

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
KISSIMMEE POINTE**

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## TABLE OF CONTENTS

ARTICLE I DEFINITIONS .....	3
ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION .....	6
ARTICLE III ARCHITECTURAL REVIEW AND CONSTRUCTION REQUIREMENTS .....	6
ARTICLE IV COMMON PROPERTY.....	15
ARTICLE V ASSOCIATION ORGANIZATION.....	17
ARTICLE VI OPERATION OF ASSOCIATION AND BOARD .....	19
ARTICLE VII ASSOCIATION BUDGET .....	20
ARTICLE VIII COVENANTS TO PAY ASSESSMENTS .....	22
ARTICLE IX INSURANCE AND INDEMNITY .....	24
ARTICLE X ENFORCEMENT .....	26
ARTICLE XI GENERAL PROVISIONS .....	28

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR KISSIMMEE POINTE**

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

This Declaration of Covenants, Conditions, Restrictions and Easements for Kissimmee Pointe (“Declaration”) is made on the date last executed below, by Breland Homes Coastal, LLC, a Florida limited liability company (“Declarant”).

WITNESSETH:

WHEREAS, Declarant is the owner of all the property described in the attached Exhibit “A”, which property is the subject of the plat of Kissimmee Pointe, recorded or to be recorded in the public records of Escambia County, Florida; and

WHEREAS, the Lots within Kissimmee Pointe will be used for single-family dwellings. The utility easements within Kissimmee Pointe will be used by the various utility providers to furnish services to the neighborhood. The common areas within Kissimmee Pointe will be transferred to a homeowners’ association, a non-profit Florida corporation formed or to be formed by Declarant, which corporation will own such areas for the benefit of the homeowners in Kissimmee Pointe.

NOW THEREFORE, Declarant hereby establishes this Declaration of Covenants, Conditions, Restrictions and Easements for Kissimmee Pointe, which will run with the land and be binding on and inure to the benefit of every Owner of property within Kissimmee Pointe.

**ARTICLE I  
DEFINITIONS**

The following definitions apply wherever the capitalized terms appear in this Declaration. Both the singular and the plural version of the defined term shall be deemed to be included. Additional terms also may be defined the first time they appear.

1.1 “Articles” means the Articles of Incorporation of the Association, filed with the Secretary of State of Florida, as amended from time to time.

1.2 “Assessments” means, collectively, the following charges:

(a) “General Assessment” means the amount charged to each Member to meet the Association’s annual budgeted expenses.

(b) “Individual Lot Assessment” means the amount charged to a Member’s individual Lot for any charges particular to that Lot.

(c) “Special Assessment” means a charge to each Member for capital improvements or emergency expenses.

1.3 “Association” means Kissimmee Pointe Homeowners’ Association, Inc., a Florida not for profit corporation, its successors and assigns, formed or to be formed or to be formed by Declarant.

1.4 “Board” means the Board of Directors of the Association.

1.5 “Bylaws” means the Bylaws of the Association.

1.6 “Common Property” means those tracts of land that are: (a) deeded to the Association and designated in the deed as Common Property or (b) labeled as a Common Area on the Plat and owned or leased by the Association for use or maintenance by the Association or its Members, regardless of whether title has been conveyed to the Association. The term “Common Property” also means any personal property appurtenant to any real property owned or leased by the Association or acquired by the Association if the personal property is designated as such in the bill of sale or other instrument conveying it. “Common Property” does not mean any area that is dedicated in the Plat to the county or municipal government or other party other than the Association or sold to the Association. “Common Property” includes without limitation Parcel ‘A’ Sign; Parcel ‘B’ Sign/Green Space; Parcel ‘C’ Mail Kiosk; Parcel ‘E’ Green Space; and Parcel ‘G’ Conservation Easement.

