of fewer than thirty (30) days or one (1) calendar month at a time, whichever is less, for use, occupancy or possession by the public. The determination that a Lot is being used as a Short-Term Rental accommodation shall be made without regard to the form of ownership of the Lot, or whether the occupant has a direct or indirect ownership interest in the Lot; and without regard to whether the right of occupancy arises from a rental agreement, other agreement or the payment of consideration.

**Section 13.02**     Short-Term Rentals Permitted; Notice. Short-Term Rentals shall be permitted within the Property. If any Residential Unit is made available as a Short-Term Rental, then the Owner of such Residential Unit shall inform the Association and CDD the name and contact information of the mangement company handling the Short-Term Rental accommodation.

**Section 13.03**     Operational Requirements. All Short-Term Rentals shall be operated in compliance with all requirements of applicable County regulations.

#### **ARTICLE 14 - GENERAL PROVISIONS**

**Section 14.01**     Amendments by Members. Other than as set forth in this Section 14.01 below, and other than as otherwise specifically set forth in this Declaration, this Declaration may be amended at any duly noticed meeting of the Association provided that two-thirds (2/3) of the total Members vote in favor of the proposed amendment. Notice to the Members shall be given at least fourteen (14) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved as set forth above, the President and Secretary of the Association shall execute an Amendment to this Declaration which shall set forth the amendment; the effective date of the amendment; the date of the meeting at which such amendment was adopted; the number of Members in attendance at the meeting; the number of members voting in favor of the amendment; and the date that notice of such meeting was given to the Members. Such amendment shall be recorded in the public records of the county in which the Property is located. Notwithstanding anything above to the contrary, as long as Declarant owns any interest in any real property within the Property, any amendment which affects rights granted to Declarant hereunder shall require Declarant’s consent, which consent may be granted or withheld in Declarant’s sole and absolute discretion.

**Section 14.02**     Amendments by Declarant. In addition to any other amendment rights granted to Declarant elsewhere herein, prior to Turnover as described in Article 9 herein, Declarant may amend this Declaration, at any time and from time to time, as to all or any portion of the Property unilaterally and without the consent of the Board, any Owner or other person claiming an interest in the Property by, through or under any Owner in the following situations:

A. if such amendment is necessary to bring any provision of this Declaration into compliance with any applicable law;

B. if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Property subject to this Declaration;

C. if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, to enable such lender, purchaser or guarantor to make, purchase or guaranty mortgage loans encumbering any Property subject to this Declaration;

D. if such amendment is necessary for the purpose of curing any error, ambiguity in or inconsistency between or among the provisions contained herein;

E. if Declarant determines such amendment is necessary; provided, however, that such amendment does not prejudice or impair to any material extent the rights or obligations of any Member.

**Section 14.03** Declarant's Rights. Prior to Turnover, Declarant reserves and shall have the sole and exclusive right:

A. To amend, modify or grant exceptions or variances from any of the use restrictions set forth herein without notice to or approval by other Owners or mortgagees.

B. Notwithstanding anything contained herein to the contrary in this Declaration, the Articles or Bylaws, Declarant and Declarant's designees shall be entitled to use any unsold Lot as an aid in selling Lots or as a sales office, construction office, or parking lot, and shall further be allowed to place on the Property signs advertising the sale of Lots, construction trailers and sales trailers. Declarant and Declarant's designees shall further have the right to transact on the Property, any business to consummate the sale of Lots. All sales office and model furniture shall not be considered Association property but shall remain the property of Declarant.

C. Declarant, for itself, its successors, assigns, and the Association, hereby reserves a perpetual easement, on, over, and under the Property, including all Lots and the Common Areas, for the necessary, ordinary, and reasonable maintenance and upkeep of lawns, landscaping and structures on the Property.

**Section 14.04** Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 14.05** FHA/VA Approval. Notwithstanding anything herein to the contrary, as long as Residential Units are being developed on the Property, Declarant may (but shall not be required to) require the following actions to be approved in advance by the Department of Housing and Urban Development and the Federal Housing Administration (and/or the Veterans Administration): (i) annexation of additional real property to the Property other than the Additional Property defined herein, (ii) dedication of Common Area, and (iii) an amendment of this Declaration. Furthermore, to the extent it is required as a condition of obtaining approval by the Department of Housing and Urban Development, FHA and/or the VA that Declarant make modifications to this Declaration, then Declarant shall have the right to so modify this Declaration without the necessity of joinder of the Board or any Owner or other party who may be affected.

**Section 14.06**     Communication. All communication from individual Lot Owners to Declarant, its successors or assigns, the Board of Directors of the Association, or any officer of the Association shall be in writing in order to be deemed effective.

**Section 14.07**     Conflicts. In the event of a conflict between this Declaration and provisions of the Bylaws or the Articles, the terms of this Declaration shall control.

**Section 14.08**     Assignment of Rights and Duties. Any and all of the rights, powers and reservations of the Association and/or Declarant may be assigned to any person or entity which will assume the duties of the Association or Declarant, as the case may be, pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment and assume such duties, such assignee shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Association or the Declarant. Further, the Association or the Declarant may from time to time delegate any and all of its rights, powers, discretions and duties hereunder to such agent or agents as it may nominate.

**Section 14.09**     Special Exceptions and Variations. Unless the written consent of the Association is first obtained, no Owner other than Declarant (which shall not be required to obtain the Association's consent) shall file a request for zoning variations, special exceptions or zoning changes affecting or relating to land within the Property.

**Section 14.10**     Enforcement. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted by the Declarant, its successors or assigns, the Association, its successors or assigns, or any Member or Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and failure by the Association or any Member, Owner or the Declarant to enforce any covenant condition, or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. In connection with the said enforcement of these covenants, conditions and restrictions, the prevailing party shall be entitled to its reasonable attorney's fees and costs at all pre-trial, trial, appellate levels and post judgment levels.

**Section 14.11**     Severability. Should any covenant, condition or restriction herein contained, or any Article, Section, Subsection sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

**Section 14.12**     Interpretation. The Board shall have the right, except as limited by any other provisions of this Declaration or the Bylaws, to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its good faith determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

**Section 14.13** Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association as approved by the Board in the manner provided for in the Bylaws of the Association, unless the terms of this instrument provide otherwise.

