

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR LOST TREE PRESERVE**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LOST TREE PRESERVE ("Declaration") is made this 25 day of NOV-2017, by LOST TREE PRESERVE, LLC, a Florida limited liability company ("Declarant"), and is joined in by LOST TREE PRESERVE OWNERS ASSOCIATION, INC., a Florida corporation not-for-profit ("Association").

WHEREAS, Declarant is the owner in fee simple of the real property more particularly described on Exhibit "A" attached hereto and made a part hereof ("Property"); and

WHEREAS, Declarant desires to develop a planned residential community to be known as "LOST TREE PRESERVE" (as hereinafter defined) upon the Property; and

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

WHEREAS, the Association is joining in this Declaration in order to acknowledge its obligations hereunder;

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

**1. EXPLANATION OF TERMINOLOGY**

The following words and phrases used in this Declaration (unless the context should clearly reflect another meaning) shall have the following meanings:

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

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

1.3. "ARCHITECTURAL REVIEW BOARD" OR "ARB" shall mean the committee created pursuant to Section 8 hereof.

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

1.5. "ASSESSMENT" shall mean assessments for which all the Owners are obligated to pay to the Association and includes "Individual Lot Assessments" and "Special Assessments" (as such terms are defined in Section 7 hereof) and any and all other assessments which are levied by the Association in accordance with the Governing Documents.

1.6. "ASSOCIATION" shall mean LOST TREE PRESERVE OWNERS ASSOCIATION, INC., a not-for-profit Florida corporation, its successors and assigns, existing pursuant to the Articles, and which Association is responsible for the ownership, administration, operation, maintenance, preservation, enforcement and architectural control of LOST TREE PRESERVE provided in this Declaration. The "Association" is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.

1.7. "BOARD" shall mean the governing body of the Association.

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

1.9. "COMMON AREA" OR "COMMON PROPERTY" shall mean the property which is or will be owned and/or maintained by the Association, as set forth in this Declaration or on the Plat, or additional plat, if any.

1.10. "COMPLETED HOME" shall mean a Home that has been completed and for which Home a certificate of occupancy or equivalent therefor has been issued by the appropriate governmental agency, and the title to which has been conveyed by Declarant.

- 1.11. "LOT OWNER" shall mean the Owner of a Lot.
- 1.12. "CONTRIBUTING LOT" shall mean any Lot conveyed by Declarant to an Owner other than a Select Builder upon which an affirmative covenant to pay Assessments, as more particularly set forth herein, is imposed.
- 1.13. "CONTRIBUTING LOT OWNER" shall mean the Owner of a Contributing Lot.
- 1.14. "COUNTY" shall mean Indian River County, Florida.
- 1.15. "DECLARANT" shall mean LOST TREE PRESERVE, LLC, a Florida limited liability company, and any successor or assign thereof to which LOST TREE PRESERVE, LLC specifically assigns all or part of the rights of Declarant hereunder by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Property. In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant. An Owner shall not, solely by the purchase of a Lot, be deemed a successor or assign of Declarant under the Governing Documents unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.
- 1.16. "DECLARATION" shall mean this instrument as it may be amended from time to time, together with any Supplemental Declaration(s) or Amendments hereto, which may be recorded in the Public Records of the County.
- 1.17. "DIRECTOR" shall mean a member of the Board.
- 1.18. "DRAINAGE SYSTEM" shall mean all structures, including culverts and swales, required to collect and convey rainfall runoff from LOST TREE PRESERVE to the water management tract(s) on and/or adjacent to the Property. The Drainage System is located upon and designed to serve all of LOST TREE PRESERVE and is a private drainage system. The Drainage System shall be maintained by the Association in accordance with the District Permit.
- 1.19. "GOVERNING DOCUMENTS" shall mean, in the aggregate, this Declaration and the Articles, Bylaws, any rules and regulations of the Association which may be promulgated, all of the instruments and documents referred to therein and executed in connection therewith, and all amendments to the foregoing.
- 1.20. "HOA ACT" shall mean the homeowners' association act, Chapter 720, Florida Statutes, as amended or renumbered through the date of recording this Declaration amongst the Public Records of the County.
- 1.21. "HOME" shall mean a residential dwelling unit in LOST TREE PRESERVE intended as an abode for one (1) family, including single family detached residences. The term Home shall include the Lot. In the event all or any portion of the Additional Property is

submitted to this Declaration by a Supplemental Declaration, the number of Homes and Lots within LOST TREE PRESERVE shall increase.

1.22. "IMPROVEMENT" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within LOST TREE PRESERVE, including, but not limited to, buildings, walkways, sidewalks, parking areas, berms, fountains, sprinkler pipes, gatehouses, roads, driveways, fences, retaining walls, underground footers and other foundation supports, stairs, landscaping, hedges, plantings, poles, swings, swimming pools, covered patios, screen enclosures, jogging, bicycling and walking paths, basketball backboards and hoops, signs, site walls, gazebos, benches, mailboxes, decorative street lights and signs.

1.23. "INSTITUTIONAL MORTGAGE" shall mean a mortgage held by an Institutional Mortgagee on any property within LOST TREE PRESERVE.

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

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

1.26. "LEGAL FEES" shall mean (i) all fees for attorney and paralegal services incurred in connection with negotiations, mediation, arbitration, litigation or preparation for same (whether or not such an action is actually begun) through and including all trial and appellate levels and post-judgment or collection proceedings; and (ii) all costs incurred with respect to the matters set forth in (i), above.

1.27. "LOST TREE PRESERVE" shall mean that planned development located in Indian River County, Florida which encompasses the Property. LOST TREE PRESERVE is presently intended to be comprised of eighty-two (82) Lots and the Common Area, but subject to change in accordance with this Declaration. LOST TREE PRESERVE will initially consist of

the land set forth in Exhibit "A," attached hereto and made a part hereof and may be expanded to include Additional Property or reduced by withdrawal of property, all by the recording of one or more Supplemental Declaration(s).

1.28. "LOT" shall mean any parcel of land within LOST TREE PRESERVE shown on the Plat, any additional plat, or on any re-plat, if any, upon which a Home is permitted to be constructed, together with the Improvements thereon. Upon completion of construction of a Home on a Lot, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot in this Declaration and the Governing Documents.

1.29. "MEMBERS" shall mean all of the Owners who are also members of the Association, as provided herein.

1.30. "NOTICE AND HEARING" shall mean written notice and a public hearing before a tribunal appointed by the Board at which the Owner concerned shall have an opportunity to be heard in person or by counsel, at the Owner's expense, in the manner set forth in Section 10.1 herein.

1.31. "OWNER" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Home within LOST TREE PRESERVE, and includes Declarant for as long as Declarant owns fee simple title to a Lot or Home, but excluding therefrom those having such interest as security for the performance of an obligation.

1.32. "PLAT" shall mean the plat of LOST TREE PRESERVE, recorded in the Public Records of the County. In the event an additional plat is recorded in the Public Records of the County with respect to the Additional Property made subject to this Declaration pursuant to a Supplemental Declaration, then the term "Plat" as used herein shall also mean the additional plat. Not all of the property shown on the Plat is subject to this Declaration.

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

1.34. "PUBLIC RECORDS" shall mean the Public Records of the County.

1.35. "SELECT BUILDER" shall mean any builder selected by Declarant as set forth in Section 7.9 of this Declaration.

1.36. "ST. JOHNS RIVER WATER MANAGEMENT DISTRICT PERMIT" OR "DISTRICT PERMIT" shall mean that certain permit issued by the St. Johns River Water Management District affecting the Property, a copy of which is attached as Exhibit "D" hereto and made a part hereof, as same may be amended or modified from time to time.

1.37. "SUPPLEMENTAL DECLARATION" shall mean any instrument executed by

Declarant which, when recorded in the Public Records of the County, shall: (a) commit Additional Property, if any, to the provisions of this Declaration, and shall be the only method of committing such property to the provisions of this Declaration, (b) withdraw any portion(s) of the Property from the effect of this Declaration, (c) designate portion(s) of the Property or Additional Property as Common Area hereunder, and/or (d) be for such other purposes as are provided in this Declaration. A Supplemental Declaration may also be used to add additional covenants, restrictions, reservations, regulations, burdens, liens, and easements upon the Property or any portion thereof; remove any existing covenant, restriction, reservation, regulation, burden, lien or easements from the Property or any portion thereof; declare certain properties to be or not to be Common Area; and/or add properties to or withdraw properties from the Property and the provisions of this Declaration. The Association shall join in the execution of any Supplemental Declaration at the request of Declarant but such joinder shall not be required to make any such Supplemental Declaration effective. The Owners shall not be required to join in the execution of any Supplemental Declaration but shall nevertheless be bound thereby.

1.38. "SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM" shall mean a system of structures and other improvements, including, without limitation, control structures, culverts and swales, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, over drainage, environmental degradation and water pollution, or to otherwise affect the quality and quantity of discharge from the system, as permitted pursuant to Chapter 62-330, Florida Administrative Code. The Surface Water or Stormwater Management System is located upon and designed to serve the Property and possibly other properties around the Property.

1.39. "TURNOVER DATE" shall mean the date upon which Members, including Declarant, shall assume control of the Association and elect the Board, as more particularly described in Article V.D.2 of the Articles.

1.40. "WATER MANAGEMENT DISTRICT" or "SJRWMD" shall mean the St. Johns River Water Management District, a regional water management district established in accordance with Florida law, and any successor, governmental agency, body or special district charged with the rights and responsibilities of the SJRWMD.

## 2. DESCRIPTION OF LOST TREE PRESERVE

### 2.1. General Plan of Development

LOST TREE PRESERVE comprises the Property encompassing, or which will encompass, the Lots and Common Area, as more particularly defined by this Declaration and, in addition, lands which Declarant may add, but shall in no way be obligated to add, by one or more Supplemental Declaration(s). The Property initially declared hereunder is described in Exhibit "A" attached hereto and is planned to contain eighty-two (82) Lots, together with Common Area, all in accordance with, but subject to, the terms of this Declaration. Notwithstanding the foregoing, Declarant hereby reserves the right to modify its plan of development of LOST TREE PRESERVE (including, without limitation, the right to modify the site plan of LOST TREE

PRESERVE; the right to add or change the recreational facilities and amenities, if any, Home product types, and number of Homes to be constructed within LOST TREE PRESERVE ); and/or the right to add land to LOST TREE Preserver to withdraw land from LOST TREE PRESERVE. Therefore, in the event Declarant modifies its plan of development of LOST TREE PRESERVE and/or adds land to LOST TREE PRESERVE or withdraws land from LOST TREE PRESERVE , it is hereby acknowledged by each Owner that the number of Lots, the layout of Lots and/or the size of Lots within LOST TREE PRESERVE may change. Declarant's general plan of development further contemplates that the Homes to be constructed within LOST TREE PRESERVE shall be whatever types of structures Declarant may choose which are in conformance with this Declaration. Declarant's general plan of development of LOST TREE PRESERVE may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to LOST TREE PRESERVE , as well as any changes thereto.

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

Declarant expressly reserves the right as to the Property to (i) commence construction and development of the Property if and when Declarant desires; (ii) develop the Property upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the plan of development of the Property (including, without limitation, the right to modify the site plan and master plan of LOST TREE PRESERVE , the right to add or change the recreational facilities and amenities, and the right to change the Home product types and number of Homes to be constructed within LOST TREE PRESERVE) in such manner as Declarant, in its sole discretion, chooses. Nothing contained herein shall be construed as obligating Declarant to construct LOST TREE PRESERVE according to the present plan of development nor as obligating Declarant to declare any Additional Property to be Property.

## 2.2. Model Row

Declarant hereby reserves the right to construct and/or operate a "model row(s)" in LOST TREE PRESERVE . The "model row(s)" may contain models for LOST TREE PRESERVE or other communities, as Declarant and/or any of Declarant's affiliates may so determine, in their sole discretion. The "model row(s)" may also contain parking, landscaping and fencing across the roads within LOST TREE PRESERVE as Declarant may determine in its sole discretion. In the event that Declarant and/or any of Declarant's affiliates constructs a "model row(s)" in LOST TREE PRESERVE , such "model row(s)" may be used for such period of time that Declarant and/or any of Declarant's affiliates determines to be necessary in its sole judgment. Declarant may use any model home(s) for a sales office and/or a construction office. By the Owner's acceptance of a deed for a Lot in LOST TREE PRESERVE , such Owner agrees and acknowledges that: (i) Declarant and/or any of Declarant's affiliates have a right to construct and/or operate a "model row(s)"; (ii) Declarant and/or any of its affiliates have an easement over

LOST TREE PRESERVE for ingress and egress to and from the “model row(s)” and to use and show the models to prospective purchasers in LOST TREE PRESERVE or other communities being developed by Declarant and/or any of Declarant's affiliates, as long as such “model row(s)” exists; and (iii) the Owner shall not interfere in any manner whatsoever in the sales process by Declarant and/or any of Declarant’s affiliates, including, without limitation, the carrying of signs, the posting of signs on Lots or Homes or other types of demonstrations in LOST TREE PRESERVE or any public right-of-way adjacent to the Property. Each Owner acknowledges and agrees that any such activities interfere with the quiet enjoyment of LOST TREE PRESERVE by the other Owners, are detrimental to the value of the Homes within LOST TREE PRESERVE , and interfere with Declarant’s and/or its affiliates ability to conduct their respective business.

### 3. ADDITIONS TO AND WITHDRAWALS FROM THE PROPERTY; CONVEYANCE OF COMMON AREA

#### 3.1. Additions

Declarant may from time to time, in its sole discretion, by recording appropriate Supplemental Declaration(s) in the Public Records of the County, add any Additional Property or any other real property to the Property governed by this Declaration, and may declare all or part of such Additional Property or other property (including any Improvements thereon) to be Lots or Common Area. Upon the recording of a Supplemental Declaration, the property described therein shall be deemed part of the Property as if it were originally included therein and subject to this Declaration. Any such Supplemental Declaration may submit any Additional Property or any other real property to such modifications of the covenants, restrictions, reservations, regulations, burdens, liens and/or easements contained in this Declaration as may be necessary or convenient to reflect or adapt to any changes in circumstances or differences in the character of any such Additional Property or other property. Nothing contained in this Section 3.1 shall be construed to require the joinder by or consent of the Owners or the Association to any such Supplemental Declaration; provided, however, the Association shall join in the execution of any such Supplemental Declaration at the request of Declarant. In addition, nothing herein shall require Declarant to add any Additional Property.

#### 3.2. Designation of Additional Common Area

Declarant may, from time to time, by recording Supplemental Declarations in the County, designate additional portions of the then existing Property owned by it to be Common Area.

#### 3.3. Disclaimer of Implication

Only the real property described in Exhibit “A” hereto is submitted and declared as the Property subject to this Declaration. Unless and until a Supplemental Declaration is recorded in the fashion required pursuant to this Declaration, no other property (including any Additional Property) shall in any way be deemed to constitute a portion of the Property or be affected by the covenants, restrictions, reservations, regulations, burdens, liens, and easements expressly binding the Property as provided by the terms of this Declaration.



### 3.4. Absence of Obligation

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

### 3.5. Withdrawal

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

### 3.6. Title to the Common Area

To the extent herein provided, the Common Area is hereby dedicated to the joint and several use in common of the Owners of all Lots that may, from time to time, constitute part of the Property. When title to all Lots which are subject to the provisions of this Declaration has been conveyed to non-Declarant purchasers or earlier at Declarant's option (exercisable from time to time, as to any portions of the Common Area), Declarant or its successors and assigns shall convey and transfer to the Association, by quitclaim deed, the fee simple title to the Common Area free and clear of any mortgages and the Association shall accept such conveyance, holding title for the Owners as aforesaid. Such conveyance shall be subject to: (i) taxes and assessments with respect to the Common Area from and after the date of recording this Declaration; (ii) all laws, ordinances, regulations, restrictions, prohibitions and other requirements imposed by governmental authorities, including, without limitation, all building, zoning, land use and environmental laws, ordinances, codes and regulations; (iii) matters which would be disclosed by an accurate survey of the Common Area; (iv) easements, covenants, conditions, restrictions, reservations, limitations, agreements and other matters of record; and (v) the terms and provisions of this Declaration, as the same may have been modified, amended and/or supplemented from time to time.

At the time of conveyance of the Common Area or any portion thereof, the Association shall be required to accept the Common Area, together with the personal property and Improvements appurtenant thereto, if any. The Association hereby agrees to accept the Common Area and the personal property and Improvements appurtenant thereto in "AS IS" "WHERE IS" condition, without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Common Area and the personal property and Improvements appurtenant thereto being conveyed. IN THAT REGARD, THE ASSOCIATION AND EACH OWNER KNOWINGLY AND VOLUNTARILY RELINQUISHES AND

WAIVES, AND DECLARANT EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED) AS TO THE COMMON AREA AND PERSONAL PROPERTY AND IMPROVEMENTS WHETHER ARISING FROM CUSTOM, USAGE OR TRADE, COURSE OF CONDUCT, COURSE OF DEALING, CASE LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR ANY IMPLIED WARRANTY OF FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. TO THE EXTENT THAT BY LAW OR OTHERWISE ANY OF THE WARRANTIES RELINQUISHED, WAIVED OR DISCLAIMED CANNOT BE RELINQUISHED, WAIVED OR DISCLAIMED, IN WHOLE OR IN PART, ALL SECONDARY, INCIDENTAL AND CONSEQUENTIAL DAMAGES ARE SPECIFICALLY EXCLUDED AND DISCLAIMED (INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM CLAIMS OF PROPERTY DAMAGE, LOSS OF USE, PERSONAL INJURY OR EMOTIONAL DISTRESS).

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

Commencing upon the date this Declaration is recorded, and notwithstanding that title thereto has not yet been conveyed to the Association, the Association shall be responsible for the maintenance of the Common Area in a continuous and satisfactory manner without cost to the general taxpayers of the County. The Association shall be responsible for the payment of real estate taxes, if any, against the Common Area including taxes on any Improvements and any personal property thereon accruing from and after the date this Declaration is recorded.

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

Subject to the foregoing, Declarant may mortgage any or all portions of the Common Area to finance construction and development expenses provided that the mortgagee recognizes the rights of Owners under this Declaration and neither the Association nor any Owner is personally liable for paying the mortgage. In such event, neither the Association nor the Owners shall be required to join in or be entitled to consent to such mortgage. The Common Area shall be released from any such mortgage no later than the date same is conveyed to the Association.

### 3.7. Parking Rights

The Association may maintain upon the Common Area parking spaces for Owners, occupants, visitors and guests. The use of such parking spaces by Owners, occupants, visitors and guests shall be subject to duly adopted rules and regulations of the Association, as the same may be amended from time to time.

## 4. OWNERS' PROPERTY RIGHTS

#### 4.1. Owners' Easements of Enjoyment

Every Owner and family member, guest, lessee, agent or invitee of an Owner shall, except as may otherwise be provided in this Declaration, have a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of the Common Area within the Property, except as may otherwise be specifically provided elsewhere in this Declaration, in common with all other Owners, their family members, guests, lessees, agents and invitees, located outside another Owner's Home which easement shall be appurtenant to, and shall pass with title to each Owner's Lot. This right shall be subject to the following conditions and limitations:

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

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

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

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

4.1.5. The right of the Association in accordance with its Articles, Bylaws, and this Declaration, with the vote or written assent of two-thirds (2/3) of the total voting interests, to borrow money for the purpose of improving the Common Area and facilities thereon, and, in aid thereof, to mortgage, pledge, or hypothecate any or all of its real or personal property or pledge Assessments as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners.