1.7 “Declarant” means Breland Homes Coastal, LLC, a Florida limited liability company its successors and assigns. Declarant may also be an Owner. The various rights of Declarant under this Declaration may be separated and assigned to different parties and, if so assigned, each assignee will be considered “Declarant” as to the specific rights so assigned. Declarant may collaterally assign its rights as Declarant by mortgage or other instrument, and such assignees may elect to either exercise the assigned rights or designate another party to exercise such rights if such assignees succeed to Declarant’s interest in Kissimmee Pointe or any portion thereof.

1.8 “Declaration” means this Declaration of Covenants, Conditions, Restrictions, and Easements for Kissimmee Pointe and all supplements and amendments to this Declaration.

1.9 “Governmental Authorities” means the Board of County Commissioners of Escambia County, Florida and its agencies and departments, the State of Florida Department of Environmental Protection, the Northwest Florida Water Management District or any other governmental entity involved in the planning, permitting and development approval process of Kissimmee Pointe.

1.10 “Lot” means any numbered lot shown on the Plat along with any improvements constructed on the Lot.

1.11 “Member” means a member of the Association. Each Owner is also a Member. There are two classes of Members as further defined below.

1.12 “Mortgagee” means any institutional lender that holds a bona fide mortgage encumbering a Lot. The term “institutional lender” specifically includes, but is not limited to, a bank, credit union, savings and loan association, mortgage lending company, insurance company, securitized trust, and the Federal National Mortgage Association, Federal Home Loan Mortgage

Corporation, Government National Mortgage Association, Federal Housing Administration, Department of Housing and Urban Development, Department of Veterans Affairs or similar federal, state, or local agency.

1.13 "Owner" means the record owner, whether that be one or more persons or entities, of fee simple title to any Lot, or a life estate in any Lot. "Owner" does not mean a Mortgagee.

1.14 "Plat" means the plat of Kissimmee Pointe and the plats of any additional land annexed to and made part of Kissimmee Pointe from time to time.

1.15 "Principal Builder" means Breland Homes Coastal, LLC, a Florida limited liability company, its successors and assigns.

1.16 "Public Records" means and refers to the Official Records of Escambia County, Florida.

1.17 "Rules and Regulations" means rules and regulations established by the Association pursuant to the Bylaws.

1.18 "Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity or quality of discharges from the system, as permitted pursuant to Chapter 62-330, F.A.C. Pursuant to the Plat, the Stormwater Management System includes, but shall not be limited to: Parcel 'D' Wet Stormwater Facility; Parcel "F" Drainage R/W; the 15' Public Drainage Easement on the northeast corner of Lot 2 and through Windsor Drive; the Public Drainage & Access Easement along the southeast corner of Lot 11, the southern and eastern boundary of Lot 12 and eastern boundary of Lot 6; and the 7.5' Public Drainage & Access Easements along the southern boundary of Lots 1 through 6, the northern boundary of Lots 7 through 12, Lot 32, and Parcel "C" Mail Kiosk; the southern boundary of Lots 33 through 38; and along the common Lot lines of Lots 14 and 15.

1.19 "Subdivision" refers to Kissimmee Pointe, the Plat of which is recorded in the Public Records, and to any land later annexed as additional phases and made subject to this Declaration, from time to time.

1.20 "Turnover" refers to the point in time in which the control of the Association is transferred to the Class A Members, being three (3) months after all phases of community have been completed and made subject to this Declaration, and ninety percent (90%) of the Lots within all phases of community have been conveyed to Members other than the Class B Member. The phrase "parcels in all phases of the community" means any additional phases developed or to be developed by Declarant in the future upon adjoining properties or properties adjoining such adjoining properties.

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

This Article describes the real property of which the Subdivision will initially be comprised and provides the method by which additional property may be added.

2.1 Initial Property. The property initially subject to this Declaration consists of the Subdivision.

2.2 Annexation of Additional Property.

(a) Authority. Additional property may be annexed by the Declarant or the Association. The Association may only annex additional property after termination of the Class B membership. Unless waived by recorded instrument, Declarant will have the right, but not the obligation, from time to time in its sole discretion, to annex any property to the Subdivision, if such property is adjacent to or abuts any property shown on the Plat. In determining whether the property to be annexed is adjacent to or abuts the property shown on the Plat, Declarant may disregard any roads that are situated between the Subdivision and the property to be annexed.