**Section 14.14** Termination of Declaration; Disposition of Common Property. The Members of the Association may terminate this Declaration upon the affirmative vote of all outstanding votes of each membership class at a meeting of the Members duly called for such purpose. Such termination, however, shall not be effective until all applicable portions of the Common Property owned by the Association are transferred to another not-for-profit corporation or appropriate public agency having similar purposes; provided, however, if no other not-for-profit corporation or agency will accept such property, then any Member or affected governmental instrumentality or agency, including the District, may petition the Circuit Court of the County in which the Property is located to appoint a receiver or trustee to conduct the affairs and fulfill the obligations of the Association with respect to such applicable portions of the Common Property, or otherwise dispose of the Common Property or portions thereof as the Circuit Court may deem appropriate. If a receiver or trustee is appointed, the Association shall be responsible for court costs, attorney's fees, and all other expenses of the receivership or trust shall constitute Common Expenses of the Association and shall be assessed against its Members. If the Association has been dissolved, or if the Association shall not have a sufficient number of directors, the receiver or trustee shall have all powers and duties of a duly constituted board of directors. The receiver or trustee shall serve until such time as the Circuit Court may deem appropriate.

**Section 14.15** Execution of Documents. The development of the Property may require from time to time the execution of certain documents required by governmental authorities to facilitate the provisions thereof. To the extent that said documents require the joinder of Members or Owners, the Declarant by its duly authorized representative, as the agent or the attorney-in-fact for the Members and Owners may execute, acknowledge and deliver such documents and the Members and Owners, by virtue of their acceptance of deeds to portions of the Property, irrevocably nominate, constitute and appoint the Declarant, through its duly authorized officers, as their proper and legal attorneys-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section shall recite that it is made pursuant to this Section. No such document may prejudice or impair to any material extent the rights or obligations of any Member or Owner.

**Section 14.16** Declarant's Consent or Approval. Notwithstanding anything in this Declaration to the contrary, to the extent that any action hereunder requires Declarant's consent or approval, such consent or approval shall only be required so long as Declarant owns any portion of the Property. At such time as Declarant no longer owns any portion of the Property, any action which is subject to Declarant's consent or approval shall no longer require such consent or approval.

**Section 14.17** Prohibited Actions. Notwithstanding anything contained herein to the contrary, the Association will neither perform any act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

**Section 14.18** Singular, Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

**Section 14.19** Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Property.

**Section 14.20** Laws of Florida. The provisions of this Declaration shall be construed under and subject to the laws of the State of Florida.

**Section 14.21** Waivers, Exceptions and Variances by Declarant and Association. Notwithstanding anything to the contrary set forth in or which may otherwise be implied from the terms and provisions of this Declaration, the Declarant specifically reserves exclusively unto itself, for the duration hereinafter specified, the right and privilege (but Declarant shall have absolutely no obligation), upon a showing of good cause therefor, to: (a) grant waivers with respect to any existing or proposed future deviation from, or violation or infraction of, the restrictions specified in this Declaration where, in the reasonably exercised good faith judgment and discretion of the Declarant, the Declarant shall determine or decide that such deviation, violation or infraction is de minimus, minor, or insignificant, and (b) grant waivers of, exceptions to, or variances from, the restrictions specified in this Declaration where special conditions and circumstances exist which are peculiar to a particular Lot and not generally applicable to other Lots (e.g., because of its unusual size, configuration or location) or where a literal interpretation or application of any restriction to a particular Lot would be inappropriate, inequitable or otherwise work or result in a hardship or deny such Lot and the Owner thereof specific rights which are generally enjoyed by other Lots and Owners; it being expressly provided, however, that, in all cases, the Declarant, in the exercise of such right and privilege shall, in its reasonably exercised and good faith judgment and discretion determine or decide that its grant of any such waiver, exception or variance shall not result in, represent, be or constitute a significant deviation of or derogation from (i) the uniform plan of development for the Property, (ii) the architectural, ecological, environmental and aesthetic standards otherwise established for the Property or (iii) the objects and purposes of this Declaration as hereinabove enumerated. The Declarant shall have such right and privilege to grant waivers, exceptions and variances, as aforesaid, until either (x) the expiration of a period of fifteen (15) years from the date of the recordation of this Declaration among the Public Records of Polk County, Florida, or (y) the sale by the Declarant or its successors or assigns in the ordinary course of business, and not in bulk, of all Lots which may be developed in the Property, whichever shall last occur. Following the occurrence of the last of the foregoing events to occur, the right and privilege of the Declarant to grant waivers, exceptions and variances, as aforesaid, shall be delegated and assigned by the Declarant to and thereafter vest in the Board. To the extent that any such waiver, exception or variance is granted in a particular instance or with respect to any particular Lot pursuant to the provisions of this Section, the same shall not be deemed to be a precedent for the granting of such or any similar waiver, exception or variance in any other particular instance or any other particular Lot.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:  
WITNESSES:

AK Oakmont LLC, a Florida limited liability company

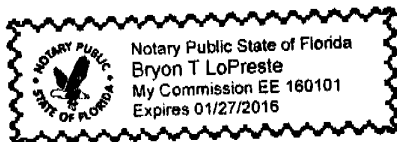
[Signature]  
Name: TRAY E. SIMPSON  
[Signature]  
Name: BRYON T. LOPRESTE

By: [Signature]  
Name: JAMES P. HARVEY  
Title: VICE PRESIDENT  
(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of November, 2012, by JAMES P. HARVEY, as VICE PRESIDENT of AK Oakmont LLC, a Florida limited liability company, on behalf of the company. He/She [] is personally known to me or [ ] has produced a driver's license as identification.

(NOTARY SEAL)



[Signature]  
NOTARY SIGNATURE  
BRYON T. LOPRESTE  
PRINTED NOTARY SIGNATURE  
NOTARY PUBLIC, STATE OF FLORIDA  
Commission Number: EE 160101  
My Commission Expires: 01.27.16

**Exhibit "A"**

**Property**

Lots 1 through 325 of OAKMONT PHASE 1, according to the Plat thereof as recorded in Plat Book 148, Pages 16 through 30, of the Public Records of Polk County, Florida.