4.1.6. The right of the Association to dedicate, release, alienate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject the Common Area to such conditions as may be agreed to by the Association. No such dedication, release, alienation or transfer shall be effective unless Members entitled to cast two-thirds (2/3) of the total voting interests agree to such dedication, release, alienation, or transfer.

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

4.1.8. The right of Declarant, Declarant's affiliates and each of their respective officers, directors, partners, employees, agents, licensees, and invitees to the nonexclusive use of

the Common Area within the Property and the facilities thereon, without charge, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes and to grant (without consent of the Association and/or vote of the Owners) easements and rights-of-way as provided in this Declaration.

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

4.1.10. The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs, and ground cover upon any portion of the Common Area, except as may be prohibited under the Water Management District Permit.

4.1.11. The right, however not the duty, of the Association by action of the Board to seek the vacation of publicly dedicated streets, if any, upon the Common Area.

4.1.12. The easements provided elsewhere in this Declaration, designated on the Plat or any additional plat, if any, including, but not limited to, those set forth in this Section 4.

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

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

#### 4.2. Delegation of Use

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

#### 4.3. Recognition of Existing Easements

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

#### 4.4. Easements for Vehicular Traffic

In addition to the general easements for use of the Common Area reserved herein, there shall be, and Declarant hereby reserves, grants, and covenants for itself and all future Owners, their family members, guests, invitees and lessees, Institutional Mortgagees of the Property (or portions thereof), and to the Association, that all of the foregoing shall have a perpetual nonexclusive easement for vehicular traffic over (i) all streets dedicated to the public use, if any (as well as alcoves, cul de sacs, and other private, paved areas abutting or serving the same), and (ii) any private roads within or upon the Property.

#### 4.5. Access Easement

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

#### 4.6. Grant and Reservation of Easements

Declarant hereby reserves and grants the following perpetual, nonexclusive easements over and across the Property as covenants running with the Property for the benefit of the Owners, the Association and Declarant as hereinafter specified for the following purposes:

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

4.6.2. Encroachment Easements. Due to the nature of a small lot development, walkways, and some equipment placed upon concrete slabs may be placed in or encroach upon Common Areas and adjoining Lots. An easement to the extent of the walkways, equipment and individual concrete slabs servicing such equipment, shall exist in favor of the Owner of the Lot over and across that portion of the adjacent Common Area or adjoining Lot as may be reasonably necessary for (1) access to the Lot across walkways and maintenance thereof and (2) the repair, maintenance, replacement or reconstruction of the equipment and a concrete slab supporting such equipment. Encroachments into adjoining Lots shall, in no event, exceed three (3) feet.

4.6.3. Easement to Enter Upon Lots and Homes. An easement or easements for ingress and egress in favor of the Association including the Board or the designee of the Board, to enter upon the Lots for the purposes of fulfilling its duties and responsibilities of ownership, maintenance and/or repair in accordance with the Governing Documents, including, by way of example, the making of such repairs, maintenance or reconstruction as are necessary for the Common Area and to maintain any Lot in the event the Owner thereof fails to do so.

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

4.6.4.1. the right of the Association to suspend the right to use the Common Area of any Owner and such Owner's family members, guests, invitees and tenants for any period during which Assessments against such Owner's Lot remain unpaid, subject to the notice and hearing provisions in Section 10.1 herein;

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

4.6.4.3. all provisions set forth in the Governing Documents.

4.6.5. Irrigation Easement. An easement for irrigation over, under and upon the Property, including each of the Lots, in favor of the Association and each Owner, including, but not limited to, reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair the irrigation pipes.

4.6.7. Plat Easement(s).

The Plat and/or additional plat, if any, may contain additional easements not discussed herein, granted in favor of the Association, Owners or others, for the specific purposes as described therein.

4.7. Surface Water or Stormwater Management System Easement.

4.7.1 Blanket Surface Water or Stormwater Management System Easement. The plan for the development of the Property includes the construction of a Surface Water or Stormwater Management System, which may include, without limitation, retention lakes, swales, conduits, weirs, pipes, and/or berms across the rear of certain Lots and access easements to the Surface Water or Stormwater Management System as may be shown on the Plat or otherwise dedicated. Declarant hereby reserves for itself, its successors and assigns, and grants to the Association and its designees, a perpetual, nonexclusive easement over and across all areas of the Surface Water or Stormwater Management System for the drainage of stormwater from the Property. Portions of the Surface Water or Stormwater Management System may be located entirely within Lots.

#### 4.7.2 Surface Water or Stormwater Management System Maintenance.

The Association shall be responsible for the maintenance, operation, and repair of the Surface Water or Stormwater Management System. Such maintenance shall include the exercise of practices which allow the Surface Water or Stormwater Management System to provide drainage, water storage, conveyance, or other capabilities in accordance with all the permits, statutes, rules, and regulations pertaining to surface water management, drainage, and water quality promulgated by the District, Florida Department of Environmental Protection, and all other local, state and federal authorities having jurisdiction. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the Surface Water or Stormwater Management System to provide drainage, water storage, conveyance and other stormwater management capabilities as permitted by the District.

The Association shall maintain and control the water level and quality of the Surface Water or Stormwater Management System and the bottoms of any retention lakes or drainage easements which retain or hold stormwater on a regular basis. The Association shall have the power, as may be required by any applicable governmental entity, to control and eradicate plants, fowl, reptiles, animals, fish, and fungi in and on any portion of the retention lakes or drainage easement. The Owners of Lots adjacent to or containing any portion of the Surface Water or Stormwater Management System, shall maintain all shoreline vegetation and the grade and contour of all embankments to the water's edge (as it may rise and fall from time to time) irrespective of ownership of such land, keep the grass, plantings, and other lateral support of the embankments in a clean and safe manner and to prevent erosion and shall remove trash and debris as it may accumulate in the system, from time to time. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the Surface Water or Stormwater Management System to provide drainage, water storage, conveyance or other surface water capabilities as permitted by the District. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be consistent with the District Permit as originally issued or any modification that may be approved by the District. In order to provide adequate assurance that the Surface Water or Stormwater Management System will adequately function, the following maintenance procedures shall be followed:

4.7.2.1 The Association shall inspect or cause to be inspected all inlets and control structures for vandalism, deterioration or accumulation of sand and debris.

4.7.2.3 The Association shall assure that all debris or sand shall be removed from the inlets and control structures and any orifice system.

4.7.2.4 The Association shall inspect and repair or cause to be inspected and repaired all skimmer boards around control structures as necessary.

4.7.3 Surface Water or Stormwater Management System Maintenance Easement. The Association is granted a perpetual, nonexclusive easement for ingress and egress, at all reasonable times and in a reasonable manner, over and across the Surface Water or Stormwater Management System and over any portion of a Lot which is a part of the Surface Water or Stormwater Management System, or upon which a portion of the Surface Water or

Stormwater Management System is located to operate, maintain, and repair the Surface Water or Stormwater Management System as required by the District Permit. Such right expressly includes the right to cut any trees, bushes or shrubbery, to make any gradings of soil, construct or modify and berms placed along the rear of any Lots as part of the Surface Water or Stormwater Management System, or take any other action reasonably necessary, following which Declarant or the Association shall restore the affected property to its original condition as nearly as practicable; provided, however, that Declarant or the Association shall not be required to replace or repair fences, walks, structures, landscaping, or other improvements which are removed or damaged. Declarant or the Association shall give reasonable notice of its intent to take such action to all affected Owners, unless, in the opinion of Declarant or the Association, an emergency exists which precludes such notice. The right granted herein may be exercised at the sole option of Declarant or the Association and shall not be construed to obligate Declarant or the Association to take any affirmative action in connection therewith. The Owners of Lots adjacent to or containing a portion of the retention areas are granted a perpetual, nonexclusive easement for ingress and egress over and across the Surface Water or Stormwater Management System for the purpose of providing maintenance and erosion control to the embankments of such retention areas but only in compliance with the District Permit or otherwise with District approval.

4.7.4 Improvements. No docks, bulkheads, or other structures, permanent or temporary, shall be constructed on, over, or under any portion of the Surface Water or Stormwater Management System without the prior written consent of the Association and the approval of the ARB or Declarant, which consent or approval may be withheld for any reason. Any improvements to the Surface Water or Stormwater Management System permitted by the Association and installed by the Owner shall be maintained by such Owner in accordance with the maintenance provisions of this Declaration. All improvements to the Surface Water or Stormwater Management System may also require the prior written approval of the District. After receiving the approval of the ARB, Owner shall be solely liable for obtaining all governmental permits necessary or convenient to construct such Improvement.

4.7.5 Use and Access. Declarant and the Association shall have the right to adopt reasonable rules and regulations from time to time in connection with the use of the surface waters of any portion of the Surface Water or Stormwater Management System, and shall have the right to deny such use to any person who, in the opinion of Declarant or the Association, may create or participate in a disturbance or nuisance on any part of the Surface Water or Stormwater Management System. The use of such surface waters by the Owners shall be subject to and limited by the rules and regulations of Declarant and the Association, all permits issued by governmental authorities, and any rights granted to other persons pursuant to the rules and regulations of Declarant and the Association. No gas or diesel driven watercraft shall be operated on any portion of the Surface Water or Stormwater Management System, including retention lakes. Swimming is strictly prohibited in the retention lakes, if any.

4.7.6 LIABILITY. NEITHER DECLARANT NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY WHATSOEVER TO OWNERS, GUESTS, TENANTS, OR INVITEES IN CONNECTION WITH THE RETENTION LAKES (IF ANY) AND DRAINAGE FACILITIES OR ANY PART OF THE SURFACE WATER OR



STORMWATER MANAGEMENT SYSTEM. EACH OWNER, FOR ITSELF AND ITS GUESTS, TENANTS, OR INVITEES, RELEASES DECLARANT AND THE ASSOCIATION FROM ANY LIABILITY IN CONNECTION THEREWITH.

4.7.7 Wetlands, Jurisdictional Land Swales. This Declaration is subject to the rights of the State of Florida over portions of the Property that may be considered wetlands, marshes, sovereignty or jurisdictional lands, and every Owner shall obtain any permit necessary prior to undertaking any dredging, filling, mowing, improving, landscaping, or removal of plant life existing on his Lot.

Further, certain Lots may be improved with swales constructed within Lots that are contiguous to any jurisdictional lands. The Owners thereof shall not remove or modify the swales without the consent of the applicable governmental entities. Any Owner who alters or otherwise modifies any swale, including mowing, shall repair and restore any such swale to be in full compliance with the applicable District Permits, at such Owner's sole cost and expense and shall indemnify and hold the Declarant and the Association harmless from such violation.

4.7.8 Rights of the District. Notwithstanding any other provisions contained elsewhere in this Declaration, the District shall have the rights and powers enumerated in this paragraph. The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration that relate to the maintenance, operation, and repair of the Surface Water or Stormwater Management System. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted, or if modified, as approved in writing by the District. No person shall alter the drainage flow of the Surface Water or Stormwater Management System, including any buffer areas, swales, treatment berms or swales, without prior written approval of the District. Any amendment to this Declaration that alters the Surface Water or Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Property, must have prior written approval of the District. In the event that the Association is dissolved, prior to such dissolution, all responsibility relating to the Surface Water or Stormwater Management System must be assigned to and accepted by an entity approved in writing by the District.

4.7.9 Indemnity. Declarant may be required to assume certain duties and liabilities for the maintenance of the Surface Water or Stormwater Management System or drainage system within the Property under the Plat, permits, or certain agreements with governmental agencies. The Association further agrees that subsequent to the recording of this Declaration, it shall hold Declarant harmless from all suits, actions, damages, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising out of any occurrence in, upon, at or from the maintenance of the Surface Water or Stormwater Management System occasioned in whole or in part by any action, omission of the Association or its agents, contractor, employees, servants, or licensees but not excluding any liability occasioned wholly or in part by the acts of the Declarant, its successors or assigns. Upon completion of construction of the Surface Water or Stormwater Management System or drainage system Declarant shall assign all its rights, obligations and duties thereunder to the Association.

The Association shall assume all such rights, duties and liabilities and shall indemnify and hold Declarant harmless therefrom.

4.7.10 Declarant's Rights. Declarant, its successors and assigns shall have the unrestricted right, without approval or joinder of any other person or entity: (i) to designate the use of, alienate, release, or otherwise assign the easements shown on the Plat of the Property or described herein, (ii) to plat or replat all or any part of the Property owned by Declarant, and (iii) to widen or extend any right of way shown on the Plat of the Property or convert a Lot to use as a right of way, provided that Declarant owns the lands affected by such change. Owner of Lots subject to easement shown on the Plat of the Property shall acquire no right, title, or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over, or under the easement area. The Owners of Lots subject to any easements shall not construct any improvements on the easement areas, alter the flow of drainage, or landscape on such areas with hedges, trees, or other landscaping items that might interfere with the exercise of the easement rights. Any Owner who constructs any improvements or landscaping on such easement areas shall remove the improvements or landscape items upon written request of Declarant, the Association, or the grantee of the easement.

#### 4.8. Assignments

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

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

### 5. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; BOARD; DURATION OF THE ASSOCIATION

#### 5.1. Membership and Voting Rights

Membership in the Association shall be established and terminated as set forth in the Articles. Each Member shall be entitled to the benefit of, and be subject to, the provisions of the Governing Documents. The voting rights of the Members shall be as set forth in the Articles.

#### 5.2. Board

The Association shall be governed by the Board which shall be appointed, designated or elected, as the case may be, as set forth in the Articles.

### 5.3. Duration of Association

The duration of the Association shall be perpetual, as set forth in the Articles. In the event of termination, dissolution or final liquidation of the Association, the responsibilities for the operation and maintenance of the Surface Water or Stormwater Management System must be transferred to and accepted by an entity which would comply with Section 62-330, Florida Administrative Code, and must be approved by the Surface Water or Stormwater Management District prior to such termination, dissolution or liquidation.

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

### 6.1. Affirmative Covenant to Pay Assessments

6.1.1. In order to: (i) fulfill the terms, provisions, covenants and conditions contained in the Governing Documents; and (ii) maintain, operate and preserve the Common Area for the use, safety, welfare and benefit of the Owners and their family members, guests, invitees and lessees, there is hereby imposed upon each Contributing Lot and each Contributing Lot Owner the affirmative covenant and obligation to pay to the Association commencing from and after the first conveyance of a Lot from Declarant as evidenced by the recordation of a deed in the Public Records of the County (in the manner herein set forth) all Assessments, including, but not limited to, the Individual Lot Assessments and Special Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot within the Property, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments in accordance with the provisions of the Governing Documents.

6.1.2. The following expenses of the Association are hereby declared to be Operating Expenses which the Association is obligated to assess and collect, and which the Owners are obligated to pay as provided herein or as may be otherwise provided in the Governing Documents: (1) any and all taxes and tax liens which may be assessed or levied at any and all times against the Common Area as a whole and not upon an individual Lot or Home, or against any and all personal property or Improvements thereon; (2) all charges levied for utilities providing services for the Common Area as a whole and not upon an individual Lot or Home, or to the Owners on a bulk basis, such as water, gas, electricity, telephone, cable television, telecommunications services home monitoring, sanitation, sewer and any type of utility or any other type of service charge which is not separately billed to an Owner; (3) the premiums on policies of insurance including, but not limited to, liability and casualty insurance for the Common Area and directors and officers liability insurance for the officers and directors of the Association; (4) any sums necessary for the maintenance and repair of the Common Area and all Improvements located thereon; (5) any sums necessary to reimburse the Association for any costs or expenses incurred in connection with maintaining the Common Area; (6)

administrative and operational expenses; (7) all sums necessary for the maintenance and repair of the Surface Water or Stormwater Management System to be maintained by the Association, including but not limited to work within retention areas, drainage structures and drainage easements; and, (8) any and all expenses deemed to be Operating Expenses by the Association and/or under this Declaration. Reserves for future maintenance, repair and replacements are specifically excluded from Operating Expenses. The Board may, if it so determines, include reserves in the Association's annual budget. In addition, any expense which is required by this Declaration to be the matter of Special Assessment shall not be deemed to be an Operating Expense. Expenses which are required to be the matter of Special Assessment include, by way of example but not by way of limitation, the following: the cost of reconstructing, replacing or improving the Common Area which is the Association's responsibility to maintain or any portion thereof or Improvements thereon; any casualty loss affecting the Association or the Common Area to the extent such loss exceeds the insurance proceeds, if any, receivable by the Association as a result of such loss; any judgment against the Association (or against a Director or Directors if and to the extent such Director is, or such Directors are, entitled to be indemnified by the Association therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Association as a result of such judgment, or an agreement by the Association (or such Director or Directors to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such Director or Directors) to the extent such settlement exceeds the insurance proceeds, if any, received by the Association as a result of such settlement agreement; and legal fees and costs (including, without limitation, attorneys and paralegal fees and court costs) incurred by the Association in connection with litigation (whether incurred for the preparation, filing, prosecution or settlement thereof or otherwise), except Legal Fees incurred by the Association in connection with the collection of Assessments or other charges which the Owners are obligated to pay pursuant to the Governing Documents or the enforcement of the use and occupancy restrictions contained in the Governing Documents, and except legal fees incurred for lawsuits not approved pursuant to Section 13.12 below.

The Operating Expenses with respect to the Common Area are payable by each Owner of a Contributing Lot notwithstanding the fact that Declarant may not have as yet conveyed title to the Common Area to the Association.

## 6.2. Establishment of Liens

Each Assessment against a Contributing Lot, together with Interest thereon and costs of collection, including, but not limited to, Legal Fees, shall be the personal obligation of the Owner of such Contributing Lot. Any and all Assessments made by the Association in accordance with the provisions of the Governing Documents with Interest thereon and costs of collection, including, but not limited to, Legal Fees, are hereby declared to be a charge and continuing lien upon each Contributing Lot against which each such Assessment is made. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of the County of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, in the event an Institutional Mortgagee of record obtains title to a Home or Lot as a result of

foreclosure of its first mortgage or deed in lieu of foreclosure, such acquirer of title, its successors or assigns, shall be liable for Assessments pertaining to such Lot or chargeable to the former Owner except and to the extent limited by the HOA Act.

### 6.3. Collection of Assessments

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

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

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

6.3.3. To file an action in equity to foreclose its lien at any time after the effective date thereof as provided in Section 6.3.2 hereinabove. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.

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

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

6.3.6. To suspend the right of the Owner(s) in default to vote on any matter on which the Owners have the right to vote if such Owner is delinquent in payment of Assessments or other monetary obligation due the Association for more than ninety (90) days and until such monetary obligations are paid in full.

6.3.7. To suspend the right of the Owner(s), along with their family members, guests, invitees and tenants to use certain common and recreational areas located within the Common Area, if any, if such Owner is delinquent in payment of Assessments or any other monetary obligation due the Association for more than ninety (90) days and until such monetary obligations are paid in full.

Suspensions imposed by the Association pursuant to subsections 6.3.6 and 6.3.7 above must be approved by the Board in the manner required by the HOA Act.