(b) Procedure. The party effecting the annexation shall record a supplemental declaration in the Public Records. The supplemental declaration shall be executed by either Declarant, its assigns, or the president of the Association. The supplemental declaration shall contain the legal description of the property being annexed. The supplemental declaration may contain special provisions applicable to the property being annexed. These special provisions may limit the applicability of specific covenants, restrictions, and easements contained in this Declaration to the annexed property or may impose additional or different covenants, conditions, or restrictions to reflect the different character of the property being annexed. The party making the supplemental declaration will have sole discretion to determine the special provisions to be contained in the supplemental declaration; however, no special provisions may be included that exempt the owners of the property being annexed from equitably sharing in any common expense of the Subdivision. Upon recording the supplemental declaration, the annexed property will become part of the Subdivision.

## **ARTICLE III ARCHITECTURAL REVIEW AND CONSTRUCTION REQUIREMENTS**

To ensure that the homes and accessory buildings within the neighborhood are harmonious, Declarant will create an Architectural Review Committee to approve all construction. Although certain requirements are specified herein, the Architectural Review Committee will not be limited to the specific requirements but rather will have broad discretion.

3.1 Architectural Review Committee.

(a) Composition. The Architectural Review Committee will consist of a single person or a committee of persons selected by Declarant. Declarant may temporarily delegate this right to appoint members or may assign this right by written instrument recorded in the Public Records. Members of the Architectural Review Committee will serve at the pleasure of the entity entitled to select the members and may be replaced at any time. If Declarant (or assignee) fails to

appoint at least one person to the Architectural Review Committee and such vacancy continues for thirty (30) days after the Association gives written notice to Declarant (or assignee) of such vacancy, the Association will have the right to appoint the members of the Architectural Review Committee until such time as Declarant (or assignee) exercises its right of appointment. At such time as Declarant (and/or its affiliates) owns no Lots within the Subdivision or any property that it plans to annex as additional phases, the Association shall have the exclusive right and obligation to select the members of the Architectural Review Committee.

(b) **Professional Advisor.** The Architectural Review Committee may employ one or more architects or land planners to advise the Architectural Review Committee. Each advisor may sit on the Architectural Review Committee as either a voting or nonvoting member, at the discretion of the other members of the Architectural Review Committee. At the discretion of the Architectural Review Committee, the advisor may be paid a reasonable fee derived from application fees or payable by the Association from the General Assessment.

### 3.2 Architectural Review Procedure.

(a) **Construction Subject to Review.** All construction, improvements, remodeling, or modification on or to a Lot, except interior alterations not affecting the external appearance of the Lot or improvements on a Lot, must be approved in advance by the Architectural Review Committee. This specifically includes, but is not limited to, painting or other alteration of a building (including doors, windows, and trim); replacement of roof or other parts of a building other than with duplicates of the original material; installation of antennas, satellite dishes or receivers, solar panels, or other devices; construction of fountains, swimming pools, whirlpools, or other pools; construction of privacy walls or other fences or gates; addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation; addition of window coverings; installation of a well; and initial landscaping and any material alteration of landscaping. This right is general and is not limited to the specific items listed in this Section or Section 3.4. Construction effected by or on behalf of Declarant will not be subject to approval by the Architectural Review Committee nor any of the provisions of this Section 3.2. Meetings of the Architectural Review Committee will be held in accordance with Section 720.303, Florida Statutes, as amended from time to time.

(b) **Application.** The plans to be submitted for approval shall include two (2) copies of: (i) the construction plans and specifications, including all proposed clearing and landscaping; (ii) elevations of all proposed improvements; (iii) a survey of the Lot showing current improvements; and (iv) such other items as the Architectural Review Committee requires. No construction on any Lot shall be commenced and no Lot shall be modified except in accordance with the submitted plans. Any modification to the approved plans must also be reviewed and approved by the Architectural Review Committee.