**Exhibit "B"**

Articles of Incorporation

**ARTICLES OF INCORPORATION  
Of  
SOLTERRA RESORT HOMEOWNERS ASSOCIATION, INC.  
(A Florida Corporation Not-for-Profit)**

The undersigned, acting as incorporators of a nonprofit corporation under Chapter 617 of the Florida Statutes, do hereby adopt the following articles of incorporation for such corporation.

**ARTICLE I  
NAME**

The name of the corporation is SOLTERRA RESORT HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association".

**ARTICLE II  
PRINCIPAL OFFICE AND MAILING ADDRESS**

The street address of the initial principal office and the mailing address are the same as follows:

8875 Hidden River Parkway, Suite 150  
Tampa, FL 33637

**ARTICLE III  
PURPOSE OF THE ASSOCIATION**

The Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purpose for which it is formed is to provide for maintenance, preservation and architectural control of the residences and Common Area within that certain tract of property described in the Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions of SOLTERRA RESORT (the "Property"), recorded or to be recorded in the Public Records of Polk County, Florida (the "Declaration") as the same may be amended from time to time as therein provided and to promote the health, safety and welfare of the residents within the Property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for these purposes.

Page 1 of 5

*Articles of Incorporation of  
Solterra Resort Homeowners Association, Inc.*



**ARTICLE IV**  
**POWERS OF THE ASSOCIATION**

The general powers that the Association shall have include all proper acts, necessary or incidental, for the benefit and protection of the Association, to transact any lawful business, and to exercise all powers granted to Associations by the laws of Florida.

**ARTICLE V**  
**MEMBERSHIP**

Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject to the Declaration, including contract sellers, shall be a member of the Association with the voting rights described herein. The foregoing shall not include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

**ARTICLE VI**  
**VOTING RIGHTS**

The Association shall have two classes of voting membership as follows:

**CLASS A.** Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When any Lot entitling the Owner to membership in the Association is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants by the entirety or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote of the individual shall be considered to represent the will of all the Owners of that Lot. In the circumstance of such common ownership, if the Owners fail to designate their voting representative then the Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owners of such Lot. Upon such notification, the Owner may not vote until the Owner(s) appoint their representative pursuant to this paragraph.

**CLASS B.** The Class B Member(s) shall be Declarant and shall be entitled to nine (9) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership once Turnover has occurred in accordance with the terms of the Declaration.

**ARTICLE VII**  
**BOARD OF DIRECTORS AND OFFICERS**

The affairs of the Association will be managed by a Board consisting of not less than three (3) and no more than five (5) directors. The number of directors may be changed by amendment of the bylaws of the Association ("Bylaws"). The method of election of directors is as stated in the Bylaws. The names and addresses of the persons who are to act in the capacity of directors and officers until the selection of their successors are:

<u>Name</u>	<u>Title</u>	<u>Address</u>
James P. Harvey	Director and President	8875 Hidden River Parkway, Suite 150 Tampa, FL 33637
David Langhout	Director, Secretary, And Treasurer	8875 Hidden River Parkway, Suite 150 Tampa, FL 33637
Troy Simpson	Director	8875 Hidden River Parkway, Suite 150 Tampa, FL 33637

**ARTICLE VI**  
**INITIAL REGISTERED OFFICE AND INITIAL REGISTERED AGENT**

The name and Florida street address of the registered agent is:

Scott A. Cookson, Esq.  
Shuffield, Lowman & Wilson, P.A.  
1000 Legion Place, Suite 1700  
Orlando, FL 32801

**ARTICLE VII**  
**INCORPORATOR**

The name and address of the incorporator of these Articles of Incorporation are as follows:

Scott A. Cookson, Esq.  
Shuffield, Lowman & Wilson, P.A.  
1000 Legion Place, Suite 1700  
Orlando, FL 32801

Page 3 of 5

*Articles of Incorporation of  
Solterra Resort Homeowners Association, Inc.*

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**ARTICLE VIII**  
**BYLAWS**

The Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded at any annual meeting of the association, or at any special meeting duly called for such purpose by a vote of a majority of a quorum of voting members present in person or by proxy, except that the initial Bylaws of the Association shall be made and adopted by the Board of Directors.

**ARTICLE IX**  
**INDEMNIFICATION**

In addition to any rights and duties under applicable law, this Association shall indemnify and hold harmless all its directors, officers, employees, and agents, and former directors, officers, employees, and agents from and against all liabilities and obligations, including attorneys fees incurred in connection with any actions taken or failed to be taken by said directors, officers, employees and agents in their capacity as such except for willful misconduct or gross negligence.

**ARTICLE X**  
**EXISTENCE AND DURATION**

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

**ARTICLE XI**  
**AMENDMENTS**

These Articles of Incorporation may be amended at any annual meeting of the Association or at any special meeting duly called and held for such purpose on the affirmative vote of at least three-fourths (3/4) of the members eligible to vote. No amendment shall make any changes in the qualifications for membership nor the voting rights of the Members, without approval in writing by all members and the joinder of all record owners of mortgages upon the Lots. No amendment shall be made that is in conflict with Florida law or the Declaration unless the latter is amended to conform with the same.

**ARTICLE XII**  
**DISSOLUTION**

In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or storm water management system must be transferred to and accepted by an entity which would comply with Section 40C-

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*Articles of Incorporation of  
Salterra Resort Homeowners Association, Inc.*

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42.027, F.A.C., and be approved in writing by the Southwest Florida Water Management District prior to such termination, dissolution or liquidation.

The Association may be dissolved with the assent given in writing and signed by not less than three-fourths (3/4) of each Class of members. Upon dissolution of the Association, other than incidental to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

IN WITNESS WHEREOF, for the purpose of forming this Corporation under the laws of the State of Florida, I, the undersigned, constituting the incorporator of this Association, have executed these Articles of Incorporation on this 1<sup>ST</sup> day of NOVEMBER, 2012.