#### 6.4. Collection by Declarant

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

#### 6.5. Rights of Declarant and Institutional Mortgagees to Pay Assessments and Receive Reimbursement

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

### 7. METHOD OF DETERMINING ASSESSMENTS AND ALLOCATION OF ASSESSMENTS

#### 7.1. Determining Amount of Assessments

The total anticipated Operating Expenses, and reserves, if reserve accounts have been established, for each calendar year shall be set forth in the budget ("Budget") prepared by the Board. The total anticipated Operating Expenses (other than those Operating Expenses which are properly the subject of a Special Assessment), plus the total anticipated reserves to be collected for the calendar year, shall be divided by the total number of Lots, and each Contributing Lot Owner shall be assessed the quotient as his or her proportionate share of the "Individual Lot Assessment" for each Contributing Lot owned. Notwithstanding anything to the contrary set forth in this Declaration, while the Declarant is in control of the Association, Declarant shall be excused from payment of its share of the Individual Lot Assessment, but Declarant thereby assumes the obligation to pay any Operating Expenses incurred by the Association that exceed the assessments receivable from Contributing Lot Owners and other

income of the Association during that time. Declarant shall have no obligation to fund any assessment for legal expenses incurred by the Association to begin legal proceedings against Declarant and such expense shall be deemed the subject of a Special Assessment and not the subject of a regular Individual Lot Assessment.

#### 7.2. Assessment Payments

The Individual Lot Assessments shall be due and payable in quarterly installments, in advance, on the first day of each fiscal quarter. Notwithstanding the foregoing, the Board has the right to change the method and frequency of the payments of Individual Lot Assessments. The Individual Lot Assessments, and the quarterly payments thereof, as well as all Assessments provided for herein and all installments thereof may be adjusted from time to time by the Board to reflect changes in the number and status of Contributing Lots or due to changes in the Budget or in the event that the Board determines that an Assessment or any installment thereof is either less than or more than the amount actually required.

#### 7.3. Special Assessments

“Special Assessments” include, in addition to other Assessments designated as Special Assessments in the Governing Documents and whether or not for a cost or expense which is included within the definition of “Operating Expenses,” those Assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring Improvements for, or on, the Common Area or the cost (whether in whole or in part) of reconstructing or replacing such Improvements. In addition, Special Assessments may be levied against particular Lots and/or Owners to the exclusion of others. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any Individual Lot Assessment. Any Special Assessments assessed against Lots and the Owners thereof shall be paid by such Owners in addition to any other Assessments and shall be assessed in the same manner as the Individual Lot Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, the levying of any Special Assessment after the Turnover Date shall require the affirmative assent of at least thirty percent (30%) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws; provided, however, the Board acting alone and without the consent of Members may levy Special Assessments for the following: i) in the event of a casualty loss to repair and replace Common Area which is not insurable (e.g., landscaping, fencing, *etc.*), not insured, under insured, or where insurance coverage was denied by the insurance carrier after the casualty loss; ii) to obtain funds to cover insurance deductibles in the event of a casualty loss; or iii) capital improvements necessary or desirable for the sole purpose of preservation of, or prevention of damage to, Common Area.

#### 7.4. Liability of Owners for Individual Home Assessments

Except as provided in Section 7.9 below as to Select Builder(s), by the acceptance of a deed or other instrument of conveyance of a Lot in the Property, each Owner thereof acknowledges that such Lot becomes a Contributing Lot upon such conveyance by Declarant and

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

#### 7.5. Waiver of Use

No Owner, other than Declarant, may exempt himself, herself or itself from personal liability for Assessments duly levied by the Association. No Owner may release the Owner's Lot from the liens and charges hereof either by waiver of the use and enjoyment of the Property and the facilities thereon or by abandonment of such Owner's Lot.

#### 7.6. Declarant Subsidy

Declarant has the right (at its sole election) to subsidize the Budget of the Association as provided below by making voluntary contributions in amounts determined by Declarant in Declarant's sole discretion. During the period of time that Declarant is offering Lots for sale in LOST TREE PRESERVE and/or based on the number of Lots owned by Owners other than Declarant, Declarant may seek to keep Assessments lower than they otherwise may be by subsidizing the Budget of the Association by making voluntary contributions in amounts determined by Declarant. The amount of any such voluntary contributions may vary from time to time or may be discontinued and/or recommenced by Declarant from time to time. The determination to subsidize the Budget of the Association, the amount of any such voluntary contribution, the discontinuance and/or recommencement of any such voluntary contributions shall all be made by Declarant in Declarant's sole discretion and in no event shall Declarant have any obligation whatsoever to make any such voluntary contributions. Each Owner shall be solely responsible to review the Budget of the Association then in effect to determine if and to what extent Declarant is making any voluntary contributions to subsidize the budget and thus lower the Assessments payable by the Owners that would otherwise be higher based on the Operating Expenses of the Association.

#### 7.7. Declarant's Right to Loan or Advance Funds

Declarant may (but is not obligated to) loan, advance or otherwise make payments



to the Association to assist the Association in meeting its financial obligations. Notwithstanding anything to the contrary contained in this Section, if Declarant loans, advances or otherwise makes payments to the Association, other than as a voluntary subsidy per Section 7.6 above, then any such sums shall be repaid to Declarant prior to the Turnover Date.

#### 7.8. Working Fund Contribution

Each Owner, other than a Select Builder, who purchases a Lot, whether such conveyance is the first conveyance from Declarant or a subsequent conveyance, shall pay to the Association at the time legal title is conveyed to such Owner, a "Working Fund Contribution." The Working Fund Contribution shall be an amount equal to two (2) times the monthly Individual Lot Assessment. Working Fund Contributions are not advance payments of Individual Lot Assessments and shall have no effect on future Individual Lot Assessments, nor will they be held in reserve. To ensure that the Association will have sufficient cash available to pay for start-up expenses, Operating Expenses and other expenses, Declarant may from time to time advance to the Association the Working Fund Contribution applicable to any Lot(s) prior to the time legal title to such Lot(s) is conveyed to the Owner(s) thereof. In the event Declarant advances the Working Fund Contribution applicable to any Lot, then, at the time legal title to such Lot is conveyed to the Owner thereof, the Working Fund Contribution to be paid by such Owner to the Association pursuant to this Section 7.8 shall be paid directly to Declarant in reimbursement of the advance, instead of to the Association. Working Fund Contributions (whether paid by Owner or advanced by Declarant) may also be used to offset Operating Expenses during the time Declarant is in control of the Board.

#### 7.9. Select Builder(s)

Notwithstanding any provision to the contrary set forth herein, Declarant shall have the right from time to time to identify or designate one or more "Select Builder(s)," who, upon the purchase of a Lot for construction of a Home thereon, shall be excused from payment of Assessments for the earlier of (a) two years following the purchase of said Lot from Declarant, or (b) until the sale of a Completed Home to a third party purchaser. During this period, the Select Builder shall not be deemed a Contributing Lot Owner.

### 8. ARCHITECTURAL REVIEW BOARD

#### 8.1. Members of the Architectural Review Board

The Architectural Review Board, sometimes referred to in this Declaration as the "ARB," shall be comprised of three (3) members. The initial members of the ARB shall consist of persons designated by Declarant and replacement members subsequently designated by Declarant. Each of said persons shall hold office until all Lots and Homes have been conveyed or such earlier time as Declarant may, at its sole option, elect. Thereafter, each new member of the ARB shall be appointed by the Board and shall hold office until such time as such new member has resigned, or has been removed, or such new member's successor has been appointed, as provided herein. Members of the ARB may be removed at any time without cause.

The Board shall have the sole right to appoint and remove all members of the ARB other than those designated by Declarant.

## 8.2. Review of Proposed Construction

8.2.1. No Improvements, including, by way of example and not of limitation, accessory structures, exterior lighting fixtures, brick pavers, stamped concrete, concrete flatwork, basketball goals, gym sets and play structures, buildings, fences, walls, pools, roofs, gutters or rain spouts, antennae, aerials, microwaves, reception devices, mailboxes, external enclosures or attachments (including entry screen and patio screen enclosures), or landscaping (including hedges, massed plantings and trees) shall be commenced, erected, installed, altered, modified, painted, planted, or maintained on the Property, including the Lots, nor shall any canopies, shutters, or window coverings be attached to or placed upon outside walls or roofs of any Home or building by any Owner other than Declarant, unless such Improvements have been reviewed by and received the written approval of the ARB in accordance with Section 8.2.2. herein below. Any Owner desiring to make Improvements shall submit two (2) complete sets of plans and specifications prepared by an architect, landscape architect, engineer or other person determined by the ARB to be qualified, showing the nature, dimensions, materials and location of the same, together with the security deposit, if required by the ARB, to be held and disbursed by the Association in accordance with Section 8.3 herein below. In addition to the foregoing, the ARB may establish and charge a review fee on a case by case basis, in the sole discretion of and in an amount set by the ARB. If a review fee is charged by the ARB, it shall be non-refundable in any event, whether or not the application submitted by an Owner is approved. Notwithstanding anything in this Section 8 to the contrary, if it is determined that any of the terms of Section 8 conflict with any of the terms or provisions of Section 10.9, then the terms or provisions of Section 10.9 shall supersede and control to the extent of such conflict.

8.2.2. The ARB shall approve proposed plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated will not be detrimental to the appearance of the surrounding area of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The ARB may also issue and amend from time to time rules or guidelines setting forth architectural standards, requirements and procedures for the submission of plans and specifications. If the proposed construction, alterations or additions are to a portion of the Improvements which the Association is obligated to maintain, said approval shall also be subject to approval by the Board. The ARB may condition its approval of proposed plans and specifications in such a manner as it deems appropriate and may require the submission of additional information prior to approving or disapproving such plans.

8.2.3. The ARB shall have thirty (30) days after delivery of all required materials to give written approval or rejection of any such plans and, if written approval is not given within such thirty (30) day period, such plans shall be deemed rejected, provided, however, that in any event, no such addition, construction or alteration shall be made by any Owner which is detrimental to or inconsistent with the harmony, appearance or general scheme of the Property as a whole.

8.2.4. In no event shall any Improvement (including without limitation landscaping) be permitted within the landscaped areas and grassed areas and any sidewalks and sidewalk easements on Lots.

8.2.5. Notwithstanding anything to the contrary in this Declaration, no Improvement (including, without limitation, landscaping) shall be permitted within any Lot that interferes with the flow of rainfall runoff to or through the Surface Water or Stormwater Management System.

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

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

### 8.3. Security Deposit for Improvements; Indemnification

Any Owner desiring to make Improvements may be required by the ARB, depending upon the Improvements being requested and the manner of installation of such Improvements, to provide to the ARB, at the time of the Owner's submission of plans and specifications for review and approval by the ARB, up to a Five Thousand Dollar (\$5,000.00) security deposit to cover costs of incidental damage caused to the Common Area, an adjacent Home or Lot, or any property (real or personal) by virtue of such Owner's construction of Improvements. The ARB shall have the sole and absolute discretion to determine whether a security deposit is required for the Improvements being requested. The Association shall not be obligated to place the security deposit in an interest bearing account. The Owner shall be entitled to the return of the security deposit upon: (i) such Owner's written notice to the ARB that the Improvements covered by the security deposit have been completed in accordance with the plans and specifications approved by the ARB; and (ii) the ARB's (or its duly authorized representative's) inspection of such Improvements confirming completion; provided, however, should any incidental damage be caused to the Common Area by virtue of such Owner's construction of Improvements, the security deposit shall not be returned to Owner until such damages have been repaired. In the event that Owner has not repaired such damages to the Common Area to the satisfaction of the ARB, Association shall have the right (but not the obligation), after five (5) days' notice to the offending Owner, to repair such incidental damage and to use so much of the security deposit held by the Association to reimburse itself for the costs of such work. Further, the offending Owner hereby agrees to indemnify and reimburse the Association for all reasonable costs expended by the Association that exceed the security deposit, including Legal Fees, if any, incurred in connection therewith. Should any incidental damage be caused to an adjacent Lot or Home by virtue of such Owner's construction of Improvements, the Owner of the adjacent Lot (the "Adjacent Lot Owner") shall, at such Adjacent Lot Owner's sole option: (a) remedy such damage and submit to the Association a receipt, invoice or statement

therefor for reimbursement from the offending Owner's security deposit; or (b) allow the offending Owner to repair such incidental damage to the Adjacent Lot Owner's Lot or Home, at the offending Owner's sole cost and expense, and upon receipt by the Association of written notice from the Adjacent Lot Owner that such incidental damage has been repaired, the offending Owner shall be entitled to a return of the security deposit being held by the Association, if any.

Notwithstanding anything contained in this Section to the contrary, the Association's return of the security deposit being held by it for any such Improvements shall be based solely on considerations set forth above. The Association's return of the security deposit does not and shall not be construed to constitute a determination by members and representatives of the ARB, Declarant, and/or the Association of the structural safety, approval or integrity of any Improvement, conformance with building or other codes or standards, or the proper issuance of governmental permits and approvals for any Improvement.

#### 8.4. Meetings of the ARB

The ARB shall meet from time to time as necessary to perform its duties hereunder. The ARB may from time to time, by resolution unanimously adopted in writing, designate an ARB representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARB, except the granting of variances pursuant to Section 8.9 below. In the absence of such designation, the vote of any two (2) members of the ARB shall constitute an act of the ARB.

#### 8.5. No Waiver of Future Approvals

The approval of the ARB of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant. Similarly, the denial of approval by the ARB of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to approve or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant.

#### 8.6. Compensation of Members

The members of the ARB shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

#### 8.7. Inspection of Work

Inspection of work and correction of defects therein shall proceed as follows:

8.7.1. Upon the completion of any work for which approved plans are required under this Section, the submitting party shall give written notice of completion to the ARB.

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

8.7.3. If upon the expiration of fifteen (15) days from the date of such notification the submitting party shall have failed to remedy such noncompliance, notification shall be given to the Board in writing of such failure. Upon such notice, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the submitting party shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board's ruling. If the submitting party does not comply with the Board's ruling within such period, the Board, at its option, may remove the Improvement, remedy the noncompliance, or proceed in court to compel compliance and the submitting party shall reimburse the Association, upon demand, for all expenses incurred in connection therewith, including Interest and Legal Fees. If such expenses are not promptly repaid by the submitting party to the Association, the Board shall levy an Assessment against such submitting party for reimbursement, and said Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as liens for Operating Expenses.

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

#### 8.8. Non-Liability of ARB Members

Neither the ARB nor any member thereof, nor its duly authorized ARB representative, nor Declarant, shall be liable to the Association or to any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the ARB's duties hereunder, unless due to the willful misconduct or bad faith of a member and only that member shall have any liability. The ARB's review and approval or disapproval of plans submitted to it for any proposed Improvement shall be based solely on considerations of the overall benefit or detriment to the community as a whole. The ARB shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes or standards, and no member or representative of the ARB or the Association, nor Declarant, shall be liable for the safety, soundness, workmanship, materials or usefulness for any purpose of any such Improvement or alteration proposed by the plans. By submitting a request for review and approval by the ARB, an Owner shall be deemed to have and does automatically agree to indemnify, defend and hold harmless the ARB, the Association and Declarant (and each of their respective officers, directors, partners, affiliates, members, representatives and

employees) from and against any and all claims, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, Legal Fees) arising from, relating to or in any way connected with the Improvement or alterations for which such request was submitted. Furthermore, approval by the ARB of any request does not excuse Owner from also obtaining approvals from all applicable governmental authorities.

#### 8.9. Variance

The ARB may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require; provided, however, the ARB shall not give or authorize (and the ARB is hereby prohibited from giving or authorizing) any variance with respect to the displaying of any signs for the sale or renting of the Home as prohibited in Section 10.23. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the Improvements for which the variance was granted.

#### 8.10. Declarant Exemption

Declarant is hereby exempt from having to comply with the requirements of this Section 8 in their entirety.

### 9. MAINTENANCE AND REPAIR OBLIGATIONS

The responsibility for the maintenance of the Property is divided between the Association and the Owners. Interior maintenance of structures is the responsibility of the owners of such structures. The Association may enter into agreements with others for the Association's management and/or maintenance of all or part of the property to be maintained by such entity (regardless of whether the subject property is within the Property) for purposes of carrying out all or a portion of the maintenance responsibilities of such entity, the expenses of which may be designated an Operating Expense, if the Association's Board determines such is in the interest of the Owners. Privately owned property shall be the maintenance responsibility of the Owner thereof, unless the responsibility is assumed by another by agreement approved or acknowledged by the Association. Open space owned by or dedicated to the Association shall be maintained by the Association and will not be diminished or destroyed in a manner which materially alters its use or enjoyment as open space.

#### 9.1. By the Association

9.1.1. The Association, at its expense, shall be responsible for the operation, maintenance, repair and replacement of all landscaping and grassed areas encompassed within the Common Area as well as all of the Improvements and facilities located over, through and upon the Common Area (except public utilities, to the extent same have not been made Common Area). Should any incidental damage be caused to any Home by virtue of the Association's failure to maintain the Common Area as herein required or by virtue of any work which may be

performed or caused to be performed by the Association in the maintenance, repair or replacement of any Common Area, the Association shall, at its expense, repair such incidental damage. The Association shall not, however, be responsible for any loss of use, any hardship, an Owner's time or any consequential or punitive damages.

9.1.2. The Association shall operate, maintain, repair and replace the irrigation system constructed over, through and upon the Common Area (or any portions thereof) as it shall deem appropriate. The Association shall be responsible for the costs of operation and maintenance of such irrigation system in connection with the Common Area, including any monthly fees and other costs of water and/or electric usage and the cost of repair or replacement to all or any part thereof. There is hereby reserved in favor of the Association the right to enter upon the Common Area and any and all Lots for the purpose of operating, maintaining, repairing and replacing the irrigation system over, through and upon the Common Area within the Property.

9.1.3. The Association shall be responsible for the maintenance, repair and replacement of all private streets, drives, roads and roadways, if any, located upon the Common Area and there is hereby reserved in favor of the Association the right to enter upon any and all parts of the Common Area and Lots for such purpose. To the extent permitted by the appropriate governmental authority, the Association may, but shall not be obligated to, also provide maintenance of all city, County, district or municipal properties which are located within or in a reasonable proximity of the Property to the extent that their deterioration or unkempt appearance would adversely affect the appearance of the Property, including the right to enhance the landscaping in any public right of way.

9.1.4. The Association shall be responsible for the maintenance, repair and replacement of any common lighting located in LOST TREE PRESERVE; provided, however, the Association shall not be responsible for the maintenance, repair and replacement of any lighting provided by the electric service provider.

9.1.5. Any property designated as open space, landscape buffer, undisturbed natural buffer, preserve area, or conservation or wetland area on any plat, permit, or other document recorded in the Public Records of the County shall be preserved and maintained by the owner of such property in a natural open condition. The Association or any subsequent owner shall not do anything that diminishes or destroys the open space, landscape buffer, undisturbed natural buffer, preserve area, or conservation area, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space.

9.1.6. In accordance with the provisions of this Declaration, the Association shall operate, maintain and repair the Surface Water or Stormwater Management System constructed over, through and upon the Property. Such maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance, or other surface water or stormwater management capabilities as permitted by District. Any repair or construction of the Surface Water or Stormwater Management System shall be as permitted or, if modified, as approved by the District. There is hereby reserved in favor of the Association the right to enter upon the

Common Area and the Lots for the purpose of operating, maintaining, repairing, and replacing the Surface Water or Stormwater Management System over, through and upon the Property. The Association shall be responsible for all costs associated with all cleaning, maintenance, repairs and replacement of any portion of the Surface Water or Stormwater Management System necessary to maintain the system in its original condition and use. In the event the Association fails to maintain the Surface Water or Stormwater Management System in accordance with this Declaration and/or the District Permit, as the same may be amended from time to time, then the District shall have the right to commence an action against the Association, including, without limitation, monetary penalties and injunctive relief, to compel the Association to maintain the portions of the Surface Water or Stormwater Management System for which the Association is responsible in accordance with this Declaration and/or the District Permit. The registered agent for the Association shall retain a copy of the District Permit for the Association's benefit.