(c) **Basis for Decision.** The Architectural Review Committee, in making its decisions, may consider purely aesthetic matters that in the sole opinion of the Architectural Review Committee will affect the desirability or suitability of the construction. The Architectural Review Committee will not be limited to the specific restrictions and requirements of this Article in making its decision.

(d) **Application Fee; Deposit.** The Architectural Review Committee may establish procedures for the review of applications and impose a reasonable fee to be paid by the applicant. The Architectural Review Committee also may require an applicant to post a security deposit to ensure that all work is affected only in accordance with approved plans. The Architectural Review Committee may retain the security deposit until all work has been completed in accordance with the approved plans.

(e) **Notification of Approval.** The Architectural Review Committee must notify an applicant in writing of its decision within thirty (30) days of receiving a completed application. If approval or disapproval is not given within thirty (30) days after submission of a completed application, the application will be deemed approved unless the applicant agrees to an extension, provided, however, that a request by the Architectural Review Committee for additional information shall halt the running of the thirty (30) day period.

(f) **Enforcement.** The Architectural Review Committee shall have the right to inspect the Owner's Lot and improvements during construction and prior to occupancy. If any construction or modification is undertaken that has not been approved or that deviates in any material manner from the approved plans, Declarant or the party delegated or assigned Declarant's right to appoint the Architectural Review Committee or the Association, may bring an action for specific performance, declaratory decree, or injunction, and will be entitled to recover all costs incurred in enforcing these provisions, including all pre-suit and post-suit attorney fees. Any such enforcement action also shall determine entitlement to any retained security deposit. At such time as Declarant (and/or its affiliates) owns no Lots within the Subdivision, the Association and each Owner will have the right to enforce these provisions. The failure to strictly enforce these provisions as to a particular violation or violations will not be deemed a waiver to enforce these provisions as to future or continuing violations.

3.3 **Liability.** The Architectural Review Committee and Declarant will not be liable to the applicant or to any other party to ensure that the proposed plans comply with any applicable building codes, for inadequacy or deficiency in the plans resulting in defects in the improvements, or to ensure the construction was done in accordance with the plans. In the event any action, proceeding or claim is made or brought against the Architectural Review Committee, the Association shall indemnify, hold harmless and defend the members of the Architectural Review Committee against such action, proceeding or claim.

3.4 **Specific Restrictions.** The following restrictions shall apply to the Lots; however, the Architectural Review Committee will not be limited to these items when reviewing plans and will have broad discretion in the interpretation of these restrictions. The Architectural Review Committee may, from time to time, establish additional written guidelines for the Subdivision.

(a) **Residential Building.** No building or structure may be erected, placed or permitted to remain on any Lot other than one single-family dwelling, a swimming pool, and a detached structure. All dwellings must be new in construction. No detached structure may be constructed prior to the completion of the construction of the primary structure. No business or commercial building may be constructed on any Lot.



(b) **Building Restriction Lines.** All dwellings shall be constructed to front on the street on which the Lot fronts unless any Lot in question fronts on two streets in which case the dwelling constructed on such Lots shall be situated as approved by the Architectural Review Committee. No dwelling shall be located nearer to the streets or adjacent Lots than the applicable building setback requirements and sight triangles as shown on the Plat. Waiver of the fixed setback requirements is hereby granted for unintentional violations that do not exceed ten percent (10%) of the setback distance in question. In the event of any controversy between setbacks as shown on the Plat or as stated in other covenants, the Plat shall have dominance over these covenants. All setbacks and variances shall be in accordance with the rules and regulations as set forth by Escambia County, Florida.

(c) **Minimum Floor Space; Roof Pitch; Base Height.** Each dwelling located must contain at least 1,400 square feet of living space and may not exceed two and one-half (2 1/2) stories in height. "Living space" means only enclosed livable floor area (that is enclosed for heating and/or air conditioning) and does not include garages, porches (open or with screened enclosures), terraces or patios. A minimum roof pitch of 6/12 (6" rise per foot of run) shall be required on one-story homes (excluding porches, patios, and breezeways) and minimum roof pitch of 6/12 (6" rise per foot of run) shall be required on two-story houses (excluding porches, patios, and breezeways) unless otherwise approved by the Architectural Review Committee.