  
SCOTT A. COOKSON  
Incorporator

ACCEPTANCE OF REGISTERED AGENT

Having been named as Registered Agent for this corporation at the office designated in the foregoing Articles of Incorporation, I am familiar with the duties and obligations of Registered Agents and I hereby agree to act in this capacity and to comply with all statutes relative to the proper and complete performance of my duties.

Date: Nov. 1<sup>ST</sup>, 2012

  
SCOTT A. COOKSON  
Registered Agent

**Exhibit "C"**

Bylaws

**BY-LAWS**

**OF**

**SOLTERRA RESORT HOMEOWNERS ASSOCIATION, INC.**

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**BY-LAWS  
OF  
SOLTERRA RESORT HOMEOWNERS ASSOCIATION, INC.**

**Article I  
Name, Principal Office, and Definitions**

1.1. Name. The name of the corporation is **SOLTERRA RESORT HOMEOWNERS ASSOCIATION, INC.** (the "Association").

1.2. Principal Office. The Association's principal office shall be located in the State of Florida in such location as the Board of Directors (the "**Board**") determines or as the Association's affairs require.

1.3. Definitions. The words used in these By-Laws shall have their normal, commonly understood definitions. Capitalized terms not otherwise defined in these By-Laws shall have the same meaning as set forth in the Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions of **SOLTERRA RESORT** recorded or to be recorded in the Public Records of Polk County, Florida, as it may be amended, or amended and restated, from time to time ("Declaration"), unless the context indicates otherwise, which provisions are incorporated herein by this reference. The Governing Documents shall refer to the Declaration and Articles of Incorporation of Solterra Resort Homeowners Association, Inc. The interpretation of certain references, as set forth in the Declaration, shall also apply to the words used in these By-Laws.

**Article II  
Membership: Meetings, Quorum, Voting, Proxies**

2.1. Membership. Every Owner of a Lot other than the Association shall be a Member of the Association. Membership shall be appurtenant to, run with, and may not be separated from ownership of a Lot. The Association shall have two classes of voting membership:

CLASS A. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When any Lot entitling the Owner to membership in the Association is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants by the entirety or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote of the individual shall be considered to represent the will of all the Owners of that Lot. In the circumstance of such common ownership, if the Owners fail to designate their voting representative then the Association may accept the person asserting the



right to vote as the voting Owner until notified to the contrary by the other Owners of such Lot. Upon such notification, the Owner may not vote until the Owner(s) appoint their representative pursuant to this paragraph.

**CLASS B.** The Class B Member(s) shall be Declarant and shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership once Turnover has occurred in accordance with the terms of the Declaration.

2.2. **Change of Membership.** Change of membership in the Association shall be established by recording a deed or other instrument conveying record fee title to any Lot. The grantee named in such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior Owner shall terminate. The new Owner shall deliver a copy of the conveyance instrument to the Association within 14 days after the conveyance and the new Owner shall not be entitled to voting privileges until the same has been received by the Association. The foregoing shall not, however, limit the Association's powers or privileges, and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot acquired.

2.3. **Place of Meetings.** The Association shall hold meetings at its principal office or at such other place as the Board may designate.

2.4. **Annual Meetings.** The Board shall set the date and time of subsequent regular annual meetings to occur within thirteen months of the previous meeting of the Members. Annual meetings may be conducted electronically (*i.e., via* the Internet, intranet, or teleconference) if and to the extent permitted by law.

2.5. **Special Meetings.** The President may call a special meeting of the Association. It also shall be the President's duty to call a special meeting if so directed by Board resolution, or upon written petition of Members representing at least 10% of the votes in the Association, or such lower percentage as may be required in these By-Laws, or if so directed by the Declarant prior to the Turnover. If the President does not call a special meeting pursuant to this Section within 30 days after the date such written petition is delivered to the Association's Secretary, any Member signing the petition may set the time and place of the special meeting and give the Association notice pursuant to Section 2.6.

2.6. **Notice of Meetings.** The Association's Secretary shall cause written notice stating the place, day, and hour of any Association meeting to be given in any manner permitted by applicable law. If permitted by law, notice may be posted in a conspicuous, prominent place within the Community, delivered by hand delivery, or sent by facsimile, electronic mail, or other electronic communication device, or such other manner which is reasonably calculated, as the Board determines in its discretion, to provide personal notice to Members. Notice shall be given not less than fourteen (14) days, nor more than sixty (60) days before the date of the meeting, by or at the direction of the President, the Secretary, or the officers or Persons calling the meeting.

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

If posted, notice shall be deemed given when posted. If mailed, the notice of a meeting shall be deemed given when deposited in the United States mail addressed to the Member at his or her address as it appears on the Association's records, with postage prepaid. If sent by facsimile, electronic mail, or other electronic communication device, notice shall be deemed delivered when transmitted to the Member at his or her address, e-mail address or telephone or fax number as it appears on the Association's records. Failure to receive actual notice of an Association meeting shall not affect the validity of any action taken at such meeting.

2.7. Waiver of Notice. Waiver of notice of an Association meeting shall be the equivalent of proper notice. Any Member may waive, in writing, notice of any Association meeting, either before or after such meeting. A Member's attendance at a meeting, either present in person or by proxy, shall be deemed a waiver by such Member of notice of the meeting, unless the Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at the meeting, unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.8. Adjournment of Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a reduced quorum as provided in Section 2.12 hereof is present. Proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

2.9. Voting. Members shall have such voting rights as are set forth in the Declaration, which provisions are incorporated herein by this reference.

2.10. Proxies. On any matter as to which a Member is entitled personally to cast the vote for his or her Lot, such vote may be cast in person or by proxy, subject to applicable law.

Every proxy must be in writing, specifying the Lot(s) for which it is given, signed by the Member or his or her duly authorized attorney-in-fact, dated, and filed with the Association's Secretary or person presiding over the meeting prior to or during the roll call for the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, the Secretary of the Association shall cast all proxy votes as filed. A proxy may be General or Specific. A General Proxy will allow the person voting the proxy to cast said vote as he or she deems in the best interest of the Association. A Specific Proxy shall provide the person voting the proxy with instructions on how to cast the proxy vote. A General Proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast. In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, the later, if the timing of the execution thereof can be determined, shall prevail, otherwise both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) conveyance of any Lot(s) for which it was given; (b) the receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is an individual by the Secretary or the person presiding over a meeting of the Association; or (c) 90 days from the meeting date for which the proxy was originally given.