9.1.7. The Association, by action of its Board, may make minor and insubstantial alterations and Improvements to the Common Area having a cost not in excess of Five Thousand Dollars (\$5,000). All other alterations and Improvements must first be approved by at least two-thirds (2/3) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. No alteration or Improvement may be made to the Common Area which materially and adversely affects the rights of the Owner of any Lot to the enjoyment of such Owner's Lot or the Common Area unless the Owner and all mortgagees holding recorded mortgages on such Lot consent thereto in writing.

9.1.8. All expenses incurred by the Association in connection with the services, operation, maintenance, repair and replacement described in Sections 9.1.1 through 9.1.7 above, inclusive, are Operating Expenses, payable by each Owner under the provisions of this Declaration concerning Assessments. Should the maintenance, repair or replacement provided for in Sections 9.1.1 through 9.1.7 of this Section 9 be caused by the negligence of or misuse by an Owner, such Owner's family, guests, servants, invitees, or tenants, such Owner shall be responsible therefor, and the Association shall have the right to levy an Assessment against such Owner's Lot and said Assessment shall constitute a lien upon the appropriate Lot and Home with the same force and effect as liens for Operating Expenses.

9.1.9. The Association has a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of LOST TREE PRESERVE.

## 9.2. By the Owners

9.2.1. The Owner of each Lot must keep and maintain the Lot and the Improvements thereon (including all landscaped and grassed areas), including all equipment and appurtenances, in good order, condition and repair, and must perform promptly all maintenance and repair work within, upon and outside of such Owner's Home which, if omitted, could adversely affect LOST TREE PRESERVE, the other Owners or the Association and its Members. The Owner of each Lot shall be responsible for any damages caused by a failure to so maintain such Lot, Improvements and Home. The Owner's responsibility for maintenance, repair and replacement shall include, but not be limited to, all of the physical structures



constructed in, upon, above or below the Lot, and physical items attached or connected to such structures that run beyond the boundary line of the Lot which exclusively service or benefit the Lot and Home. Without limiting the generality of the foregoing, the Owner of each Lot shall keep all drainage structures (such as catch basins) located on the Owner's Lot clear of grass, leaves and other debris. Additionally, the painting, caulking and maintenance of the exterior surface of the walls, doors, windows and roof of the physical structures of the Home shall be performed by the Owner, and the exterior surface of such walls, doors, windows and roof shall at all times be maintained in a good and serviceable condition with no damage or other defect therein by the Owner. The Owner of a Lot further agrees to pay for all utilities, such as telephone, cable or satellite television, telecommunication systems, home monitoring, water (including water associated with irrigation), sewer, sanitation, electric, etc., that may be separately billed or charged to each Home. The Owner of each Lot shall be responsible for insect and pest control within the Home and the Lot. Whenever the maintenance, repair and replacement of any items which an Owner is obligated to maintain, repair or replace at such Owner's own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or otherwise, reduce the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

In addition to the foregoing, the Owner of each Home shall be required to maintain appropriate climate control, keep his or her Home clean, promptly repair any leaks and take necessary measures to retard and prevent mold, fungi, mildew and mycotoxins from accumulating in the Home. Each Owner shall be required to clean and dust such Owner's Home on a regular basis and to remove visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces as soon as reasonably possible and must not block or cover any heating, ventilation or air-conditioning ducts, and to properly maintain and have serviced on a regular basis, the Home's HVAC system. Each Owner of a Home shall be responsible for damage to such Owner's Home and personal property as well as any injury to the Owner of a Home and/or occupants of the Home resulting from the Owner's failure to comply with these terms. Each Owner of a Home shall be responsible for the repair and remediation of all damages to the Home caused by mold, fungi, mildew and mycotoxins. While the foregoing are intended to minimize the potential developments of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of same. By acquiring title to a Home, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released Declarant from any and all liability resulting from same, including, without limitation, any liability for incidental or consequential damages, which may result from, without limitation, the inability to possess the Home, inconvenience, moving costs, hotel costs, storage costs, loss of time, lost wages, lost opportunities and/or personal injury and death to or suffered by the Owner, his or her family members and/or his or her guests, tenants, invitees and/or the pets of all of the aforementioned persons, as a result of mold, mildew, fungus or spores. Additionally, each Owner, by acceptance of a deed, or otherwise acquiring title to a Home, shall be deemed to have agreed that Declarant shall not be responsible, and Declarant hereby disclaims any responsibility

for any illness, personal injury, death or allergic reactions which may be experienced by the Owner, his or her family members and/or his or her guests, tenants, invitees and/or the pets of all of the aforementioned persons, as result of mold, mildew, fungus or spores. Declarant does not make any representations or warranties regarding the existence or development of molds, fungi, mildew or mycotoxins, and each Owner on behalf of themselves and their family members, guests, invitees, tenants, successors and assigns shall be deemed to and by acceptance of a deed or title to the Home or by use of the Home, waives and expressly releases any such warranty and claims for loss or damages (including, without limitation, property damage and/or personal injury) resulting from the existence and/or development of same. References in this section regarding climate control and air conditioning shall only be applicable to those portions of the Home that are air conditioned.

9.2.2. An Owner shall not plant any shrubs, trees and/or landscaping on his or her Lot (except in such Owner's private fenced-in backyard area, if applicable) without the prior written approval of the ARB. If an Owner receives such approval and plants any shrubs, trees and/or landscaping on his or her Lot, such Owner shall be responsible for maintaining such shrubs, trees and/or landscaping. Nothing shall be planted in any open space, landscape buffer and/or undisturbed natural buffer, if any, by any Owner.

Declarant may have constructed one or more drainage swales upon each Lot for the purpose of managing and containing the flow of excess surface water, if any, found upon such Lot from time to time. Each Lot Owner shall be responsible for the maintenance, operation and repair of the swales on the Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the SJRWMD. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the drainage swale shall be authorized and any damage to any drainage swale, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale returned to its former condition as soon as possible by the Owner(s) of the Lot(s) upon which the drainage swale is located.

9.2.3. The Owner of each Lot shall maintain, repair and replace as needed any fencing on their Lot, clean, maintain and repair the driveway on their Lot, and keep the sidewalk located on and/or adjacent to their Lot clean and free from any stains, trash, debris and/or impediments to pedestrian traffic.

9.2.4. In addition to the above, the Owner of each Home shall be responsible to fix leaks in and otherwise maintain and repair the roof of such Owner's Home; replace any dead or obviously dying trees on their Lot; and maintain, repair and replace any fences on their Lot, except as otherwise provided in this Declaration. The Owner of each Home shall also clean, maintain and repair the driveway located on its Lot and keep the sidewalks located on its Lot clean and free from any impediments to pedestrian traffic.

9.2.5. If a Home is damaged by fire or other casualty, its Owner shall properly and promptly restore it to at least as good a condition as it was before the casualty occurred. Any such work shall be in accordance with the original plans and specifications of the Home unless

otherwise authorized by the Board

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

9.2.7. If an Owner fails to comply with the foregoing provisions of this Section 9.2, the Association may pursue administrative or legal remedies to compel compliance. Further, if the failure to comply relates to the Owner's obligations to maintain insurance, the Association shall be entitled, although not obligated, to obtain the required coverage itself and to levy on the offending Owner an Assessment equal to the cost of premiums, and any such Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses.

9.2.8. If a failure to comply with the provisions of this Section 9.2 relates to the Owner's obligation to maintain and care for the Home, landscaping or any other area required to be maintained and cared for by the Owner, then, in addition to the exercise of all other remedies, the Association or Declarant shall have the right but not the obligation, upon fifteen (15) days written notice, to enter the Lot of the Owner for the purpose of performing the maintenance and care referred to, set forth and described in the notice and to levy on the offending Owner an Assessment equal to the cost of performing such maintenance and care. Any such Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses. The determination of whether an Owner is failing to properly maintain and care for the property for which he has the maintenance responsibility under this Declaration or any of the other Governing Documents shall be determined in the sole discretion of the Association or Declarant.

### 9.3. Damage to Buildings

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

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

Declarant shall be exempt from the provisions of this Section 9.3, provided that any such reconstruction, rebuilding or repairs made by Declarant shall be consistent, as to the exterior appearance, with the Improvements as they existed prior to the damage or other casualty.

## 10. OCCUPANCY AND USE RESTRICTIONS

All of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions, and any and all additional rules and regulations which may, from time to time, be adopted by the Association, except as provided in Section 10.38 below with respect to Declarant and Lots and Homes owned by Declarant:

10.1. Enforcement. Failure of an Owner to comply with any limitations or restrictions in this Declaration or any of the Governing Documents or with any rules and regulations promulgated by the Association shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof.

Notwithstanding the rights of the Association hereunder to enforce to the terms and provisions of the Governing Documents, the District shall also have the right to take enforcement action, including a civil action for an injunction and penalties, against the Association to compel the Association to correct any failure by the Association to operate, maintain and repair the Surface Water or Stormwater Management System in accordance with the District Permit.

In addition to all other remedies, if an Owner is delinquent for more than ninety (90) days in paying a monetary obligation due the Association, the Association may suspend, until such monetary obligation is paid, any or all of the rights of any or all of an Owner or an Owner's tenants, guests or invitees to use the Common Area and facilities (including, without limitation, cable television and other amenity (non-utility) services provided); may suspend the voting rights of an Owner if such Owner is delinquent in payment of regular annual assessments for more than ninety (90) days; and may levy reasonable fines not to exceed \$100.00 per violation against any Owner or any Owner's tenant, guest or invitee for failure of such Owner, and/or such Owner's family, guests, invitees, tenants or employees to comply with any of the Governing Documents. A fine may be levied by the Board for each day of a continuing violation, with a single notice and opportunity for hearing, of up to a maximum of \$10,000.00 in the aggregate. The following procedures must be adhered to in levying a fine:

10.1.1. Levy, Notice, and Hearing before Fining Committee. The Board may levy a fine or impose a suspension against a Member, or any member's tenant, guest, or invitee for the failure of the Lot Owner or its tenant, guest or invitee to comply with any provision of the Declaration, the Association Bylaws, or the reasonable rules of the Association, at a Board meeting, but the fine or suspension shall be subject to approval by a "Fining Committee" (as hereinafter defined). A fine or suspension may not be imposed without at least fourteen (14) days' notice to the person sought to be fined or suspended as well as to the Owner, and an opportunity for a hearing before a Fining Committee comprised of at least three (3) Members appointed by the Board, none being officers, directors, or employees of the Association, nor the spouse, parent, child, brother or sister of an officer, director, or employee of the Association ("Fining Committee"). The role of the Fining Committee is limited to determining whether to either confirm or reject the fine or suspension levied by the Board. If the Fining Committee, by majority vote, rejects the proposed fine or suspension, it may not be imposed, but the rejection shall be without prejudice. If the fine or suspension is confirmed by the Fining Committee, it is

thus imposed, and the Association shall provide written notice of such fine or suspension by mail or hand delivery to the Owner and, if applicable, to any Owner's tenant, guest or invitee.

10.1.2. Payment and Enforcement. A fine shall be paid not later than thirty (30) days after notice of the imposition of the fine. In the event that the fine is not paid in full within this time period, the Association may choose any or all of the following enforcement options, which are not exhaustive:

a. Assess any fine of \$1000 or more against the subject Lot or Lots, which fine may become a lien or be otherwise collected in the same manner as an unpaid Individual Lot Assessment or a Special Assessment;

b. File a claim of lien for the amount of the fine of \$1000 or more on the subject Lot or Lots, and enforce the claim of lien in the manner provided by law;

c. Institute appropriate judicial action at law or equity to collect the fine. To the extent permitted by law, the Owner waives any constitutional homestead protections against the enforcement of a fine, lien, or Assessment against the Owner's Lot. An Owner shall be responsible for all Legal Fees and costs incurred in connection with the collection of a fine whether or not an action at law to collect said fine is commenced. All monies received from fines shall be allocated as directed by the Board, subject to the provisions of this Declaration. Unless otherwise permitted by the HOA Act, as amended, a fine of less than One Thousand and No/100 Dollars (\$1,000.00) may not become a lien against a Lot.

10.1.3. Failure to Pay Assessments. Notwithstanding anything to the contrary set forth herein, Notice and Hearing as provided in this Section shall not be required with respect to the imposition of suspension of voting rights or fines upon any Owner because of such Owner's failure to pay Assessments or other monetary obligations or charges which are ninety (90) days delinquent.

10.1.4. Suspension of use rights to the Common Area shall not impair the right of an Owner or tenant of a Lot and/or Home to have vehicular and pedestrian ingress to and egress from such Lot and/or Home, including, but not limited to, the right to park, nor to provide access to utility services provided to the Lot and/or Home.

10.1.5. In addition to all other remedies, the Association may levy Benefited Assessments, to cover costs which the Association incurs to bring a Lot into compliance with the Governing Documents, including Legal Fees, or costs incurred as a consequence of the conduct of an Owner or occupant of a Lot, their guests or invitees.

10.1.6. For purposes of this Section 10, unless the context otherwise requires, Owner shall also include the family, invitees, guests, licensees, lessees and sublessees of any Owner, and any other permitted occupants of a Home. All the Property shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Section 10.38 hereof:

10.2. Single Family Use. The Homes shall be for single family use only. No commercial occupation or activity may be carried on in LOST TREE PRESERVE except as such occupation or activity is permitted to be carried on by Declarant under this Declaration. A

family is defined to mean any number of persons related by blood, marriage or adoption or not more than two (2) unrelated adult persons living as a single housekeeping unit.

10.3. Occupancy of Home. The Fair Housing Amendments Act of 1988 (Public Law 100-430, approved September 13, 1988) ("Fair Housing Act"), which became effective in March, 1989, and as amended effective December 31, 1995, provides that communities cannot reject families with children. Therefore, neither Declarant nor the Association shall have the authority to prohibit children.

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

10.5. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of any Lot or the Home thereon nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. Each portion of the Property will be subject to, and the Association and each Owner will conform to and observe, all laws, statutes, ordinances, rules and regulations of the United States of America, the State of Florida, the County, and any and all other governmental and public authorities and boards or officers of the same relating to such Property and any Improvements thereon or the use thereof. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover relating to any Lot or Home shall be corrected by, and at the sole expense of the Owner of any such Lot or Home.

10.6. Leases. No portion of a Home (other than an entire Home) may be rented. All leases shall provide, and if they do not so provide then the leases shall be deemed to provide, that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles, the Bylaws, applicable rules and regulations, or of any other agreement, document or instrument governing the Lots or Homes. The Owner of a leased Home shall be jointly and severally liable with such Owner's tenant for compliance with the Governing Documents and to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinate to any lien filed by the Association whether before or after such lease was entered into. Within five (5) days following execution of a lease for a Home, but in no event later than occupancy of the Home by a tenant, Owner shall: (a) notify the Association in writing with the name of the tenant and all of tenant's family members or others that will be occupying the Home, and (b) provide

the Association with a true, correct and complete copy of the lease agreement. In the event Owner fails to timely comply with the foregoing, such lease shall be null and void and of no further force or effect, and Owner shall be in violation of this Declaration.

No Owner shall lease a Home for a term of less than ninety (90) days nor shall any Owner lease a Home more often than twice during any calendar year.

In the event that an Owner is delinquent in the payment of his or her Assessments or other sums due and owing to the Association, the Home shall not be leased until such amounts are paid in full. If the Home is leased in violation of this provision, the Association may terminate the lease and evict the tenants in addition to imposing all other available remedies. In the event an Owner is in default in the payment of Assessments or other sums due and owing to the Association and the Owner's Home is leased, the Association shall have the right and authority to collect the rent to be paid by the tenant to the Owner directly from the tenant. In the event such tenant fails to remit said rent directly to the Association within ten (10) days (but no later than the day the next rental payment is due) from the day the Association notified such tenant in writing that the rents must be remitted directly to the Association, the Association shall have the right to terminate the lease and evict the tenant. All sums received from the tenant shall be applied to the Owner's account for the leased Home according to the priority established in the HOA Act until the Owner's account is current. All leases entered into by an Owner shall be deemed to automatically incorporate this provision and all the Owners hereby appoint the Association its agent for such purpose.

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

10.7. Removal of Sod and Shrubbery; Alteration of Drainage, Etc. Except for Declarant's acts and activities with regard to the development of LOST TREE PRESERVE, no Improvements (including, but not limited to, driveways, pools, and landscaping) and no sod, top soil, muck, trees or shrubbery shall be removed from LOST TREE PRESERVE without prior written consent of the ARB. No change in the condition of the soil or the level of the land of any of LOST TREE PRESERVE area shall be made which would result in any permanent change in the flow or drainage of surface water within LOST TREE PRESERVE without prior written consent of the ARB and the Board.

10.8. Addition of Landscaping; Alteration of Drainage, Etc. If an Owner installs additional landscaping to their Lot (which installation must be approved by the ARB), the Owner is responsible for the additional costs of maintaining the additional landscaping. The installation

of additional landscaping shall not result in any permanent change in the flow or drainage of surface water within LOST TREE PRESERVE without prior written consent of the ARB and the Board.

10.9. Antenna and Aerial. No outside television, radio, or other electronic towers, aeriels, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any portion of the Property or upon any improvements thereon, unless expressly approved in writing by the Association, except that this prohibition shall not apply to those satellite dishes that are one (1) meter (39.37 inches) in diameter or less, and specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association is empowered to adopt rules governing the types of antennae, restrictions relating to safety, location and maintenance of antennae. The Association may also adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to certain specified locations, not visible from the street or neighboring properties, and integrated with the Property and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation of permissible dishes or antennae. Any permissible dishes or antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. This Section 10.9 shall not apply to Declarant.

10.10. Garbage and Trash. Each Owner shall regularly pick up all garbage, trash, refuse or rubbish around his or her Lot, and no Owner or resident shall place or dump any garbage, trash, refuse or other materials on any other portions of LOST TREE PRESERVE, or any property contiguous to LOST TREE PRESERVE. Garbage, trash, refuse or rubbish that is required to be placed at the front of a Lot in order to be collected may be placed and kept at the curb after 5:00 p.m. on the day before the scheduled day of collection, but not sooner, and any trash facilities must be removed on the collection day after the pickup. All garbage, trash, refuse or rubbish must be placed in appropriate trash facilities or bags. All containers, dumpsters and other trash collection facilities shall be approved by the Association. All containers, dumpsters or garbage facilities shall be stored inside the garage or screened from view on the Lot and kept in a clean and sanitary condition. No noxious or offensive odors shall be permitted.

10.11. Radio Transmission. No ham radios or radio transmission equipment shall be operated or permitted to be operated within LOST TREE PRESERVE without the prior written consent of the Association.

10.12. Animals and Pets. No animals, livestock or poultry of any kind of size shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept subject to the rules and regulations governing their keeping adopted by the Board. In no event shall the number of pets exceed two (2) dogs, two (2) cats and (2) pet birds for any Lot. No permitted pet may be kept, bred or maintained for any commercial purpose. No permitted pet may be kept if the pet becomes a nuisance or annoyance to any neighbor, as determined by the Board. No dogs or other pets shall be permitted to have excretions on the Property, except in



locations designated by the Board. An Owner is responsible for the cost of repair or replacement of any Common Area damaged by such Owner's pet. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Association.