(d) All dwellings shall be constructed of approved materials including stucco, brick, hardy board, dimensional shingles, vinyl windows, vinyl fascia, vinyl soffit, vinyl porch ceilings, vinyl chimneys, and fiberglass doors, or such other materials as may be approved by the Architectural Review Committee. Roofs shall be of architectural shingles. In no event shall any used building be moved onto any Lot.

(e) **Driveways.** All Lots must have a paved driveway of stable and permanent construction extending from the adjacent street to the dwelling. All driveways must be concrete or other material approved by the Architectural Review Committee.

(f) **Pools, Play Facilities, and Lighting.** All recreation facilities constructed or erected on a Lot including, without limitation, swimming pools and any other play or recreation structures, platforms, playhouses, dog houses, or other structures of a similar kind or nature, but not basketball backboards, must be adequately walled, fenced, or landscaped in the manner specifically approved by the Architectural Review Committee before such facility is constructed or erected. Basketball goals not attached to a house are allowed so long as they are kept in good condition.

(g) **Garage.** Unless otherwise specifically approved by the Architectural Review Committee, no building may be constructed separate and apart from the dwelling and each dwelling must have an enclosed garage to accommodate at least two (2) and not more than three (3) cars. No carports will be permitted. Garage doors may be front or side entry. Without prior written approval of the Architectural Review Committee, no garage may be enclosed permanently or converted to another use without the substitution of another garage on the Lot meeting the requirements of this Declaration and the approval of the Architectural Review Committee.

(h) **Non-Interference with Easements.** No structure, planting, or other material may be placed or permitted to remain on a Lot if it may damage or interfere with the installation and maintenance of any entryway, hedge, planting, tree, grass, fence or other improvement or landscaping located within the Common Property. Any easement area located on a Lot and all improvements on an easement area shall be maintained by the Owner of the Lot whereon the easement area lies, except for those easement areas the maintenance of which is the responsibility of a public authority, utility, or the Association. In any event, an Owner may not interfere with the maintenance of an easement area on the Owner's Lot by the party responsible for maintaining the same. This provision may be enforced by any person or party benefiting from the easement or responsible for the maintenance of the easement.

(i) **Utility Connections.** Connections for all utilities including, but not limited to, water, sewage, electricity, telephone, and television must be run underground from the connecting point therefrom to the dwelling in such a manner as is acceptable to the respective utility authority or company. Wells may be installed only for irrigation purposes.

(j) **Air Conditioning Units.** No window or through the wall air conditioning unit or heater will be permitted on any Lot.

(k) **Mailboxes.** Mailboxes shall be uniform in style, or as approved by the Architectural Review Committee. In that a centralized mailbox area is part of the Common Property, no mailboxes, paper boxes, or other receptacles of any kind for use in the delivery of mail, newspapers, magazines, or similar material shall be erected or permitted upon any Lot.

(l) **Antennae, Aerials, and Satellite Dishes.** No antennae or aerial may be placed on any Lot or affixed to the exterior of any building, and no antennae or aerial placed or affixed within a building may extend or protrude beyond the exterior of such building or in any way be visible from outside the building. Under no circumstances shall any satellite dish exceed 36 inches in diameter. Satellite dishes may only be affixed to the rear of a home and must not be visible from the street in front of the building.

(m) **Clothes Drying Area.** No clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling shall be constructed or maintained on a Lot if viewable from other Lots, Common Property or adjacent roads unless construction of such clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling is approved by the Architectural Review Committee. Such approval shall not be unreasonably withheld pursuant to Fla. Stat. 163.04.