2.11. Majority. As used in these By-Laws, the term "Majority" shall mean those votes, Owners, or other group as the context may indicate, totaling more than 50% of the Members present, voting in person or by proxy, at any annual or special meeting of the Members where a quorum is present.

2.12. Quorum. Except as these By-Laws or the Declaration otherwise provide, Members or their proxies entitled to cast thirty (30%) percent or more of the total votes in the Association shall constitute a quorum at all Association meetings. If no quorum is present at such a meeting, the meeting may be adjourned and reconvened at a later time. At such reconvened meeting, the required quorum shall be one-half (1/2) of the required quorum at the preceding meeting. Such reconvened meeting need not be noticed in accordance with Section 2.6 of these By-Laws, but rather may be noticed informally at the adjourned meeting by any available means. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

2.13. Conduct of Meetings. The President shall preside over all Association meetings at which he or she is present, and the Secretary shall keep (or cause to be kept) the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings. Declarant and Owners may record (audio and visual images) Association meetings subject to such reasonable rules as the Board may impose.

2.14. Action Without a Meeting. Notwithstanding any provision in Section 2.11 and 2.12 and without holding a meeting pursuant to Sections 2.4 or 2.5, Members may take any action that applicable law requires or permits the Members to take at a meeting (subject to any limitations in the Governing Documents), if approved by Members representing at least the minimum number of votes in the Association necessary to authorize such action at a meeting, if all Members entitled to vote were present and voted. Such approval shall be evidenced by one or more written consents specifically authorizing the proposed action, dated and signed by Members holding the requisite votes and delivered to the Association's principal place of business or to any officer of the Association having custody of the book in which proceedings of meetings of members are recorded. Written consent shall not be effective to take the corporate action referred to in the consent unless the consent is signed by members having the requisite number of votes necessary to authorize the action within 60 days of the date of the earliest dated consent and is delivered in the manner required by this section. The Association need not give prior notice before soliciting such consent. The Association's Secretary shall file (or cause to be filed) such consents with the Association's minutes and the consents shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give (or cause to be given) written notice to

all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

2.15. Order of Business. The order of business at all annual meetings of the Members shall be as follows: (a) roll call to determine whether a quorum is represented; (b) proof of notice of the meeting or waiver of notice; (c) reading of (or waiver of reading) minutes of the preceding meeting; (d) reports of officers, if any; (e) reports of committees, if any; (f) election of inspector(s) of election if an election is to be held; (g) election of directors if applicable; (h) unfinished business, if any; and (i) new business.

### Article III

#### Board of Directors: Selection, Meetings, Powers

##### A. Composition and Selection.

3.1. Governing Body; Composition. The Board shall govern the Association's affairs. Each director shall have one vote. Directors must be Members, or authorized representatives of Members, in good standing within the Community, except in the case of directors that the Declarant appoints prior to the Turnover. A director must be an individual who is at least 18 years old. No more than one representative of any Member which is a legal entity, nor more than one occupant of any Lot, shall serve on the Board at a time, except in the case of directors that the Declarant appoints.

3.2. Number of Directors. The affairs of this Association shall be governed by a Board of Directors composed of not less than three (3) nor more than five (5) persons as is determined from time to time by the Members.

3.3. Directors During Declarant Control Period. The Declarant shall have complete discretion in appointing, removing, and replacing directors during the Declarant Control Period. For purposes of these Bylaws, "Declarant Control Period" shall be the period prior to Turnover.

##### 3.4. Director Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every eligible person who has an interest in serving as a director may file as a candidate for any director position. Nominations for election to the Board also may be made by a nominating committee. The nominating committee, if any, shall consist of a Chairman, who shall be a Member, and two or more Members or representatives of Members, all appointed by a majority of the Board. The nominating committee, if any, may make as many nominations for election to the Board as it shall in its discretion determine. The Board also shall permit nominations from the floor at any election meeting.

The Board shall give each candidate a reasonable, equal opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures. A Member may cast the vote(s) assigned to the Lot(s) which he or she owns for each position to be filled at an election. Cumulative voting is not allowed. Proxy voting is allowed. That number of candidates equal to the number of positions to be filled who receive the greatest number of votes shall be elected.

3.5. Election and Term of Office. Except as these By-Laws may otherwise specifically provide, election of directors shall take place at the Association's annual meeting. Notwithstanding any other provision of these By-Laws:

During the Declarant Control Period, all directors shall be appointed by the Declarant.

Declarant shall be entitled (but not obligated) to appoint at least one member of the Board for so long as Declarant holds any portion of the Property for sale in the ordinary course of business, unless otherwise required by law.

At the first meeting of the Members at or following the Turnover, whether a special or annual meeting (the "Turnover Meeting"), the Members shall elect a new slate of directors which shall be divided into two classes for purposes of the term of office, with each class having, if possible, the same number of Board members. The initial members of the first class of directors shall be the persons who received the greatest number of votes at the election of directors at the Turnover Meeting constituting the majority of the total number of directors elected. The initial members of the second class of directors shall be the persons who received the next greatest number of votes at the election of directors at the Turnover Meeting constituting the minority of the total number of directors elected. The initial members of the first class of directors shall serve until the annual meeting of the Members held on or about the date two years following their election. The member(s) of the second class of directors shall serve until the annual meeting of the Members held on or about the date one year following their election.

At each annual meeting of the Members following the Turnover Meeting, the class of directors whose term has expired shall be elected to serve until the annual meeting of the Members held on or about the date two years following their election. Prior to the election of directors, the Members may act to change the number of directors to be elected to serve for the following year. Should the Members decide to increase the number of directors, the term of those elected shall be determined based on two criteria; 1) the primary intent will be that as close to half of the directors shall stand for election at each annual meeting, 2) the number of candidates with the greatest number of votes shall serve a two-year term. For example, if at the first annual meeting following Turnover, the Members decide to increase the number of directors from three to four, the candidate receiving the greatest number of votes shall be elected to serve a two-year term. If the Members decide to increase the number of directors from three to nine, the two candidates receiving the greatest number of votes shall serve a two-year term, with the candidates receiving the next greatest number of votes serving a one-year term.