Notwithstanding the foregoing, under no circumstances will any dog whose breed is noted for its viciousness or ill-temper, in particular, the "Pit Bull" (as hereinafter defined), Presa Canario, or any crossbreeds of such breeds, be permitted on any portion of the Property. A "Pit Bull" is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying a majority of the physical traits of any one (1) or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds. No exotic pet or any animal of any kind which has venom or poisonous defense or capture mechanisms, or if let loose would constitute vermin, shall be allowed on any portion of the Property. Trained seeing-eye dogs will be permitted for those persons holding certificates of blindness and necessity. Other animals will be permitted if such animals serve as physical aides to handicapped persons and such animals have been trained or provided by an agency or service qualified to provide such animals. The guide or assistance animal will be kept in direct custody of the assisted person or the qualified person training the animal at all times when on the Property and the animal shall wear and be controlled by a harness or orange-colored leash and collar. Pets may not be kept, bred or maintained for any commercial purpose. Any pet must be temporarily caged, carried or kept on a leash when outside of a Home. No pet shall be kept outside a Home or on any patio, unless someone is present in the Home. No dogs will be curbed in any landscaped area or close to any walk, but only in special areas designated by the Association, if any, provided this statement shall not require the Association to designate any such area. An Owner shall immediately pick up and remove any solid animal waste deposited by his or her pet. The Owner shall compensate any person hurt or bitten by his or her pet and shall indemnify the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal within the Property. If a dog or any other animal becomes obnoxious to other Owners by barking or otherwise, the Owner thereof must cause the problem to be corrected; or, if it is not corrected, the Owner, upon written notice by the Association, will be required to permanently remove the animal from the Property. All pets must be registered, licensed and inoculated as required by law. The Association will promulgate rules and regulations from time to time designating other rules as necessary to regulate pets.

10.13. Clotheslines. Unless otherwise permitted by applicable law and only to the extent permitted therein, no clothesline or clothes drying which is visible from outside a Lot shall be undertaken or permitted on any portion of LOST TREE PRESERVE.

10.14. Temporary Buildings, Etc. No tents, trailers, shacks or other temporary buildings or structures shall be constructed or otherwise placed within LOST TREE PRESERVE except in connection with construction, development, leasing or sales activities permitted under this Declaration or with the prior written consent of the Association. No temporary structure may be used as a residence.

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

10.16. Fences. An Owner may not install any fencing (including invisible fencing) on his or her Lot without the prior written approval by the ARB. In addition, the installation of any fence placed upon any Lot is subject to easements which run with the land. In the event that any fence is approved by the ARB and is permitted to cross any such easements, such ARB's approval is still subject to Owner first receiving written approval from the grantee of such easements and all other applicable governmental authorities. In the event the grantee of any such easement which runs with the land (i.e., FPL, utility provider or the County), its successors and/or assigns, requires the removal of any fence upon the Lot, then the Owner of said Lot shall, at the Owner's sole cost and expense, immediately remove the fence. The Owner of a Lot when installing any fence upon the Lot shall comply with all valid laws, zoning ordinances, codes, rules and regulations of all applicable governmental bodies, as applicable, in addition to the ARB approval required.

10.17. Drainage or Utility Easements. No structures, trees or shrubs shall be placed on any drainage or utility easements, except by Declarant, without the prior written consent of the ARB.

10.18. Additions and Alterations. No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any improvement, addition, or alteration to the exterior of his or her Home, including, without limitation, the painting, staining, or varnishing of the exterior of the Home without the prior written consent of the ARB.

10.19. Increase in Insurance Rates. No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

10.20. Mining, Drilling, or Excavation. There shall be no mining, quarrying or drilling for minerals, oil, gas or otherwise ("Mining Activity") undertaken on the Property. Activities of Declarant or the Association in dredging, excavating or maintaining drainage or other facilities or easements shall not be deemed Mining Activities.

10.21. Upon the failure of an Owner(s) to (i) maintain the portion of the Property and any Improvement thereon which such party is responsible to maintain in accordance with the requirements of this Declaration and to the satisfaction of the Association and (ii) correct such deficiencies within fifteen (15) days of written notice by the Association, unless a longer period is authorized by the Association, the Association may enter upon such portion of the Property and make such corrections as may be necessary. The cost of such corrections shall be paid by the Owner who is required to perform such maintenance. If any Owner(s) fails to make payment within fifteen (15) days after requested to do so by the Association, then the payment requested shall be collected as an Individual Lot Assessment from such Owner and the Association shall be

entitled to lien rights upon any Lot owned by the offending party in accordance with the provisions of this Declaration.

10.22. Subdivision and Partition. No Lot on the Property shall be subdivided without the ARB's prior written consent except by Declarant.

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

10.24. Boats, Recreational Vehicles and Commercial Vehicles. No trailer, camper, or other vehicle, other than four wheel passenger automobiles and other four wheel passenger vehicles determined acceptable by the Association, shall be permitted on any portion of LOST TREE PRESERVE unless fully enclosed in the garage, except for trucks furnishing goods and services during the daylight hours, except for police and emergency service vehicles, and except as the Association may designate for such use by appropriate rules and regulations. Motorcycles and boats are permitted on the Property; however, they are restricted to being parked in the garage only. In addition, the Board shall adopt rules and regulations from time to time regulating and limiting the size, weight, type and place and manner of operation of vehicles in LOST TREE PRESERVE.

10.25. Vehicular Parking. No person, firm or corporation shall park or cause to be parked any vehicle on any portion of the Property other than in driveways or other specifically designated parking areas in the streets, drives, swales, alleys or parkways located on the Property. The foregoing, however, shall not: (i) prohibit routine deliveries by tradesmen, or the use of trucks or commercial vans in making service calls and short term visits; (ii) apply to a situation where a vehicle becomes disabled and, as a result of an emergency, is required to be parked within LOST TREE PRESERVE until it can be towed away; and (iii) apply to vehicles used in connection with construction, development or sales activities permitted under this

## Declaration.

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

10.27. No person, firm or corporation shall maintain or repair any vehicle (including, but not limited to, four wheel passenger automobiles) upon any portion of the Property except within a closed garage and totally isolated from public view; provided, however, Declarant its successors, nominees or assigns and the Association may make, or cause to be made, such repairs if necessary in regard to vehicles used in connection with construction, sales or management at LOST TREE PRESERVE. Vehicles which are missing one or more wheels, have one or more deflated tires, are not in an operating condition, or do not have current valid license plates shall not remain upon any portion of the Property, except within a wholly enclosed garage fully shielded from view, for more than two (2) consecutive days. No Owner or his or her family members, guests, invitees or lessees or their family members, guests, or invitees shall be permitted to keep any vehicle on the Property which is deemed to be a nuisance by the Association or Declarant.

10.28. Window Decor. No newspaper, aluminum foil, sheets or other temporary window treatments shall be permitted, except for periods not exceeding two (2) weeks after an Owner or a lessee first moves into a Home or when permanent window treatments are being cleaned or repaired. Window tinting is permitted provided that the type and method of tinting is first approved by the ARB.

10.29. Hurricane Shutters. No hurricane shutters may be installed without the prior written consent of the ARB, which consent may not be unreasonably withheld. If the installation of hurricane shutters is made which does not conform with the ARB's consent, then the hurricane shutters will be made to conform by the ARB at the Owner's expense or they shall be removed. Approved hurricane shutters shall not be installed or closed, as applicable, before the issuance of a hurricane watch by the National Hurricane Center encompassing the LOST TREE PRESERVE location, and shall be removed no later than ten (10) days after the cessation of a hurricane watch or warning for same ("Hurricane Shutter Time Period"), however, if the hurricane shutters are clear in color they shall be allowed to remain installed or closed, as applicable, if the Owners are absent during hurricane season

Each Owner who plans to be absent from his or her Home during the hurricane season must prepare his or her Lot prior to such Owner's departure by (a) removing all furniture, potted plants and other movable objects from his or her porch, balcony or patio, if any; (b)

designating a responsible firm or individual satisfactory to the Association to install and remove hurricane shutters in accordance with the Hurricane Standards and the Hurricane Shutter Time Period requirements; and (c) designating a responsible firm or individual satisfactory to the Association to care for the Home should the Home suffer hurricane damage. Such firm or individual shall contact the Association for clearance to install or remove hurricane shutters pursuant to this Declaration.

10.30. **Flags.** An Owner may display one portable, removable United States flag in a respectful manner, and one portable, removable official flag in a respectful manner, not larger than 4½ feet by 6 feet, that represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. An Owner may erect a freestanding flagpole no more than 20 feet high on any portion of the Owner's Lot if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The Owner may further display in a respectful manner from that flagpole, one official United States flag, not larger than 4½ feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the County and all setback and locational criteria contained in this Declaration.

10.31. **Water Supply.** No individual water supply system shall be permitted on any of the Property, provided that one or more central water supply systems are being operated in accordance with requirements of the governmental body having jurisdiction over said central system, except that wells are permitted for the irrigation of landscaping only, provided that a method of stain reduction is utilized in conjunction with the irrigation well.

10.32. **Sewage Disposal.** No individual sewage disposal system shall be permitted on the Property.

10.33. **Weapons.** The use and discharge of weapons within LOST TREE PRESERVE is prohibited. The term "weapons" includes bows and arrows, slingshots, "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

10.34. **On-Site Fuel Storage.** No on-site storage of gasoline or other fuels shall be permitted on any Lot, except that up to five (5) gallons fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment. Small propane tanks normally associated with outdoor barbecue grills are permitted above-ground. This restriction is designed to reduce environmental risks associated with fuel storage and to minimize the hazards associated with on-site fuel storage.

10.35. **Board's Rule Making Power.** The foregoing use restrictions shall not be deemed to be all inclusive nor restrict the right of the Association to adopt such reasonable rules and regulations governing the use of LOST TREE PRESERVE as the Board may determine from time to time, provided that such rules and regulations: (i) are not in conflict with the provisions hereof; (ii) apply equally to all lawful residents of LOST TREE PRESERVE without

discriminating on the basis of whether a Home is occupied by an Owner or his or her lessee; and (iii) for so long as Declarant holds any Lots or Homes within LOST TREE PRESERVE for sale in the ordinary course of its business, in which case, Declarant has the right to approve any rule or modification thereof.

10.36. Compliance with Documents. Each Owner and their family members, guests, and invitees shall be bound by and abide by the Governing Documents. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within LOST TREE PRESERVE. Such Owner shall be liable to the Association and shall pay the cost of any maintenance, repair or replacement of any real or personal property located on the Property rendered necessary by his or her act, neglect or carelessness, or by that of any other of the foregoing parties as an Individual Lot Assessment.

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

10.38. Declarant Exemption. Declarant plans to undertake the work of constructing Homes and Improvements upon the Property and may undertake the work of constructing other buildings upon adjacent land or other property being developed or marketed by Declarant or its affiliates. The completion of the aforementioned work and the sale, rental and other transfer of Homes by Declarant and Declarant's affiliates/designees are essential to the establishment and welfare of the Property as a residential community. In order that such work may be completed and a fully occupied community established as rapidly as possible, neither the Owners nor the Association shall do anything whatsoever to interfere with any of Declarant's or Declarant's affiliates/designees activities relating to the constructing of Homes and Improvements upon the Property, the constructing of other buildings upon adjacent land or any other property being developed or marketed by the Declarant or its affiliates/designees or the sale, rental and/or other transfer of Lots and Homes by Declarant or its affiliates/designees. In this respect, Declarant hereby reserves the right for itself and its employees, agents, licensees, and invitees to come upon any and all portions of the Property (including, without limitation, the Common Area as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient to enable Declarant to carry on its work and other activities including, without limitation, Declarant's development and construction of LOST TREE PRESERVE and the Homes therein.

In general, the restrictions and limitations set forth in this Section 10 shall not apply to Declarant or to Lots and Homes owned by Declarant. Further, Declarant and any Select Builder shall specifically be exempt from any restrictions contained in this Section 10 which interfere in any manner whatsoever with Declarant's/Select Builder's plans for development, construction, sale, lease, or use of the Property and to the Improvements thereon. Declarant/Select Builder shall be entitled to injunctive relief for any actual or threatened

interference with its rights under this Section 10 in addition to whatever remedies at law to which it might be entitled.

## 11. DAMAGE OR DESTRUCTION TO COMMON AREA

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

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

11.2. If insurance proceeds are insufficient to effect total restoration of the Common Area, and the cost of restoration would require a Special Assessment against each Lot in an amount of Five Thousand Dollars (\$5,000.00) or less (such amount is based on the value of the dollar in the year this Declaration is recorded and shall be increased each year thereafter based upon increases in the Consumer Price Index), then the Association shall cause the Common Area to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment proportionately against each of the Lots in accordance with the provisions of Sections 6 and 7 herein.

11.3. If the insurance proceeds are insufficient to effect total restoration of the Common Area and the cost of restoration of the Common Area would require a Special Assessment against each Lot in an amount greater than Five Thousand Dollars (\$5,000.00) (such amount is based on the value of the dollar in the year this Declaration is recorded and shall be increased each year thereafter based upon increases in the Consumer Price Index), then by the written consent or vote of a majority of the voting interests, they shall determine whether: (i) to rebuild and restore either: (a) in substantially the same manner as the Improvements existed prior to the damage or destruction; or (b) in a manner less expensive, and in the event of (a) or (b) to raise the necessary rebuilding and restoration funds by levying pro rata restoration and construction Special Assessments against all Lots; or (ii) to not rebuild and to retain available insurance proceeds. In the event it is decided that the damaged or destroyed Common Area shall not be rebuilt, the remains of any structure or structures shall be torn down and hauled away, so as not to be a safety hazard or visual nuisance, and the land shall be fully sodded and landscaped or otherwise treated in an attractive manner. Notwithstanding anything contained herein to the contrary, any decision not to rebuild or to rebuild in a manner which would result in a change in the Improvements shall not be effective without the prior written approval of Declarant (which approval shall be given, conditioned or withheld in Declarant's sole and absolute discretion) as long as Declarant owns any portion of the Property.

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

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

## 12. INSURANCE AND CONDEMNATION

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

12.1. **Casualty Insurance.** Property and casualty insurance (including as applicable, windstorm coverage) in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all Improvements and personal property which are owned by the Association and now or hereafter located upon the Common Area, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Common Area in developments similar to LOST TREE PRESERVE in construction, location and use.

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

12.3. **Directors' Coverage.** Adequate directors' and officers' liability coverage, which coverage shall be effective from and after the date the Association is created.

12.4. **Other Insurance.** The Board may obtain such other forms of insurance as the Board may determine and in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Property and any improvements now or hereafter located thereon or in the best interests of the Association and/or its officers and directors.

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

12.6. **Flood Insurance.** If determined appropriate by the Board or if required by an Institutional Mortgagee, a master or blanket policy of flood insurance covering the Common Area, if available under the National Flood Insurance Program, shall be purchased, which flood



insurance shall be in the form of a standard policy issued by a member of the National Flood Insurers Association, and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available under such program, or one hundred percent (100%) of the current replacement cost of all buildings and other insurable property located in the flood hazard area.

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

12.8. Public Liability Coverage. A comprehensive policy of public liability insurance naming the Association and, until Declarant no longer owns any Lot within the Property, Declarant as named insureds thereof insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance and use of the Common Area and any Improvements located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000.00) for damages incurred or claimed by any one person for any one occurrence; not less than Three Million Dollars (\$3,000,000.00) for damages incurred or claimed by more than one person for any one occurrence; and for not less than Fifty Thousand Dollars (\$50,000.00) property damage per occurrence with no separate limits stated for the number of claims. The Association may also obtain worker's compensation insurance and other liability insurance including, but not limited to, insurance for lawsuits related to employment contracts in which the Association is a party, as it may deem desirable.

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

### 13. GENERAL PROVISIONS

#### 13.1. Conflict With Other Governing Documents.

In the event of any conflict between the provisions hereof and the provisions of the Articles and/or Bylaws and/or rules and regulations promulgated by the Association, the provisions of this Declaration shall control.

#### 13.2. Notices

Any notice or other communication required or permitted to be given or delivered

hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) each Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; (ii) the Association, certified mail, return receipt requested, at 11300 US 1, Palm Beach Gardens, Fl 33408 Attention: Association President, or such other address as the Association shall hereinafter notify Declarant and the Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at Lost Tree Preserve, LLC, 11300 US 1, Palm Beach Gardens, Fl, 33408, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Owners.

### 13.3. Enforcement

The covenants and restrictions herein contained may be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any Lot and/or Home), the Association, any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Property in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to reimbursement of all costs thereof including, but not limited to, Legal Fees. Further, the Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System.

### 13.4. Interpretation

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

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

### 13.5. Severability

In the event any of the provisions of this Declaration shall be deemed invalid by a

court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. In the event that any court should hereafter determine that any provision of this Declaration is in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Association.

### 13.6. Certain Rights of Declarant

Notwithstanding anything to the contrary herein contained, no Improvements constructed or installed by Declarant shall be subject to the approval of the Association or the Owners or the provisions and requirements of this Declaration, although it is the intent of Declarant to create a community with a common scheme of development. Notwithstanding the other provisions of this Declaration, Declarant reserves for itself and for Select Builder(s), and Declarant and its nominees (including a Select Builder(s), if applicable), shall have the right to enter into and transact on the Property any business necessary to consummate the sale, lease or encumbrance of Lots and Homes or real property within or outside LOST TREE PRESERVE, including, but not limited to, the right to maintain models and a sales and/or leasing office, a construction office and/or a service office, utilize the amenities center as a sales and/or leasing office, place signs, employ sales, leasing, construction and service personnel, use the Property and show Homes, and Declarant further reserves the right to make repairs to the Property and to carry on construction activity for the benefit of the Property. Declarant, and its nominees and Select Builder(s), if applicable, may exercise the foregoing rights without notifying the Association. Any such models, sales and/or leasing office, construction office, service office, signs and any other items pertaining to such sales, leasing, construction or service efforts shall not be considered a part of the Property and shall remain the property of Declarant (and/or Select Builder(s), if and as applicable). In addition, Declarant hereby has, shall have and hereby reserves the right to enter upon the Property (including, without limitation, all drainage easements) to final-out and/or close-out any and all approvals, permits, orders, conditions and/or requirements that have been issued or imposed by any governmental entity in connection with the development and construction of LOST TREE PRESERVE and all Improvements therein for Declarant to comply and adhere to the same, and such rights shall survive the date of Turnover and continue for such period of time as is necessary for Declarant to fully comply with all such governmentally issued approvals, permits, orders, conditions and/or requirements. Without limiting the generality of the foregoing, in exercising any such rights, Declarant shall have the right to remove and/or relocate any and all items (including, without limitation, landscape materials, fences and/or other Improvements) that may be required to be removed and/or relocated to final-out and/or close-out any and all such approvals, permits, orders, conditions and/or requirements. This Section 13.6 may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant (and Select Builder(s), as applicable). This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Governing Documents may

be assigned in writing by Declarant in whole or in part. For the purposes of this Section 13.6, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to acquire or construct Improvements upon the Property, or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Property as a result of the foreclosure of any mortgage encumbering any portion of the Property securing any such loan to Declarant, or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Section 13.6, which are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Governing Documents.

Declarant, its successors, assigns, employees, contractors, sub-contractors, Select Builder(s) (as applicable) and potential purchasers shall have access to the LOST TREE PRESERVE property at all times and the Association shall not impede any such access. Any gate system installed shall remain open during construction and sales hours to allow Declarant, its successors, assigns, employees, contractors, sub-contractors, Select Builder(s) and potential purchasers access to the LOST TREE PRESERVE property.