(n) **Signs.** No sign of any kind shall be displayed to general view on any Lot (whether freestanding, attached to a building, or displayed in a window) except under any of the following circumstances:

i. Directional or traffic signs and entrance or other identification signs may be installed by or with the consent of the appropriate governmental authority, by Declarant, or by the Board;

ii. Declarant and Principal Builder may display signs for the sale of Lots, homes and promotion of the Subdivision;

iii. One "For Sale" sign not more than two square feet (as measured on each side of the sign) may be displayed on a Lot by the Owner or the agent for such Owner; and

iv. A small sign indicating a security company may be displayed near the front door. A sign no larger than six (6) square feet in size, advertising a company may be displayed, but only during the period that the company is working on the property on which the sign is displayed.

v. No other signs may be displayed either inside or outside the building of any Lot except for special occasions such as garage sales or parties and then for a period not to exceed twenty-four (24) hours. Notwithstanding the foregoing or anything in this Declaration to the contrary, the Architectural Review Committee will, subject to the requirements of law, have absolute authority for approval of any signs.

(o) Fences and Sight Triangles and Drainage Easements. All fences, hedges, walls or the like constructed upon any Lot shall comply with all applicable regulations of the relevant Governmental Authorities and be approved by the Architectural Review Committee. No wall, fence, planter, hedge or other screening material shall be erected or maintained within the Sight Triangles as designated on the Plat. No wall, fence, planter, hedge or other screening material in excess of two and one-half feet (2 1/2') high shall be erected or maintained nearer to the front Lot line than the front building setback line, nor on the corner Lots nearer to the side Lot line than the building setback line parallel to the side street. No rear or side fence, wall, hedge or other screening material shall be more than six (6') feet high. All fences shall be constructed of pressure-treated wood. The rear Lot line shall be defined as being approximately parallel to the rear corners of the home and perpendicular to the boundary of the side Lot lines. No fences or structures shall be located within the ten-foot (10') wide private drainage easements along each side lot line, that may prohibit or materially restrict the flow of stormwater. All public drainage easements shall remain free of obstructions including but not limited to fences, landscaping, structures, and retaining walls. The drainage easements shall be accessible at all times.

(p) Temporary Structures. No structure of a temporary nature, whether a trailer, tent, shack, garage, barn, or any other such building, is permitted on a Lot, nor shall any building that is unfinished on the exterior be occupied. This restriction does not apply to any temporary structure maintained for Lot sale and related purposes as provided in Paragraph (q) of this Section.

(q) Completion of Construction and Repairs. Other than original new home construction, all construction of improvements of a Lot and the construction, repair, or remodeling of any improvement must be completed within twelve (12) months after commencement. All waste shall be contained during construction and any debris that becomes scattered shall be picked up immediately by the person or company performing the construction.

(r) Sales Offices. Notwithstanding anything in this Declaration to the contrary, Declarant and any other parties approved, in writing, by Declarant may construct and maintain sales offices, model homes, and sales trailers, together with a sign or signs relating thereto, on a Lot or Lots or on any other property within the Subdivision until such time as all of the Lots are sold.

(s) **Destruction or Damage to Subdivision Improvements.** Owners will be responsible for any and all damage caused to Common Property or subdivision improvements including, but not limited to, curbs, gutters, water hydrants, sidewalks, power poles, or fences erected by anyone, whether such damage is caused by the Owner or the Owner's employees, agents, invitees, guests, contractors, or subcontractors. Owners will, during construction, create such barricades or fencing as is required to prevent erosion of soils onto Common Property, public roads, or other Lots and police the areas of trash caused by those constructing improvements to the Owner's Lot. Any liability incurred under this provision will be both a personal obligation and an Individual Lot Assessment on such Owner's Lot.

(t) **Lot Drainage.** As part of the Subdivision design process, the Declarant may have created an Escambia County, Florida, approved master drainage plan for the Subdivision, in which case the master drainage plan information may be contained on the recorded Plat and/or the construction plans for the Subdivision, a copy of which may be viewed or obtained from the Escambia County Planning and/or Engineering Departments or from Declarant. Each Owner shall be deemed to know the requirements of any approved master drainage plan and therefore shall comply with the provisions of the approved master drainage plan for the Subdivision. No elevation or topography changes shall be permitted on any Lot which materially affects the surface grade or drainage on said Lot or any adjoining Lot or property. Easements located on each Lot shall be accessible for maintenance at all times. No fences or structures shall be located within the ten-foot (10') wide private drainage easements along each side lot line, that may prohibit or materially restrict the flow of stormwater. All public drainage easements shall remain free of obstructions including but not limited to fences, landscaping, structures, and retaining walls. These easements shall be accessible at all times.