Should the Members decide to lower the number of directors at subsequent annual meetings, then the primary intent of having as close to one-half of the director positions stand for

election each year shall be maintained. The Members present shall determine how such reduction in directors shall be accomplished, but there shall never be less than three directors.

Notwithstanding anything contained in this Section to the contrary, each director shall continue to serve until his or her successor shall be duly elected and qualified to serve, unless such director resigns, dies, is judicially adjudicated mentally incompetent or is removed in the manner provided in Section 3.6 below before the expiration of his or her term of office. Any person serving as a director may be reelected, without restriction, and there shall be no limitation on the number of terms during which he may serve. In the event that an annual meeting of the Members is not held, or, if at the annual meeting, the class of directors up for election is not so elected, the class of directors up for election may be elected at a special meeting of the Members held for that purpose.

3.6. Removal of Directors and Vacancies. Any director may be removed, with or without cause, by the vote of at least two-thirds (2/3) of the Members present, voting in person or by proxy, at any annual or special meeting of the Members where a quorum is present. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members to fill the vacancy for the remainder of such director's term. The applicable provisions of Florida Statutes shall control any removal of directors.

Any director who has three consecutive unexcused absences from Board meetings, or who is more than 60 days delinquent (or occupies a Lot for which assessments are so delinquent) in the payment of any assessment or other charge due the Association may be suspended or removed by a majority vote of the Board, excluding the director at issue. If the director is removed by the Board pursuant to this provision, the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term. If they fail to do so, the Board may appoint another director to fill the vacancy until filled by election.

This Section shall not apply to directors the Declarant appoints nor to any director serving as Declarant's representative prior to Turnover. Such directors may be removed and replaced only by the Declarant. The Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by or elected as a representative of the Declarant.

B. Meetings.

3.7. Organizational Meetings. The Board shall hold a meeting promptly after the Turnover Meeting, at such time and place as the Board shall fix.

3.8. Regular Meetings. The Board may hold regular meetings at such time and place as the Board shall determine.

3.9. Special Meetings. The Board shall hold special Board meetings when called by written notice signed by the President, Secretary or any two directors. Prior to Turnover, the Declarant may also call a special Board meeting.

3.10. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall give notice to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone (either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director); or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address, each as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least 7 business days before the time set for the meeting, except in the event of an emergency. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Except for emergency meetings, notice of a Board meeting shall be posted in a conspicuous place within the Community at least 48 hours in advance of the meeting or provided in any other manner reasonably anticipated to provide notice to all Members, including, without limitation, publication in an Association newsletter with Community-wide circulation, posting on a Community cable television channel, or posting on a Community Internet or intranet page. In lieu of notice of each regular Board meeting, the Board may post or publish a schedule of upcoming Board meetings. An assessment may not be levied at a board meeting unless a written notice of the meeting is provided to all members at least 14 days before the meeting, which notice includes a statement that assessments will be considered at the meeting and the nature of the assessments.

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

(d) Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment.

3.11. Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a Board or committee meeting by means of telephone or other electronic means, through which all persons participating in the meeting can hear each other at the same time. Participation in this manner shall constitute presence at the meeting for all purposes. Participants attending by electronic means may vote by electronic transmission.

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

3.13. Conduct of Meetings. The President shall preside over all Board meetings at which he or she is present, and the Secretary shall keep (or cause to be kept) a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.14. Open Meetings; Executive Session. Subject to the provisions of Section 3.15, all Board meetings shall be open to all Members. However, attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak, and the Board concurs. In such case, the President (or other officer conducting the meeting) may limit the time any such individual may speak. Declarant and Owners may record (audio and video images) Board meetings subject to reasonable rules the Board imposes.

Notwithstanding the above, the President may call a special Board meeting, or adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to discuss with the Association's attorney matters relating to pending or threatened litigation which are protected by the attorney-client privileges, or to discuss among the Board any other matter of a sensitive nature, if applicable law permits. In such cases, no recording will be permitted.

3.15. Action Without a Formal Meeting. Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if all directors sign a consent in writing, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.



3.16. Powers. The Board shall have all of the powers and duties necessary for administering the Association's affairs and for performing all of the Association's responsibilities and exercising all of the Association's rights as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or applicable law require to be done and exercised exclusively by the membership generally.

3.17. Duties. The Board's duties shall include, without limitation:

- (a) those obligations set forth in the Declaration and elsewhere in these By-Laws;
- (b) depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; however, any reserve funds may be deposited, in the Board's business judgment, in depositories other than banks;
- (c) after termination of the Declarant Control Period, submitting for bid any planned Association expenditure (whether for capital items, services, maintenance, or otherwise) anticipated to exceed \$25,000.00 in any fiscal year; however, the Board is not obligated to contract with or otherwise retain the services of the lowest bidder nor is it obligated to submit for bid the renewal of existing contracts;
- (d) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association if, in the exercise of its business judgment, it deems it prudent to do so;
- (e) keeping books with detailed accounts of the Association's receipts and expenditures; and
- (f) maintaining, and retaining for the time periods required, the "official records" of the Association, as provided in Chapter 720, Florida Statutes, or such other applicable law.

3.18. Compensation. The Association shall not compensate a director for acting as such. The Association may reimburse any director for expenses incurred on the Association's behalf if approved by a majority of the other directors. In addition, nothing herein shall prohibit the Association from compensating a director for services or supplies he or she furnishes to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association. The foregoing also applies to any entity with which a director is affiliated.

3.19. Right of Declarant to Disapprove Actions. During the Declarant Control Period, the Declarant shall have a right, to the extent not prohibited by law, to veto any action, policy, or program of the Association, the Board, and/or any committee which, in the Declarant's discretion, would tend to impair rights or interests of Declarant, or any Affiliate of Declarant's, interfere with development or construction of any portion of the Community, or diminish the level of services the Association provides.