Declarant shall also have the right, but not the obligation, to conduct inspections and tests from time to time of all or any portion of the Property in order to ascertain the physical condition of the Improvements and to determine if maintenance, repair or replacement of any such Improvement is necessary. If Declarant conducts any such tests or inspections, it shall pay all costs thereof, restore the affected portion of the Property to its condition immediately prior to the inspections and tests. Declarant shall have such rights of entry on, over, under, across and through the Property as may be reasonably necessary to exercise the rights described in this Section 13.6. Declarant's right of inspection shall exist whether or not the Turnover Date has occurred. In the event Declarant exercises its inspection right, it is acknowledged by the Association and all the Owners that Declarant is performing any such inspection for its own benefit and not for the benefit of the Association and/or the Owners and further, Declarant shall have no obligation to inform the Association and/or the Owners of the result of any such inspection.

Declarant may assign any of the Declarant's rights described in this Section 13.6 to a Select Builder. A Select Builder shall be entitled to exercise such rights as described in this Section as are reasonably necessary for Select Builder to conduct construction, marketing and sales activities.

ALL OWNERS, OCCUPANTS AND USERS OF LOST TREE PRESERVE ARE HEREBY PLACED ON NOTICE THAT DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES MAY BE, FROM TIME TO TIME, CONDUCTING EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO LOST TREE PRESERVE . BY THE ACCEPTANCE OF THEIR DEED OR TITLE OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF LOST TREE PRESERVE , EACH SUCH OWNER, OCCUPANT AND USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON, OR

ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO LOST TREE PRESERVE WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) DECLARANT AND THE OTHER AFORESAID RELATED PARTIES SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS WHATSOEVER ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, (iv) ANY PURCHASE OR USE OF ANY PORTION OF LOST TREE PRESERVE HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING, AND (v) THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT TO SELL, CONVEY, LEASE AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF LOST TREE PRESERVE .

#### 13.7. Disputes as to Use

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

#### 13.8. Amendment and Modification

The process of amending or modifying this Declaration shall be as follows:

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

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

13.8.3. Amendments for correction of scrivener's errors or other nonmaterial

changes may be made by Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent of the Owners.

13.8.4. Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Association or of any Institutional Mortgagee under the Governing Documents without the specific written approval of such party affected thereby. Finally, notwithstanding anything to the contrary contained herein, no amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Section 13.6 and any such amendment shall be deemed to impair and prejudice the rights of Declarant.

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

13.8.6. Notwithstanding anything contained herein to the contrary, Declarant may, without the consent of any Owners file any amendment(s) to this Declaration which may be required by an Institutional Mortgagee for the purpose of satisfying said Institutional Mortgagee's development criteria or such other criteria as may be established by such Institutional Mortgagee's secondary mortgage market purchasers, including, without limitation, the FNMA and the FHLMC; provided, however, any such filed amendment(s) must be in accordance with any applicable rules, regulations and other requirements promulgated by HUD.

13.8.7. Any proposed amendment to this Declaration which would affect the Surface Water or Stormwater Management System (including environmental conservation areas, if any, and the water management portions of the Common Area), shall be submitted to the District for a determination of whether the proposed amendment necessitates a modification of the District Permit.

### 13.9. Delegation

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

### 13.10. Term

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

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

In the event this Declaration is terminated or the Association ceases to exist for any reason, the Owners shall be jointly and severally responsible for the costs to maintain and shall maintain the Common Area in the manner described herein. This provision shall survive the termination of this Declaration and shall run with the Property in perpetuity. Any Owner may, however, petition the Circuit Court for the appointment of a Receiver to manage the affairs of the Association in the event of dissolution of the Association.

### 13.11. Rights of Mortgagees

13.11.1. Right to Notice. The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Governing Documents and the books, records and financial statements of the Association to the Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Property. In addition, evidence of insurance shall be issued to each Owner and mortgagee holding a mortgage encumbering a Lot or Home upon written request to the Association. A mortgagee shall be entitled to receive timely written notice of any proposed action that requires the consent of a specified percentage of mortgagees. To be entitled to receive notices under this Section, the mortgagee (or mortgage insurer or guarantor) must send a written request to the Association stating both its name and address and the address of the Lot on which it has (or insures or guaranties) the mortgage.

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

(a) Any condemnation, loss or casualty loss which affects any material portion of the Property;

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

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

(d) Any failure by an Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform such Owner's obligations

under the Governing Documents, including, but not limited to, any delinquency in the payment of Assessments, or any other charge owed to the Association by said Owner where such failure or delinquency has continued for a period of sixty (60) days.

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

#### 13.12. Approval of Association Lawsuits by Owners

Notwithstanding anything contained herein to the contrary, in order to prevent the Board from incurring expenses not contemplated by the Governing Documents, for which the Owners will be responsible, the Association shall be required to obtain the approval of three-fourths (3/4) of the total voting interests (at a duly called meeting of the Owners at which a quorum is present) prior to engaging persons or entities for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which the Owners are obligated to pay pursuant to the Governing Documents;
- (c) the enforcement of the use and occupancy restrictions contained in the Governing Documents;
- (d) dealing with an emergency when waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Property or to the Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths [3/4] of the Owners); or
- (e) filing a compulsory counterclaim.

#### 13.13. Compliance With Provisions

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

#### 13.14. Security



The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. NOTWITHSTANDING THE FOREGOING, NEITHER DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE, IF ANY. ALL OWNERS AGREE TO HOLD DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY AND NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT GUARANTEES OR WARRANTS, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH MONITORING SYSTEM OR SECURITY SERVICE, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES, DAMAGE, INJURY, DEATH OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY.

#### 13.15. Covenant Running With The Land

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

#### 13.16. No Public Right or Dedication

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Common Area to the public, or for any public use.

13.17. No Representations or Warranties

NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION.

13.18. Association and Declarant as Attorney-In-Fact

Each Owner, by reason of having acquired ownership of a Lot and Completed Home, whether by purchase, gift, operation of law or otherwise, and each occupant of a Home, by reason of his or her occupancy, is hereby declared to have acknowledged and agreed to his or her automatic consent to any rezoning, re-platting, covenant in lieu of unity of title, change, addition or deletion made in, on or to LOST TREE PRESERVE by Declarant (hereinafter, collectively, the "Modifications") and, in respect thereto, each Owner of a Lot and occupant of a Home hereby designates the Association to act as agent and attorney-in-fact on behalf of such Owner or occupant to consent to any such Modification. If requested by Declarant, each Owner shall evidence his or her consent to a Modification in writing (provided, however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). Further, each Owner, by reason of having acquired ownership of a Lot, hereby agrees to execute, at the request of Declarant, any document and/or consent which may be required by any government agency to allow Declarant and/or its affiliates to complete the plan of development of LOST TREE PRESERVE, as such plan may be hereafter amended, and each such Owner hereby further appoints Declarant as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of each such Owner, any and all of such documents and/or consents. This power of attorney is irrevocable and is coupled with an interest. The provisions of this Section 13 may not be amended without Declarant's prior written consent.

13.19. Declarant's Reservation of Rights.

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

Additionally, in the event Declarant changes the zoning of the Property or any

portion thereof to a use other than single-family residential and amends this Declaration or creates a sub-declaration, in order to insure representation on the Board for various groups having dissimilar interests, Declarant reserves the right to establish voting groups for election of Directors to the Board. In such event, each voting group shall be entitled to elect one (1) or more Director(s) to the Board. Each voting group may have different voting rights as determined by Declarant.

In the event Declarant establishes other uses of or for the Property as aforesaid, Declarant reserves the right to change the method pursuant to which Assessments are shared among the Lots and other portions of the Property. The expenses may be divided among each type of property use (e.g., single-family residential, multi-family residential and commercial) based upon, but not necessarily proportional to, the percentage of each type of property use, the level of services received by each type of property use and other relevant factors as determined by Declarant. Additionally, expenses which specifically relate to a specific property use will only be assessed against that type of property. The percentages for each type of property will be based upon the total acreage of the Property.

The portion of the anticipated Operating Expenses which are assessed against the single-family residential property shall be divided equally among the contributing Lots or units by dividing such portion of the Operating Expenses which are being assessed to the single-family residential property by the total number of contributing Lots or units.

The portion of the anticipated Operating Expenses which are assessed against the multi-family residential property shall be divided equally among the contributing multi-family units by dividing such portion of the Operating Expenses which are being assessed to the multi-family residential property by the total number of contributing units.

The portion of the anticipated Operating Expenses which are assessed against the commercial property shall be divided among the owners of the commercial property based upon a fractional formula, the numerator of which is the total square feet of buildings and paved areas of each commercial parcel and the denominator of which is the total square feet of all buildings and paved areas.

### 13.20. Animal, Reptile and Wildlife Hazards

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

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

- (a) Any wild animal can be dangerous. Always be cautious and observant.

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

**BY ACCEPTANCE OF A DEED TO THEIR LOT EACH OWNER ACKNOWLEDGES THAT LOST TREE PRESERVE, AND AREAS IN THE VICINITY OF LOST TREE PRESERVE, MAY CONTAIN WILDLIFE SUCH AS, BUT NOT LIMITED TO, INSECTS, VENOMOUS AND NON-VENOMOUS SNAKES AND OTHER REPTILES, ALLIGATORS, AND OTHER ANIMALS, SOME OF WHICH MAY POSE HAZARDS TO PERSONS OR PETS COMING IN CONTACT WITH THEM. THE DECLARANT AND THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER AND HIS OR HER LESSEES, GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.**

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

WITNESSES AS TO DECLARANT:

DECLARANT:

LOST TREE PRESERVE, LLC,  
a Florida limited liability company  
by Lost Tree Village Corporation, Manager



Margaret R. Duquet  
Signature  
Print Name MARGARET R. DUQUET  
[Signature]  
Signature  
Print Name STEPHEN R. MICHON

By: Charles M. Bayer, Jr.  
Printed Name: Charles M. Bayer, Jr.  
Its: President

MICHIGAN  
STATE OF FLORIDA )  
  ) SS  
COUNTY OF WAYNE )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Charles M. Bayer, Jr., as President of Lost Tree Village Corporation as Manager of LOST TREE PRESERVE, LLC, a Florida limited liability company, freely and voluntarily under authority duly vested in him by said corporation, who is personally known to me.

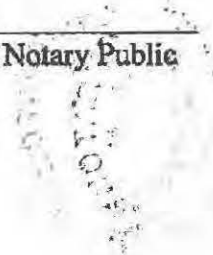
WITNESS my hand and official seal in the County and State last aforesaid this 25 day of APRIL, 2018.

Margaret R. Duquet  
Notary Public, State of ~~Florida~~ at Large MICHIGAN AT LARGE

My Commission Expires:  
Oct. 21, 2022

Typed, Printed or Stamped Name of Notary Public

MARGARET R. DUQUET  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Oct 21, 2022  
ACTING IN COUNTY OF WAYNE





**CONSENT AND JOINDER OF MORTGAGEE**

The undersigned, CenterState Bank of Florida, NA, the mortgagee under that certain Commercial Mortgage & Security Agreement dated May 10, 2017 and recorded at Official Record Book 3024, page 253, the Cross-Collateralization and Cross Default Agreement recorded in O.R. Book 3024, Page 274, and an Assignment Rents filed May 11, 2017, in O.R. Book 3024, Page 265, all in the Public Records of Indian River County, Florida, hereby consents and joins in the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Lost Tree Preserve ("Declaration"), and subordinates its mortgage lien to the Declaration.

6<sup>th</sup> IN WITNESS WHEREOF, this Consent and Joinder is executed by the undersigned this day of July, 2018.

Witnesses:

Vanessa Hughes  
Name: Vanessa Hughes

Jill Hayes  
Name: Jill Hayes

Mortgagee

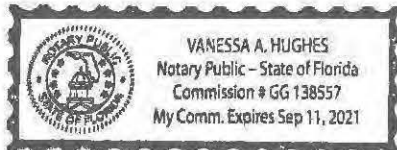
BY: Daniel E. Bockhorst

Name: DANIEL E. Bockhorst  
Title: EVP

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2018 by Vanessa Hughes who did not take an oath.

Vanessa Hughes  
Notary Public, State of Florida at Large



My Commission Expires: 9/11/2021

Serial No. \_\_\_\_\_

Personally know  OR produced identification \_\_\_\_\_ Identification produced \_\_\_\_\_

EXHIBIT "A"

Legal Description of Property

Lost Tree Preserve PD, Phase 1 as per Plat thereof recorded in Plat Book 30 Page 1, Public Records of Indian River County, Florida, LESS AND EXCEPT Tract M thereof.



EXHIBIT "B"

Articles of Incorporation of  
LOST TREE PRESERVE OWNERS ASSOCIATION, INC.

## COVER LETTER

Department of State  
Division of Corporations  
P. O. Box 6327  
Tallahassee, FL 32314

**SUBJECT:** LOST TREE PRESERVE OWNERS ASSOCIATION, INC.  
(PROPOSED CORPORATE NAME - MUST INCLUDE SUFFIX)

Enclosed is an original and one (1) copy of the Articles of Incorporation and a check for :

\$70.00  
Filing Fee

\$78.75  
Filing Fee &  
Certificate of  
Status

\$78.75  
Filing Fee  
& Certified Copy

\$87.50  
Filing Fee,  
Certified Copy  
& Certificate

**ADDITIONAL COPY REQUIRED**

**FROM:** STEVE L. HENDERSON, ESQUIRE  
Name (Printed or typed)

756 BEACHLAND BOULEVARD  
Address

VERO BEACH, FL 32963  
City, State & Zip

772-231-4343  
Daytime Telephone number

shenderson@verolaw.com  
E-mail address: (to be used for future annual report notification)

**NOTE:** Please provide the original and one copy of the articles.

- ED  
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**ARTICLES OF INCORPORATION  
OF  
LOST TREE PRESERVE OWNERS ASSOCIATION, INC.  
(A Florida Corporation Not For Profit)**

In order to form a corporation not for profit under and in accordance with the provisions of Chapters 617 and 720 of the Florida Statutes, the undersigned hereby incorporates this corporation not for profit for the purposes and with the powers hereinafter set forth and, to that end, the undersigned, by these Articles of Incorporation, certifies as follows:

**ARTICLE I  
DEFINITIONS**

The following words and phrases when used in these Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings, or if not defined below as defined in the Declaration:

1. "Articles" means these Articles of Incorporation and any amendments hereto.
2. "Assessments" means the assessments for which all Owners are obligated to the Association and includes "Individual Home Assessments" and "Special Assessments" (as such terms are defined in the Declaration) and any and all other assessments which are levied by the Association in accordance with the Governing Documents.
3. "Association" means LOST TREE PRESERVE OWNER ASSOCIATION, INC., a Florida corporation not for profit. The "Association" is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.
4. "Board" means the Board of Directors of the Association.
5. "Bylaws" means the Bylaws of the Association and any amendments thereto.
6. "Common Area" or "Common Property" means the property more particularly described in Article I of the Declaration.
7. "County" means Indian River County, Florida.
8. "Declarant" means LOST TREE PRESERVE, LLC, a Florida limited liability company, and any successor or assign thereof to which Declarant specifically assigns all or part of the rights of Declarant under the Declaration by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Property. In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant.

9. "Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements for Lost Tree Preserve, which is intended to be recorded amongst the Public Records of the County, and any amendments thereto.

10. "Director" means a member of the Board.

11. "Governing Documents" means in the aggregate the Declaration, the Articles and the Bylaws, any rules and regulations of the Association which may be promulgated, all of the instruments and documents referred to therein and executed in connection therewith, and all amendments to the foregoing.

12. "Home" shall mean a residential dwelling unit in LOST TREE PRESERVE intended as an abode for one (1) family, including single family detached residences. The term Home shall include the Lot.

13. "Lost Tree Preserve" means that planned residential development located in the County which encompasses the Property. LOST TREE PRESERVE is presently intended to comprise eighty-two (82) Homes, but subject to change in accordance with the Declaration.

14. "Lot" shall mean and refer to any parcel of land within LOST TREE PRESERVE shown on the Plat, any additional plat, or on any re-plat, if any, upon which a Home is permitted to be constructed, together with the Improvements thereon. Upon completion of construction of a Home on a Lot, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot in these Articles and the Governing Documents.

15. "Member" means the Owner of a Lot in LOST TREE PRESERVE.

16. "Owner" means the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot or Home within LOST TREE PRESERVE, and includes Declarant for as long as Declarant owns fee simple title to a Lot or Home, but excluding therefrom those having such interest as security for the performance of an obligation.

17. "Plat" means the plat of LOST TREE PRESERVE, according to the plat thereof recorded in the Public Records of Indian River County, Florida. In the event an additional plat is recorded in the Public Records of the County with respect to the Additional Property made subject to the Declaration pursuant to a Supplemental Declaration, then the term "Plat" as used herein shall also mean the additional plat. Not all of the property shown on the Plat is subject to the Declaration.

18. "Surface Water or Stormwater Management System" shall mean a system of structures and other improvements, including, without limitation, control structures, culverts and swales, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, over drainage, environmental

degradation and water pollution, or to otherwise affect the quality and quantity of discharge from the system, as permitted pursuant to Chapter 62-330, Florida Administrative Code.

19. "Property" shall mean that certain real property described on Exhibit "A" to the Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Declaration and/or the Association; provided, however, Declarant has reserved the right in the Declaration to add property and withdraw from the provisions hereof such portion or portions of the Property as Declarant from time to time elects, upon the execution by Declarant of a Supplemental Declaration.

Unless otherwise defined herein, the terms defined in the Declaration are incorporated herein by reference and shall appear in initial capital letters each time such terms appears in these Articles.

## ARTICLE II NAME

The name of this corporation shall be LOST TREE PRESERVE OWNERS ASSOCIATION, INC., a Florida corporation not for profit, whose principal address and mailing address is 11300 U.S. 1, Palm Beach Gardens, FL 33408.

## ARTICLE III PURPOSES

The purpose for which the Association is organized is to take title to, administer, operate, maintain, finance, repair, replace, manage and lease the Common Area in accordance with the terms of, and purposes set forth in, the Governing Documents and to carry out the covenants and enforce the provisions of the Governing Documents.

## ARTICLE IV POWERS

The Association shall have the following powers and shall be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a corporation not for profit.

B. The Association shall operate, maintain and manage the Surface Water or Stormwater Management System in a manner consistent with the St. Johns River Water Management District ("District") Permit No. 96932-5 requirements and applicable District rules and shall assist in the enforcement of the restrictions contained therein. The Association shall levy and collect adequate Assessments from Members of the Association for the cost of the maintenance, repair and operation of the Surface Water or Stormwater Management System. Such Assessments shall be levied for and such maintenance, repair and operation shall include but not be limited to work within retention areas, drainage structures and drainage easements.

C. The Association shall have all of the powers granted to the Association in the Governing Documents. All of the provisions of the Declaration and Bylaws which grant powers to the Association are incorporated into these Articles.

D. The Association shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to, the following:

1. To perform any act required or contemplated by it under the Governing Documents.

2. To make, establish, amend, abolish (in whole or in part) and enforce reasonable rules and regulations governing the use of the Property.

3. To make, levy and collect Assessments for the purpose of obtaining funds from its Members to pay Operating Expenses and other costs defined in the Declaration and costs of collection, and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association.

4. To enforce by legal means the obligations of the Members and the provisions of the Governing Documents.

5. To employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the maintenance, operation, administration and management of the Property and to enter into any other agreements consistent with the purposes of the Association, including, but not limited to, agreements with respect to professional management of the Property and to delegate to such professional manager certain powers and duties of the Association.

6. To enter into the Declaration and any amendments thereto and instruments referred to therein.

7. To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Association mandate to keep and maintain LOST TREE PRESERVE in a proper and aesthetically pleasing condition and to provide the Owners with services, amenities, controls and enforcement which will enhance the quality of life at LOST TREE PRESERVE.