(u) Each Lot on which a dwelling is constructed shall have landscaping done in accordance with preliminary drawings to be approved by the Architectural Review Committee prior to beginning work. Landscaping of a Lot shall be completed within ninety (90) days after the date on which the dwelling is substantially complete and a certificate of occupancy is issued. Owners shall preserve, keep and maintain the landscaping, including all sodded areas, in a healthy and attractive condition.

(v) **Maintenance of Exteriors.** Each Owner shall at all times maintain the exterior of all structures on the Owner's Lot and any and all fixtures attached thereto in a sightly manner. Such maintenance includes, but is not limited to:

- i. Keeping all improvements, parking areas, and driveways in good repair.
- ii. Repainting of dwellings, where applicable.
- iii. Repair of exterior damage to dwellings.
- iv. Keeping exterior lighting and mechanical facilities in good working order.
- v. Keeping all lawn, garden and green areas alive and attractive; properly mowed, trimmed, watered and fertilized, and free of weeds and vegetation destroying insects.

(w) **Noxious Vegetation.** No Owner may permit the growth of noxious weeds or vegetation on the Owner's Lot or on the land lying between the street pavement and the front lot line of Owner's Lot.

(x) **Litter, Trash, and Garbage.** No garbage, trash, refuse, or rubbish may be deposited, dumped, or kept on any Lot except in closed sanitary containers appropriately screened from view. Trash containers must be placed at the front of the Lot on the day designated for pickup and promptly returned to the proper storage area as soon as possible.

(y) **Nuisances.** No Owner may cause or permit unreasonable noises or odors on the Owner's Lot. No Owner may commit or permit any nuisance, any immoral or illegal activity, or anything that may be an annoyance or a noxious or offensive activity to the other Owners or their guests. Soliciting within the Subdivision is strictly prohibited.

(z) **No oil exploration, oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot.**

(aa) **Parking of Wheeled Vehicles, Boats, and Water Vessels.** Cars, trucks, tractors, recreational vehicles, golf carts and trailers (collectively called "Vehicles") must be kept at all times completely inside a garage or on the driveway and are not permitted to be parked elsewhere on a Lot or on a street within the Subdivision except as otherwise specifically permitted in this Paragraph. Boats and water vessels and trailers must be kept at all times completely inside a garage or parked on the Lot completely screened behind a six-foot (6') wooden privacy fence and are not permitted to be parked on a street or roadway. Private cars or private trucks (exclusive of all other Vehicles) owned by an Owner and an Owner's guest including private cars with an Owner's personal business advertisement displayed on them may be parked in the Owner's driveway at all times. Additionally, vehicles used by an Owner for emergency, regulatory, law enforcement, and other public services may be parked in the Owner's driveway at all times. Commercial vehicles may be parked in a street or driveway when necessary for providing services to an Owner, or for pickup and delivery service, but only while undertaking this activity and never overnight. Recreational vehicles, motorhomes, travel trailers, trailers, and campers must be kept completely inside a garage or on the Lot completely screened behind a six-foot (6') wooden privacy fence and must be well maintained. Golf carts, motorcycles and ATVs must be kept completely inside a garage when not in use. Emergency vehicles shall be allowed on any Lot or Common Property for lawfully performed emergency, regulatory, law enforcement, and other public services. No Vehicles may be repaired or maintained on or adjacent to a Lot, except within a garage. Vehicles engaged in construction of Subdivision improvements or dwellings on behalf of Declarant or Principal Builder will be permitted within the Subdivision for such purposes.