(a) Notice. The Association, the Board, and each committee shall give the Declarant written notice of their meetings and proposed actions to be approved at their meetings (or by written consent in lieu of a meeting). The notice shall comply with the requirement for notice to directors under Section 3.10 and shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard. The Association, the Board, and each committee shall give the Declarant the opportunity at any meeting to join in, or to have its representatives or agents join in, discussion from the floor concerning any prospective action, policy, or program which would be subject to the veto right described in this Section.

(c) Exercise of Rights. The Declarant may exercise its veto right at any time within 30 days following the meeting at which such action was proposed or, if the action is approved without a meeting, at any time within 30 days following receipt of written notice of the proposed action. The Declarant, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. This veto right may be used to block proposed actions but shall not include a right to require any action or counteraction by the Association, the Board, or any committee. The Declarant shall not use its veto right to prevent expenditures required to comply with applicable laws.

(d) Condition of Implementation. No action, policy, or program subject to the Declarant's veto right shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met, and then subject to the Declarant's rights under subsection (c).

3.20. Management. The Board shall employ a professional managing agent or agents, at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize and as are otherwise within the scope of the Board's authority. The Board may delegate such powers as are necessary to perform the manager's duties, but shall not delegate policy-making authority or the obligation to adopt a budget.

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

After termination of the Declarant Control Period, the Association shall not be bound, either directly or indirectly, by any management contract executed during the Declarant Control Period unless such contract contains a right of termination, which the Association may exercise with or without cause and without penalty at any time after termination of the Declarant Control Period upon not more than 90 days written notice. After the Declarant Control Period terminates, the Association may not terminate any management contract, or retain a new managing agent, without the approval of a majority of the Board of Directors.

The Members shall have no right to terminate a management contract during the Declarant Control Period. Unless the Board otherwise grants such right, or unless the

management contract otherwise provides, the Board may act in its discretion with respect to executing and terminating management contracts during the Declarant Control Period. Any management contract may, among other things, authorize the managing agent to act as the Association's agent with respect to the expenditure of Association funds within the scope of the approved Association budget; however, the managing agent shall not be permitted to spend money in excess of the budget or reallocate greater than 10% of any budget line item without the Board's prior written approval.

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

(a) The Board may prepare financial reports for the Association at least quarterly containing:

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

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

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

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

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

(b) An annual financial report consisting of at least the following shall be prepared within 60 days (or such longer period as is permitted by law) after the close of the fiscal year: (i) a balance sheet showing actual receipts and expenditures; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant.

The Association shall provide each Owner, or its authorized agent, a copy of the final annual financial report that has been prepared as required under the preceding paragraph within 20 business days following receipt of a written request for same. In addition, if applicable law requires, the Association shall send a copy of the annual financial report to each Member by secure e-mail, mail or personal delivery following the close of the fiscal year.

3.22. Right To Contract. Contracts for products and services; in writing; bids; exceptions. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations.

- (a) All contracts as further described in this section or any contract that is not to be fully performed within 1 year after the making thereof for the purchase, lease, or renting of materials or equipment to be used by the Association in accomplishing its purposes under this chapter or the Governing Documents, and all contracts for the provision of services, shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the Association that exceeds 10 percent of the total annual budget of the Association, including reserves, the Association must obtain competitive bids for the materials, equipment, or services. Nothing contained in this section shall be construed to require the Association to accept the lowest bid.
- (b) Notwithstanding the foregoing, contracts with employees of the Association, and contracts for attorney, accountant, architect, community association manager, engineering, and landscape architect services are not subject to the provisions of this section.
- (c) A contract executed before adoption of these By-laws, and any renewal thereof, is not subject to the competitive bid requirements of this section, and shall not be invalidated due to lack of such competitive bid process. If a contract was awarded under the competitive bid procedures of this section, any renewal of that contract is not subject to such competitive bid requirements if the contract contains a provision that allows the Board to cancel the contract on 30 days' notice. Materials, equipment, or services provided to an association under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this section. A contract with a manager, if made by a competitive bid, may be made for up to 3 years.
- (d) Nothing contained in this section is intended to limit the ability of the Association to obtain needed products and services in an emergency.
- (e) This section does not apply if the business entity with which the Association desires to enter into a contract is the only source of supply within the county serving the Association.
- (f) Nothing contained in this section shall excuse a party contracting to provide maintenance or management services from compliance with the Florida Statutes.

3.23. Enforcement. The Association may impose fines, in such amounts as permitted by law, for any violation of the Governing Documents except with regard to assessments.

Should the Board of Directors elect to impose fines, the Board shall comply with all applicable provisions of Florida Statutes.

Subject to any limitations set forth in the Declaration, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the Declaration's dispute resolution procedures, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including, without limitation, reasonable Legal Costs actually incurred, including but not limited to pre-suit legal fees and costs.

3.24. Board Training Seminar. The Board may provide, or provide for, as a Common Expense, seminars and continuing educational opportunities designed to educate and inform directors of their responsibilities as directors. Such programs may include instruction on applicable corporate and fiduciary law principles, other issues relating to administering the Community's affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, including property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected director and each re-elected director may be required to complete a training seminar within the first six months of assuming the director position.

3.25. Board Standards. In performing their duties, directors and officers shall act as fiduciaries and are entitled to insulation from liability as provided for directors and officers of corporations by applicable law and as otherwise provided by the Governing Documents.

A director or officer acting in accordance with the business judgment rule shall not be personally liable to the Association or its Members for errors in judgment made in the director's or officer's capacity as such. Unless the Governing Documents require that specific action be taken, the failure to take such specific action shall not, without further showing that the Board acted in violation of the business judgment rule, be deemed a violation of a Board duty. A director or officer shall be considered to be acting in accordance with the business judgment rule so long as the director or officer:

(a) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(b) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, they are made on an informed basis;

(c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and

(d) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

Board determinations of the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

3.26. Conflicts of Interest: Code of Ethics. Unless otherwise approved by a majority of the other directors, no director may transact business with the Association or the Association contractor during his or her term as director. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members. The Board may void any contract which creates a prohibited conflict of interest.