8. To borrow money and to obtain such financing as is necessary to maintain, repair and replace the Property in accordance with the Declaration and, as security for any such loan, to collaterally assign the Association's right to collect and enforce Assessments levied for the purpose of repaying any such loan.

9. To exercise and enforce architectural control, maintenance and use restrictions in accordance with the Declaration.

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COMMUNITY DEVELOPMENT DIVISION

10. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of all Members (at a duly called meeting of the Members at which a quorum is present) prior to the engagement of legal counsel by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which Owners are obligated to pay pursuant to the Governing Documents;
- (c) the enforcement of any applicable use and occupancy restrictions contained in the Governing Documents;
- (d) dealing with an emergency when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Property or to Member(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the Members); or
- (e) filing a compulsory counterclaim.

The costs of any legal proceedings initiated by the Association, which are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by Special Assessment(s) and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations.

#### ARTICLE V MEMBERS AND VOTING

The qualification of Members of the Association, the manner of their admission to membership, the manner of the termination of such membership and the manner of voting by Members shall be as follows:

A. Until such time as the first deed of conveyance of a Home from Declarant to an Owner is recorded amongst the Public Records of the County ("First Conveyance"), the membership of the Association shall be comprised solely of Declarant. Until the First Conveyance, Declarant shall be entitled to cast the one (1) and only vote on all matters requiring a vote of the membership.

B. Upon the First Conveyance, Declarant shall be a Member as to each of the remaining Lots until each such Lot is conveyed to another Owner, and thereupon and thereafter each and every Owner, including Declarant as to Lots owned by Declarant, shall be a Member and exercise all of the rights and privileges of a Member.

C. Membership in the Association for Owners other than Declarant shall be established by the acquisition of ownership of fee simple title to a Lot as evidenced by the recording of an instrument of conveyance amongst the Public Records of the County. Where

title to a Lot is acquired by conveyance from a party other than Declarant by means of sale, gift, inheritance, devise, bequest, judicial decree or otherwise, the person, persons or entity thereby acquiring such Lot shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Association.

D. The Association shall have two (2) classes of voting membership:

1. Class "A" Members shall be all Members, with the exception of Declarant while Declarant is a Class "B" Member, each of whom shall be entitled to one (1) vote for each Lot owned.

2. Class "B" Member shall be Declarant, who shall be entitled to five (5) times the total number of votes of all Class "A" Members plus one (1) vote. Class "B" membership shall cease and be converted to Class "A" membership upon the earlier to occur of the following events ("Turnover Date"):

(a) three (3) months after the conveyance of ninety percent (90%) of the "Total Developed Lots" (as defined below) by Declarant, as evidenced by the recording of instruments of conveyance of such Homes amongst the Public Records of the County;

(b) upon the Class "B" Member abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the Governing Documents. There is a rebuttable presumption that Declarant has abandoned and deserted the Property if Declarant has unpaid Assessments or guaranteed amounts under Section 720.308 of the HOA Act for a period of more than two (2) years;

(c) upon the Class "B" Member filing a petition seeking protection under Chapter 7 of the Federal Bankruptcy Code;

(d) upon the Class "B" Member losing title to the Property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment;

(e) upon a receiver for the Class "B" Member being appointed by a circuit court and not being discharged within 30 days after such appointment, unless the court determines within 30 days after such appointment that transfer of control would be detrimental to the Association or the Members; or

(f) when, in its discretion, the Class "B" Member so determines.

On the Turnover Date, Class "A" Members, including Declarant, shall assume control of the Association and elect not less than a majority of the Board.



Notwithstanding the foregoing, Class "A" Members are entitled to elect at least one (1) member of the Board when fifty percent (50%) of the Total Developed Lots have been conveyed to Members other than Declarant, and Declarant shall be entitled to elect at least one (1) member of the Board as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Total Developed Lots.

E. The designation of different classes of membership are for purposes of establishing the number of votes applicable to certain Lots, and nothing herein shall be deemed to require voting solely by an individual class on any matter which requires the vote of Members, unless otherwise specifically set forth in the Governing Documents.

F. No Member may assign, hypothecate or transfer in any manner his/her membership in the Association except as an appurtenance to his/her Lot.

G. Any Member who conveys or loses title to a Lot by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of a Member resulting from ownership of such Lot.

H. There shall be only one (1) vote for each Lot, except for the Class "B" Member as set forth herein. If there is more than one (1) Member with respect to a Lot as a result of the fee interest in such Lot being held by more than one (1) person, such Members collectively shall be entitled to only one (1) vote. The vote of the Owners of a Lot owned by more than one (1) natural person or by a corporation or other legal entity shall be cast by the person named in a certificate signed by all of the Owners of the Lot, or, if appropriate, by properly designated officers, partners or principals of the respective legal entity ("Voting Representative"), and filed with the Secretary of the Association, and such certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not filed with the Secretary of the Association, the vote of such Lot shall not be considered for a quorum or for any other purpose.

Notwithstanding the foregoing provisions, whenever any Lot is owned by a husband and wife they may, but shall not be required to, designate a Voting Representative. In the event a certificate designating a Voting Representative is not filed by the husband and wife, the following provisions shall govern their right to vote:

1. When both are present at a meeting, each shall be regarded as the agent and proxy of the other for purposes of casting the vote for each Lot owned by them. In the event they are unable to concur in their decision upon any topic requiring a vote, they shall lose their right to vote on that topic at that meeting, but shall count as one Member for purposes of establishing a quorum.

2. When only one (1) spouse is present at a meeting, the person present may cast the Lot vote without establishing the concurrence of the other spouse, absent any prior written notice to the contrary by the other spouse. In the event of prior written notice to

the contrary to the Association by the other spouse, the vote of said Lot shall not be considered, but shall count as one Member for purposes of establishing a quorum.

3. When neither spouse is present, the person designated in a "Proxy" (as defined in the Bylaws) signed by either spouse may cast the Lot vote, when voting by Proxy is allowed, absent any prior written notice to the contrary to the Association by the other spouse or the designation of a different Proxy by the other spouse. In the event of prior written notice to the contrary to the Association or the designation of a different and contrary Proxy by the other spouse, the vote of said Lot shall not be considered, but in the case of contrary Proxies submitted by spouses when Proxy voting is allowed, the spouses shall count as one Member for purposes of establishing a quorum.

I. A quorum shall consist of persons entitled to cast at least thirty percent (30%) of the total number of votes of the Members.

## ARTICLE VI TERM

The term for which this Association is to exist shall be perpetual. In the event of dissolution of the Association (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Association shall be conveyed to a similar homeowners association or a public agency having a similar purpose, or any Member may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and its properties in the place and stead of the dissolved Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties.

In the event and upon dissolution of the Association, if the Veterans Administration ("VA") is guaranteeing or the U.S. Department of Housing and Urban Development ("HUD") is insuring the mortgage on any Lot, then unless otherwise agreed to in writing by HUD or VA, if required by such governmental agencies rules and regulations, any remaining real property 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 acceptance of such dedication is refused, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes. Such requirement shall not apply if VA is not guaranteeing and HUD is not insuring any mortgage and/or if not required by HUD or VA regulations; provided if either agency has granted project approval for LOST TREE PRESERVE, then HUD and/or VA shall be notified of such dissolution, if and as required by HUD and/or VA applicable rules and regulations.

In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water or Stormwater Management System must be transferred to and accepted by an entity which would comply with Section 62-330 F.A.C. (Florida Administrative Code), and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

ARTICLE VII  
INCORPORATOR

The name and address of the Incorporator of these Articles is: Steve L. Henderson, Esquire, Collins, Brown, Barkett, Garavaglia & Lawn, Chartered, 756 Beachland Boulevard, Vero Beach, FL 32963.

ARTICLE VIII  
OFFICERS

The affairs of the Association shall be managed by the President of the Association, assisted by the Vice President(s), Secretary and Treasurer, and, if any, by the Assistant Secretary(ies) and Assistant Treasurer(s), subject to the directions of the Board. Except for those appointed by Declarant, officers and Directors must be Members.

The Board shall elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. The President shall be elected from amongst the membership of the Board, but no other officer need be a Director. The same person may hold two (2) or more offices, the duties of which are not incompatible; provided, however, the office of President and a Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

ARTICLE IX  
FIRST OFFICERS

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	Charles M. Bayer, Jr.
Vice President	Sheila Crosby
Secretary	Margaret Shaffer
Treasurer	Stephen Melchiori

ARTICLE X  
BOARD OF DIRECTORS

A. The number of Directors on the first Board of Directors of the Association ("First Board") and the "Initial Elected Board" (as hereinafter defined) shall be three (3). The number of Directors elected by the Members subsequent to the "Declarant's Resignation Event" (as hereinafter defined) shall be not less than three (3) nor more than five (5), as the Board shall from time to time determine prior to each meeting at which Directors are to be

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elected. Except for Declarant-appointed Directors, Directors must be Members. There shall be only one (1) vote for each Director.

B. The names and addresses of the persons who are to serve as Directors on the First Board are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>
Charles M. Bayer, Jr.	11300 U.S. 1 Palm Beach Gardens, FL 33408
Sheila Crosby	11300 U.S. 1 Palm Beach Gardens, FL 33408
Margaret Shaffer	11300 U.S. 1 Palm Beach Gardens, FL 33408

Declarant reserves the right to remove, replace, and/or designate and elect successor Directors to serve on the First Board for so long as the First Board is to serve, as hereinafter provided, subject to the right of the Members to elect one Director once fifty percent (50%) of the Total Developed Lots contemplated for all phases of development of Lost Tree Preserve, have been conveyed to Contributing Lot Owners.

C. Declarant intends that LOST TREE PRESERVE, if and when ultimately developed, will contain eighty-two (82) Lots with Homes constructed thereon (collectively, "Total Developed Lots"). Notwithstanding the foregoing, however, Declarant has reserved the right in the Declaration to modify the plan of development for LOST TREE PRESERVE and the right to, among other things, modify the site plan and the right to change the recreational facilities, amenities, Home product types and the number of Homes to be constructed within LOST TREE PRESERVE and/or the right to add land to LOST TREE PRESERVE or to withdraw land from LOST TREE PRESERVE, all in its sole and absolute discretion.

D. Upon the Turnover Date, the Members other than Declarant ("Purchaser Members") shall be entitled to elect not less than a majority of the Board. The election of not less than a majority of the Board by the Purchaser Members shall occur at a special meeting of the membership to be called by the Board for such purpose ("Initial Election Meeting"). The First Board shall serve until the Initial Election Meeting.

E. The Initial Election Meeting shall be called by the Association, through the Board, within sixty (60) days after the Purchaser Members are entitled to elect a majority of Directors as provided in Paragraph D hereof. A notice of meeting shall be forwarded to all Members in accordance with the Bylaws; provided, however, that the Members shall be given at least fourteen (14) days prior notice of such meeting. The notice shall also specify the number of Directors which shall be elected by the Purchaser Members and the remaining number of Directors designated by Declarant.

F. At the Initial Election Meeting, Purchaser Members, who shall include all Members other than Declarant, the number of which may change from time to time, shall elect two (2) of the Directors, and Declarant, shall be entitled to (but not obligated to) designate one (1) Director (same constituting the "Initial Elected Board"). Declarant reserves and shall have the right, until the Declarant's Resignation Event, to name the successor, if any, to any Director it has so designated.

G. The Board shall continue to be so designated and elected, as described in Paragraph F above, at each subsequent "Annual Members' Meeting" (as defined in the Bylaws), until the Annual Members' Meeting following the Declarant's Resignation Event or until a Director elected by the Purchaser Members is removed or resigns.

H. Upon the earlier to occur of the following events ("Declarant's Resignation Event"), Declarant shall remove or cause all of its designated Directors to resign:

1. When Declarant no longer holds at least five percent (5%) of the Total Developed Lots for sale in the ordinary course of business and all Lots sold by Declarant have been conveyed as evidenced by the recording of instruments of conveyance of such Lots amongst the Public Records of the County; or

2. When Declarant removes or causes the resignation of all of the Directors designated by Declarant and, intending to trigger a Declarant Resignation Event, does not designate replacement Directors beforehand or shortly thereafter.

Upon Declarant's Resignation Event, the Directors elected by Purchaser Members shall elect a successor Director to fill the vacancy caused by the resignation or removal of Declarant's designated Director. This successor Director shall serve until the next Annual Members' Meeting and until his or her successor is elected and qualified. In the event Declarant's Resignation Event occurs prior to the Initial Election Meeting, the Initial Election Meeting shall be called in the manner set forth in Paragraph E of this Article X, and all of the Directors shall be elected by the Purchaser Members at such meeting.

I. At each Annual Members' Meeting held subsequent to Declarant's Resignation Event, all of the Directors shall be elected by the Members. At the first Annual Members' Meeting held after the Initial Election Meeting, a "staggered" term of office of the Board shall be created as follows:

1. a number equal to fifty percent (50%) of the total number of Directors rounded (upward if .5 or higher) to the nearest whole number is the number of Directors whose term of office shall be established at two (2) years and the Directors serving for a two (2) year term will be the Directors receiving the most votes at the meeting; and

2. the remaining Directors' terms of office shall be established at one (1) year.

At each Annual Members' Meeting thereafter, as many Directors of the Association shall be elected as there are Directors whose regular term of office expires at

such time, and the term of office of the Directors so elected shall be for two (2) years, expiring when their successors are duly elected and qualified.

J. The resignation of a Director who has been designated by Declarant or the resignation of an officer of the Association who has been appointed by the First Board shall be deemed to remise, release, acquit, satisfy and forever discharge such officer or Director of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Association or Purchaser Members had, now have or will have or which any personal representative, successor, heir or assign of the Association or Purchaser Members hereafter can, shall or may have against said officer or Director for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of such resignation, except for such Director's or officer's willful misconduct or gross negligence.

#### ARTICLE XI INDEMNIFICATION

Each and every Director and officer of the Association shall be indemnified by the Association against all costs, expenses and liabilities, including attorney and paralegal fees at all trial and appellate levels and post judgment proceedings, reasonably incurred by or imposed upon him/her in connection with any negotiation, proceeding, arbitration, litigation or settlement in which he/she becomes involved by reason of his/her being or having been a Director or officer of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director or officer at the time such cost, expense or liability is incurred. Notwithstanding the above, in the event of any such settlement, the indemnification provisions provided in this Article XI shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as being in the best interest of the Association, and in the event a Director or officer admits that he/she is or is adjudged guilty of willful misfeasance or malfeasance in the performance of his/her duties, the indemnification provisions of this Article XI shall not apply. The foregoing right of indemnification provided in this Article XI shall be in addition to and not exclusive of any and all rights of indemnification to which a Director or officer of the Association may be entitled under statute or common law.

#### ARTICLE XII BYLAWS

The Bylaws shall be adopted by the First Board, and thereafter may be altered, amended or rescinded in the manner provided for in the Bylaws. In the event of any conflict between the provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.

ARTICLE XIII  
AMENDMENTS

A. Prior to the First Conveyance, these Articles may be amended only by an instrument in writing signed by Declarant of these Articles and filed in the Office of the Secretary of State of the State of Florida.

B. After the First Conveyance, and prior to the Turnover Date, these Articles may be amended solely by a majority vote of the Board, without need for consent of the Members, at a duly called meeting of the Board.

C. After the Turnover Date, these Articles may be amended in the following manner:

1. (a) The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the Members, which may be at either the Annual Members' Meeting or a special meeting. Any number of proposed amendments may be submitted to the Members and voted upon by them at one (1) meeting.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member within the time and in the manner provided in the Bylaws for the giving of notice of meetings.

(c) At such meeting, a vote of the Members shall be taken on the proposed amendment(s). The proposed amendment(s) shall be adopted upon receiving the affirmative vote of a majority of the total voting interests present at such meeting.

2. An amendment may be adopted by a written statement (in lieu of a meeting) signed by all Members and all members of the Board setting forth their intention that an amendment to the Articles be adopted.

D. These Articles may not be amended without the written consent of a majority of the members of the Board.

E. Notwithstanding any provisions of this Article XIII to the contrary, these Articles shall not be amended in any manner which shall prejudice the rights of: (i) Declarant, without the prior written consent thereto by Declarant, for so long as Declarant holds either a leasehold interest in or title to at least one (1) Home or Lot; and (ii) any "Institutional Mortgagee" (as such term is defined in the Declaration) without the prior written consent of such Institutional Mortgagee.

F. Notwithstanding the foregoing provisions of this Article XIII to the contrary, no amendment to these Articles shall be adopted which shall abridge, prejudice, amend or alter the rights of Declarant without the prior written consent of Declarant, including, but not limited to, Declarant's right to designate and select members of the First Board or otherwise designate and select Directors as provided in Article X above, nor shall any other amendment

be adopted or become effective without the prior written consent of Declarant for so long as Declarant holds either a leasehold interest in or title to at least one (1) Lot.

G. Any instrument amending these Articles shall identify the particular article or articles being amended and shall provide a reasonable method to identify the amendment being made. A certified copy of each such amendment shall be attached to any certified copy of these Articles, and a copy of each amendment certified by the Secretary of State shall be recorded amongst the Public Records of the County.


ARTICLE XIV  
MERGERS AND CONSOLIDATIONS

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


ARTICLE XV  
REGISTERED OFFICE AND REGISTERED AGENT

The name and street address of the initial registered agent of the Association is Steve L. Henderson, Esquire, Collins, Brown, Barkett, Garavaglia & Lawn, Chartered, 756 Beachland Boulevard, Vero Beach, FL 32963.

IN WITNESS WHEREOF, the Incorporator has hereunto affixed his/her signature, this 19<sup>th</sup> day of January, 2017

  
Steve L. Henderson, Esquire, Incorporator

The undersigned hereby accepts the designation of Registered Agent as set forth in Article XV of these Articles of Incorporation, and acknowledges that he is familiar with and accepts the obligations imposed upon registered agents under the Florida Not For Profit Corporation Act.

By:   
Printed Name: Steve L. Henderson, Esquire  
Dated: 1/19/18

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EXHIBIT "C"

Bylaws of  
LOST TREE PRESERVE OWNERS ASSOCIATION, INC.

**BYLAWS  
OF  
LOST TREE PRESERVE OWNERS ASSOCIATION, INC.**

**Section 1. Identification of Association**

These are the Bylaws of LOST TREE PRESERVE OWNERS ASSOCIATION, INC. ("Association") as duly adopted by its Board of Directors ("Board"). The Association is a corporation not for profit, organized pursuant to Chapters 617 and 720, Florida Statutes.

1.1. The office of the Association shall be for the present at 11300 US 1, Palm Beach Gardens Fl, 33408 and thereafter may be located at any place designated by the Board.

1.2. The fiscal year of the Association shall be the calendar year.

1.3. The Association shall have a seal.

**Section 2. Explanation of Terminology**

The terms defined in the Articles of Incorporation of the Association ("Articles") as well as in the Declaration of Covenants, Conditions, Restrictions and Easements for Lost Tree Preserve ("Declaration") are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in these Bylaws.

**Section 3. Membership; Members' Meetings; Voting and Proxies**

3.1. The qualification of Members, the manner of their admission to membership in the Association, the manner of termination of such membership and the voting by Members shall be as set forth in the Articles.

3.2. The Members shall meet annually ("Annual Members' Meeting"). The Annual Members' Meeting shall be held at the office of the Association or at such other place in the County as the Board may determine and on such day and at such time as designated by the Board in the notice of such meeting commencing with the year following the year in which the Articles are filed with the Secretary of State. The purpose of the Annual Members' Meeting shall be to hear reports of the officers, elect members of the Board (when that shall be appropriate as determined by the provisions of the Articles) and transact any other business authorized to be transacted at such Annual Members' Meeting.

3.3. Special meetings (meetings other than the Annual Members' Meeting) of the Members shall be held at the office of the Association or at such other place within the County whenever called by the President or Vice President or by a majority of the Board. A special meeting must be called by such President or Vice

President upon receipt of a written request from Members constituting at least one-third (1/3) of the total voting interests, which request shall specify the nature and topic of business to be conducted.

3.4. Written notice of each Members' meeting, whether an Annual Members' Meeting or a special meeting (collectively "Meeting"), shall be given to each Member at his or her last known address as it appears in the records of the Association and shall be mailed or hand delivered to said address, or electronically transmitted to the location furnished by the Member for that purpose, not less than fourteen (14) days nor more than forty-five (45) days prior to the date of the Meeting. Proof of such mailing, delivery or electronic transmission shall be given by the affidavit of the person giving the notice. Any notice given hereunder shall state the time and place of the Meeting and the purposes for which the Meeting is called. The notices of all Annual Members' Meetings shall, in addition, specify the number of Directors of the Association to be designated by Declarant and the number of Directors to be elected by the Members, if applicable. Notwithstanding any provisions hereof to the contrary, notice of any Meeting may be waived before, during or after such Meeting by a Member or by the person entitled to vote for such Member by signing a document setting forth the waiver of such notice.

3.5. The Members may, at the discretion of the Board, act by written response in lieu of a Meeting provided written notice of the matter or matters to be agreed upon is given to the Members or duly waived in accordance with the provisions of these Bylaws. Unless some greater number is required under the Governing Documents and except as to the election of Directors, which shall be accomplished by plurality vote, the decision of a majority of the votes cast by Members as to the matter or matters to be agreed or voted upon shall be binding on the Members provided a quorum is either present at such Meeting or submits a response if action is taken by written response in lieu of a Meeting, as the case may be. The notice with respect to actions to be taken by written response in lieu of a Meeting shall set forth the time period during which the written responses must be received by the Association.

3.6. (a) A quorum of the Members shall consist of Members entitled to cast at least thirty percent (30%) of the total voting interests of the Members. A quorum of any class of Members shall consist of Class Members of such class entitled to cast at least thirty percent (30%) of the total voting interests of the class. Limited "Proxies" and general "Proxies" (as hereinafter defined in Paragraph 3.10) may be used to establish a quorum.

(b) When a quorum is present at any Meeting and a question which raises the jurisdiction of such Meeting is presented, the holders of a majority of the voting rights present in person or represented by written Proxy shall be required to decide the question. However, if the question is one upon which a vote other than the majority vote of a quorum is required by express provision of the Governing Documents or by law, then such express provision shall govern and control the required vote on the decision of such question.

3.7. At any Annual Members' Meeting when elections of Directors are to occur, written ballots are to be supplied to Members for such purposes. Members may vote for Directors in person or by Proxy. Members are not permitted to vote for Directors by absentee ballot. Furthermore, at any Annual Members' Meeting at which Directors are to be elected, the "Chairman" (as hereinafter defined in Paragraph 7.2) shall appoint an "Election Committee" consisting of three (3) Members to supervise the election, count and verify ballots, disqualify votes if such disqualification is justified under the circumstances and certify the results of the election to the Board. The Election Committee shall be able to determine questions within its jurisdiction by plurality vote of all three (3) members, but matters resulting in deadlocked votes of the Election Committee shall be referred to the entire Board for resolution.

3.8. If a quorum is not in attendance at a Meeting, the Members who are present, either in person or by Proxy, may adjourn the Meeting from time to time until a quorum is present with no further notice of such adjourned Meeting being required unless otherwise determined by the Board.

3.9. Minutes of all Meetings shall be kept in a businesslike manner and be available for inspection by the Members and Directors at all reasonable times. The Association shall retain minutes for at least seven (7) years subsequent to the date of the meeting the minutes reflect.

3.10. Voting rights of Members shall be as stated in the Articles with respect to the election of all Boards other than the First Board. Proxies may be used to vote on other agenda items at meetings at which Directors are to be elected, and may also be used to establish a quorum. "Proxy" is defined to mean an instrument containing the appointment of a person who is substituted in the place and stead of the person or authorized representative of an entity entitled to vote. Proxies shall be in writing signed by the person or authorized representative of an entity giving the same and shall be valid only for the particular Meeting designated therein and, if so stated in the Proxy, any adjournments thereof, provided, however, any proxy automatically expires ninety (90) days after the date of the meeting for which it was originally given. A Proxy must be filed with the Secretary of the Association before the appointed time of the Meeting in order to be valid. Any Proxy may be revoked prior to the time a vote is cast in accordance with such Proxy.

3.11. The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of twenty percent (20%) of the votes represented at such Meeting and entitled to be cast on such matter, if such request is made prior to the vote in question.

#### Section 4. Board; Directors' Meetings

4.1. The business and administration of the Association shall be by its Board.

4.2. The election and, if applicable, designation of Directors shall be conducted in accordance with the Articles. Except for Declarant-appointed Directors, Directors must be Members.

4.3. (a) Any person elected or designated as a Director shall have all the rights, privileges, duties and obligations of a Director of the Association.

(b) The term of a Director's service shall be as stated in the Articles and, if not so stated, shall extend until the next Annual Members' Meeting and thereafter until his/her successor is duly elected and qualified or until he/she resigns or is removed in the manner elsewhere provided.

4.4. The organizational meeting of a newly elected Board shall be held within ten (10) days of its election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. Provided the organizational meeting is held directly following the Annual Members' Meeting, no further notice of the organizational meeting shall be necessary; if not, however, notice of the organizational meeting shall be given in accordance with Section 720.303(2) of the HOA Act.

4.5. Regular meetings of the Board may be held at such times and places at the office of the Association or at such other place in the County as shall be determined from time to time by a majority of the Directors. Special meetings of the Board may be called at the discretion of the President or the Vice President. Special meetings must be called by the Secretary at the written request of at least one-third (1/3) of the Directors. Any such special meeting may be held at the office of the Association or at such other place in the County at such time and place as determined by the Directors requesting such meeting or in such other place as all of the Directors shall agree upon.

4.6. Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally, by mail, telephone or electronically transmitted if correctly directed to an electronic mail address at which the Director has consented to receive notice at least three (3) days prior to the day named for such meeting unless such notice is waived before, during or after such meeting. Any Director may waive notice of the meeting in writing before, during or after a meeting and such waiver shall be deemed equivalent to the receipt of notice by such Director.

4.7. Notice of all Board meetings shall be given to the members in accordance with the HOA Act.

4.8. A quorum of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board, except as may be otherwise specifically provided by law, by the Articles or elsewhere herein. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time

until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board.

4.9. The presiding officer at all Board meetings shall be the President. In the absence of the President, the Directors shall designate any one of their number to preside.

4.10. Directors' fees, if any, shall be determined by the Members.

4.11. Minutes of all meetings of the Board shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times.

4.12. The Board shall have the power to appoint an "Executive Committee(s)" of the Board consisting of not fewer than three (3) Directors. An Executive Committee(s) shall have and exercise such powers of the Board as may be delegated to such Executive Committee(s) by the Board.

4.13. Meetings of the Board shall be open to all Members. The Board may also hold closed meetings to the extent permitted by applicable law, including, by way of example but not by way of limitation, when the discussion at a meeting is governed by attorney-client privilege. Members shall have the right to participate in meetings with reference to all designated agenda items in accordance with the HOA Act and any rules and regulations promulgated by the Association. In the event a Member conducts himself or herself in a manner detrimental to the carrying on of the meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish said Member's expulsion. Also, any Director shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he or she is a Member or a duly authorized representative, agent or proxy holder of a Member, unless said person has been specifically invited by any of the Directors to participate in such meeting.

4.14. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof and such consent shall have the same force and effect as a unanimous vote of the Directors, provided, however, whenever assessments are to be considered, they may be considered only at a meeting of the Directors properly noticed in accordance with the HOA Act.

## Section 5. Powers and Duties of the Board

5.1. All of the powers and duties of the Association shall be exercised by the Board. Such powers and duties of the Board shall include, but not be limited to, all powers and duties set forth in the Governing Documents, as well as all of the powers and duties of a director of a corporation not for profit not inconsistent therewith.

5.2. The Association may employ a manager to perform any of the duties, powers or functions of the Association. Notwithstanding the foregoing, the Association may not delegate to the manager the power to conclusively determine whether the Association should make expenditures for capital additions or improvements chargeable against the Association funds. The members of the Board shall not be personally liable for any omission or improper exercise by the manager of any duty, power or function delegated to the manager by the Association.

## Section 6. Late Fees

An Owner who fails to timely pay any Assessment shall be charged a late charge of Twenty-Five Dollars (\$25) or five percent (5%) of the past due amount, whichever is greater, by the Association for such late Assessment. This amount is subject to change in the Board's sole discretion. In addition, any party who fails to pay any Assessment within ten (10) days of the due date shall be charged interest thereon from the date due until paid at 18% per annum. Lot Owners shall be responsible to pay all Legal Fees incurred in connection with the collection of late Assessments whether or not an action at law or in equity to collect said Assessment and foreclose the Association's lien has been commenced.

## Section 7. Officers of the Association

7.1. Executive officers of the Association shall be the President, who shall be a Director, one or more Vice Presidents, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board. The Board may, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. One person may hold any two offices simultaneously, except when the functions of such offices are incompatible, but no person shall hold the office of President and any of the following offices simultaneously: Vice President, Secretary or Assistant Secretary.

7.2. The President shall be the chief executive officer of the Association. He/She shall have all of the powers and duties which are usually vested in the office of the President of an association or a corporation not for profit, including, but not limited to, the power to appoint such committees from among the Members at such times as he/she may, in his/her discretion, determine appropriate to assist in the conduct of the affairs of the Association. If in attendance, the President ("Chairman") shall

preside at all meetings of the Board and the Members; provided, however, that the President may appoint a substitute.

7.3. In the absence or disability of the President, the Vice President shall exercise the powers and perform the duties of the President. If there is more than one (1) Vice President, the Board shall designate which Vice President is to perform which duties. The Vice President(s) shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board. In the event there shall be more than one Vice President elected by the Board, then they shall be designated as "First Vice President", "Second Vice President", etc., and shall exercise the powers and perform the duties of the presidency in such order.

7.4. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times. The Secretary shall have custody of the seal of the Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. The Secretary shall be custodian for the corporate records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the Association as may be required by the Board or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary under the supervision of the Secretary.

7.5. The Treasurer shall have custody of all of the monies of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep the assessment rolls and accounts of the Members and shall keep the books of the Association in accordance with good accounting practices and he/she shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

7.6. The compensation, if any, of the officers and other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from hiring a Director as an employee of the Association or preclude contracting with a Director or a party affiliated with a Director for the management or performance of contract services for all or any part of Lost Tree Preserve.

## Section 8. Resignations

Any Director or officer may resign his/her post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Lots owned by any Director or officer (other than appointees of Declarant) shall constitute a written resignation of such Director or officer.



## Section 9. Accounting Records; Fiscal Management

9.1. The Association shall prepare financial reports and maintain accounting records in accordance with the HOA Act. The accounting records of the Association shall be open to inspection by Members and Institutional Mortgagees or their respective authorized representatives at reasonable times and in accordance with, but subject to the limitations of, the HOA Act. Such authorization as a representative of a Member must be in writing and signed by the person giving the authorization and dated within sixty (60) days of the date of the inspection. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; (ii) an account for each Lot within Lost Tree Preserve which shall designate the name and address of the Owner thereof, the amount of Individual Lot Assessments and all other Assessments, if any, charged to the Lot, the amounts and due dates for payment of same, the amounts paid upon the account and the dates paid, and the balance due; (iii) any tax returns, financial statements and financial reports of the Association; and (iv) any other records that identify, measure, record or communicate financial information.

9.2. The Board shall adopt a Budget (as defined and provided for in the Declaration) of the anticipated Operating Expenses for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board ("Budget Meeting") called for that purpose to be held during the month of November or December of the year preceding the year to which the Budget applies. Prior to the Budget Meeting, a proposed Budget for the Operating Expenses shall be prepared by or on behalf of the Board. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member, upon request, and each Owner shall be given notice of the Individual Lot Assessment applicable to his/her Home(s). The copy of the Budget, if requested, shall be deemed furnished and the notice of the Individual Lot Assessment shall be deemed given upon its delivery or upon its being mailed to the Owner shown on the records of the Association at his/her last known address as shown on the records of the Association.

9.3. In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between calendar years on a *pro rata* basis any expenses which are prepaid in any one calendar year for Operating Expenses which cover more than such calendar year; (iv) Assessments shall be made quarterly in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Operating Expenses, required reserves, if reserve accounts have been established, and for all unpaid Operating Expenses previously incurred; and (v) items of Operating Expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received. Notwithstanding the foregoing, the Assessments for Operating Expenses and any periodic installments thereof shall be of sufficient magnitude to insure

an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the accrual basis method of accounting.

9.4. Individual Lot Assessments shall be payable as provided in the Declaration.

9.5. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Operating Expenses not budgeted or which shall exceed budgeted items, and no Board is required to engage in deficit spending. Should there exist any deficiency which results from there being greater Operating Expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of a Special Assessment or an upward adjustment to the Individual Lot Assessment.

9.6. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

9.7. On or before April 1<sup>st</sup> of each year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year in compliance with the requirements of Section 720.303(7) of the HOA act, and shall provide each member with a copy of the report or a written notice that a copy of the financial report is available upon request at no charge to the member.

#### Section 10. Rules and Regulations

The Board may adopt rules and regulations or amend, modify or rescind then existing rules and regulations for the operation of Lost Tree Preserve; provided, however, that such rules and regulations are reasonable and are not inconsistent with the terms or provisions of the Governing Documents.

#### Section 11. Parliamentary Rules

The then latest edition of Robert's Rules of Order shall govern the conduct of all meetings of the Members and the Board; provided, however, if such rules of order are in conflict with any of the Governing Documents, Robert's Rules of Order shall yield to the provisions of such instrument.

#### Section 12. Roster of Owners

Each Owner shall file with the Association a copy of the deed or other document showing his or her ownership of a Lot in Lost Tree Preserve. The Association shall maintain such information. The Association shall also maintain the electronic mailing addresses and numbers designated by Owners for receiving notices sent by electronic

transmission of those Owners consenting in writing to receive notice by electronic transmission. The electronic mailing address and numbers provided by Owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked in writing. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein.

### Section 13. Amendment of the Bylaws

13.1. These Bylaws may be amended as hereinafter set forth in this Section 13.

13.2 After the Turnover Date, any Bylaw of the Association may be amended or repealed, and any new Bylaw of the Association may be adopted by either:

(i) a majority vote of the Members at any Annual Members' Meeting or any special meeting of the Members called for that purpose or by majority action of the Members who have acted by written response in lieu of a Meeting as permitted by these Bylaws; or

(ii) by the affirmative vote of a majority of the Directors then in office at any regular meeting of the Board or at any special meeting of the Board called for that purpose or by written instrument signed by all of the Directors as is permitted by these Bylaws, provided that the Directors shall not have any authority to adopt, amend or repeal any Bylaw if such new Bylaw or such amendment or the repeal of a Bylaw would be inconsistent with any Bylaw previously adopted by the Members.

13.3. Notwithstanding any of the foregoing provisions of this Section 13 to the contrary, until the Turnover Date, all amendments or modifications to these Bylaws and adoption or repeal of Bylaws shall only be made by action of the Declarant-appointed Board as described in the Articles, which Declarant-appointed Board shall have the power to amend, modify, adopt and repeal any Bylaws without the requirement of any consent, approval or vote of the Members.

13.4. Notwithstanding the foregoing provisions of this Section 13, there shall be no amendment to these Bylaws which shall abridge, prejudice, amend or alter the rights of: (i) Declarant, without the prior written consent thereto by Declarant for so long as Declarant holds title to at least one (1) Lot; or (ii) any Institutional Mortgagee without the prior written consent of such Institutional Mortgagee.

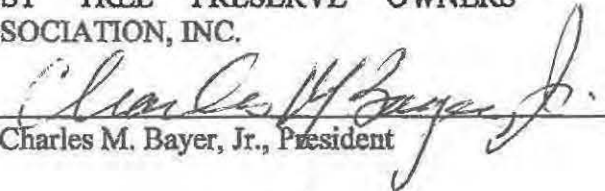
13.5. Any instrument amending, modifying, repealing or adding Bylaws shall identify the particular section or sections affected and give the exact language of such modification, amendment or addition or of the provisions repealed. A copy of each such amendment, modification, repeal or addition attested to by the Secretary or Assistant Secretary of the Association shall be recorded amongst the Public Records of the County.

Section 17. Interpretation

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the event of any conflict between the Articles and the Declaration, the Declaration shall control.

LOST TREE PRESERVE OWNERS  
ASSOCIATION, INC.

By:

  
Charles M. Bayer, Jr., President

[CORPORATE SEAL]

EXHIBIT "D"

Water Management District Permit



# St. Johns River Water Management District

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

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

June 02, 2016

Stephen R Melchiori  
Lost Tree Preserve, LLC  
2244 PGA Blvd Ste 240  
Palm Beach Gardens, FL 33410

SUBJECT: 96932-5  
Lost Tree Preserve

Dear Sir:

Enclosed is your individual permit issued by the St. Johns River Water Management District on June 02, 2016. This permit is a legal document and should be kept with your other important documents. Permit issuance does not relieve you from the responsibility of obtaining any necessary permits from any federal, state, or local agencies for your project.

#### **Technical Staff Report:**

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

#### **Noticing Your Permit:**

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

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

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

#### GOVERNING BOARD

John A. Miklos, CHAIRMAN  
ORLANDO

Fred N. Roberts Jr., VICE CHAIRMAN  
OCALA

Chuck Drake, SECRETARY  
ORLANDO

Carla Yetter, TREASURER  
FERNANDINA BEACH

Douglas C. Bourmique  
VERO BEACH

John P. Browning, Jr.  
EAST PALATKA

Douglas Burnett  
ST. AUGUSTINE

Maryam H. Ghyabi  
ORMOND BEACH

Ron Howse  
COCOA

copies of the appropriate forms, please contact the Bureau of Regulatory Support at (386) 329-4570.

**Transferring Your Permit:**

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

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

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

Sincerely,



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

Enclosures: Permit

cc: District Permit File

**Consultant:** Stephen E Moler  
Masteller & Moler, Inc.  
1655 27th St Ste 2  
Vero Beach, FL 32960-3384

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

PERMIT NO: 96932-5

DATE ISSUED: June 02, 2016

PROJECT NAME: Lost Tree Preserve

**A PERMIT AUTHORIZING:**

Construction and modification of a Stormwater Management System with stormwater treatment by wet detention for Lost Tree Preserve, a 217.3-acre project to be constructed as per plans received by the District on May 25, 2016.

**LOCATION:**

Section(s): 10, 9

Township(s): 32S

Range(s): 39E

Indian River County

**Receiving Water Body:**

Name	Class
Indian River Lagoon	II, IV

**ISSUED TO:**

Lost Tree Preserve, LLC  
2244 PGA Blvd Ste 240  
Palm Beach Gardens, FL 33410

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

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


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

**PERMIT IS CONDITIONED UPON:**

See conditions on attached "Exhibit A", dated June 02, 2016

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

By:

  
\_\_\_\_\_  
David Miracle  
Regulatory Coordinator