#### **Article IV** **Officers**

4.1. Officers. The Association's officers shall include a President, Secretary, and Treasurer. The officers shall be Board members; The Board may appoint such other officers, including, without limitation, one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Such other Officers shall be Board Members, Owners or Residents. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office. The Board shall elect the Association's officers at the first Board meeting following the Turnover Meeting and each Association annual meeting. Officers shall serve until their successors are elected.

4.3. Removal and Vacancies. Any officer may be removed by a vote of at least a majority of the directors. The Board shall appoint a replacement to fill any vacancy in any office for the unexpired portion of the term.

4.4. Powers and Duties. The Association's officers each shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose.

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

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other Association instruments shall be executed by an officer, unless the Board provides otherwise, or by such other person or persons as the Board may designate by resolution.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.18.

4.8. President. The President shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board at which he or she is present. He or she shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including, but not limited to, the power, subject to the provisions of Article V, to appoint committees from among the Members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board, have general supervision, direction, and control of the business of the Association. The President shall be ex-officio a member of all standing committees, and shall have such other powers and duties as may be prescribed by the Board or these By-Laws.

4.9 Intentionally left blank.

4.10. Secretary. The Secretary shall take the place of the President and perform his or her duties whenever the President is absent, disabled, or refuses or is unable to act. If neither the President nor the Secretary is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Secretary shall prepare or supervise the preparation of meeting minutes as required by applicable law. The Secretary shall keep (or cause to be kept) the minutes of all meetings of the Board and the minutes of all meetings of the Association at the Association's principal office or at such other places as the Board may order. The Secretary shall have charge of such books and papers as the Board may direct. The Secretary shall, in general, perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notice of meetings of the Members of the Association and of the Board required by these By-Laws or by law to be given. The Secretary shall maintain (or cause to be maintained) a book of record Owners, listing the names and addresses of the Owners furnished by the Association, and such books shall be changed only at such time as satisfactory evidence of a change in ownership of a Lot is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board or these By-Laws. The Secretary may delegate all or a part of such duties to the managing agent.

4.11. Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records, and business transactions of the Association, including accounts of all assets, liabilities, receipts, and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board, in accordance with the Declaration and these By-Laws, shall render to the President and

the Board, upon request, an account of all of his or her transactions as Treasurer and of the financial conditions of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these By-Laws. The Treasurer may delegate any part or all of such duties to the managing agent. The Treasurer shall supervise the preparation of the Association's budget, but may delegate all or part of the preparation and notification duties to a finance committee, managing agent, or both.

#### **Article V** **Committees**

5.1. **General.** The Board may create such committees and appoint its members as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Committee members need not be directors, but must be either a Member or the duly authorized representative of a Member. Committees shall exercise only such authority as granted by Board resolution within the limitations prescribed by Florida law, provided the Board may elect not to follow a committee's advice on any matter. Committees may not act without specific Board authority and may not bind the Association contractually or financially. The Board may establish by resolution the specific scope and limitations on the authority of any and all committees.

#### **Article VI** **Miscellaneous**

6.1. **Fiscal Year.** The Association's fiscal year shall be the calendar year unless otherwise established by Board resolution.

6.2. **Parliamentary Rules.** Except as may be modified by Board resolution, *Robert's Rules of Order* (the edition published on the date closest to the meeting) shall govern the conduct of Association proceedings when not in conflict with applicable law or the Governing Documents.

6.3. **Conflicts.** Conflicts between or among the Governing Documents and applicable law shall be resolved as directed in the Declaration.

6.4. **Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at reasonable times: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Community as the Board shall designate.



(b) Rules for Inspection. The Board may establish reasonable rules with respect to: (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; (iii) payment of the cost of reproducing documents requested; and (iv) such other matters as the Board deems appropriate. Records shall be made available within 10 business days of the receipt of a written request by an Owner or his or her authorized agent, or as otherwise required by law.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties the Association owns or controls. The director's right of inspection includes the right to make a copy of relevant documents at the Association's expense. The Board shall provide for such inspection to take place at the Association's office, the managing agent's office, or at a place within the Community as the Board shall designate.

#### 6.5. Notices.

(a) Form of Notice and Method of Delivery. Except as otherwise provided in the Declaration or these By-Laws or by applicable law, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, by facsimile, electronic mail or other electronic communication device with written confirmation of transmission.

(b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the address, facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member;

(ii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Declarant, at the principal address of the Declarant as it appears on the Secretary of State's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this Section.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; however, if such delivery is refused or if the intended recipient has contracted with the private carrier to leave any deliveries without obtaining a signature evidencing receipt, the notice shall be deemed duly given and effective if the attempt to deliver was timely made;

(iii) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

6.6. Amendment.

- (a) By Declarant. During the Declarant Control Period, the Declarant may amend these By-Laws unilaterally, subject to the approval requirements in Article 14.02 of the Declaration, if applicable; however, if the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD") has issued project approval for VA-guaranteed or HUD-insured Mortgages, respectively, then either shall have the right to veto amendments to these By-Laws during the Declarant Control Period.
- (b) By the Membership. Except as provided above, these By-Laws may be amended only by the affirmative vote of a Majority of Members. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.
- (c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

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

**CERTIFICATE OF ADOPTION**

I hereby certify that the foregoing Bylaws of Solterra Resort Homeowners Association, Inc. was adopted by the Members of the Association effective \_\_\_\_\_, 2012.

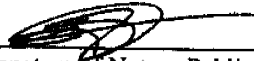
  
\_\_\_\_\_  
David Langhout, Secretary

STATE OF FLORIDA)  
COUNTY OF HILLSBOROUGH )

The foregoing instrument was acknowledged before me on this the 15<sup>th</sup> day of December, 2012, by David Langhout, Secretary of Solterra Resort Homeowners Association, Inc.

Personally Known  OR Produced Identification \_\_\_\_\_  
Type of Identification Produced: \_\_\_\_\_



  
\_\_\_\_\_  
Signature of Notary Public  
BRYON T. LOPRESTE  
\_\_\_\_\_  
Name of Notary Public