(bb) **Storage of commercial transport or delivery vehicles including, but not limited to, tractor trailers and heavy equipment are strictly prohibited. No vehicle of any size which transports inflammatory or explosive cargo may be kept, parked or stored.**

(cc) **Pets.** Up to two "household pets" may be kept at a Lot. All other pets and animals are strictly forbidden to be kept, bred, or maintained within the Subdivision. A "household

pet" is a dog, cat, or other common domestic animal approved by the Architectural Review Committee. In no event may any pet, including household pets, be kept, bred, or maintained for any commercial purpose. Each Owner will be strictly responsible for the behavior of his or her household pets. An Owner may not permit the household pet to become a nuisance or annoyance to other Owners. Each Owner will be responsible to immediately collect and dispose of waste and litter from the Owner's pets. Pets will not be allowed on the Common Property except in designated areas (if any).

(dd) No Owner shall permit anything or condition to exist upon any Lot, which shall induce, breed, or harbor plant disease or noxious insects.

(ee) No exterior storage of any items of any kind shall be permitted, except with prior written approval and authorization of the Association. Any such storage as is approved and authorized shall be in areas attractively screened or concealed (subject to all required approvals) from view from neighboring property, dwellings, pathways, and streets. This provision shall apply, without limitation, to woodpiles, camping trailers, boat trailers, travel trailers, boats, mobile homes, and unmounted pick-up camper units. Also, without limitation, no automobile, truck or other vehicle, regardless of ownership, age, condition, or appearance shall remain on any Lot in any manner which could be construed as being stored, neglected, abandoned, or otherwise not in frequent use, except pursuant to written approval and authorization of the Association.

(ff) Retention Swales and Private Drainage Easements. Declarants hereby reserve unto the Association a right of entry on and across all retention swales and private drainage easements for purposes of improving and/or maintaining these areas should it desire to do so (although it is not obligated to do so) with the cost assessed to the affected Owners as an Individual Lot Assessment (per Section 8.6 herein). Within such areas, no structure, improvements, or other materials of a temporary or permanent nature shall be placed or permitted to remain by any Owner which might appear unsightly, destroy or adversely affect the natural buffer or drainage mechanism inherently provided by such areas, or obstruct or interfere with any improvements made by the Association or maintained thereon by the Association. These areas shall be maintained by the Owners of the Lots upon which they are located in a natural state, except for those improvements, if any, made by the Association. The Association shall have the authority to formulate the maintenance requirements of the areas to ensure proper drainage and functioning of the areas and shall have the right to impose such requirements upon the Owners.

(gg) Flags. A homeowner may display one portable, removable United States Flag or official flag of the State of Florida, in a respectful place and manner as provided by Section 720.3075, Florida Statutes, and one other portable, removable flag as provided by Section 720.304(2)(a), Florida Statutes, in a respectful place and manner, to be no larger than four and one-half feet by six feet. The Architectural Review Committee will, subject to the requirements of law, have absolute authority for approval of any flags.

3.5 Further Subdivision or Replat of Lots. All Lots shall be conveyed as a whole except that two or more contiguous Lots may be re-subdivided into an equal or lesser number of contiguous Lots provided that all regulations and ordinances of Escambia County, Florida applicable to the Lots are complied with. An Owner may also, by recording an instrument to that effect in the Public Records, combine two or more Lots for a single home site, whereupon the

combined property will be deemed to be two or more separate Lots for all purposes, except that it shall be deemed to be a single Lot for the purposes set forth in Article III. Declarant shall have the right to modify the Plat to make adjustments to Lot boundary lines if the Owners of the affected Lots consent. Declarant may make other adjustments to the Lot boundary lines if Owners are not materially affected or if all Owners who will be materially affected consent to the modification. Owners shall not unreasonably withhold their consent to an adjustment, and consent will be deemed given if an Owner does not object in writing to a request for the Owner's consent. Notwithstanding the foregoing, Declarant also may replat a Lot or Lots to Common Property, whereupon such replatted Lot or Lots will no longer be deemed a "Lot." Declarant also may establish additional easements on a Lot or Lots Declarant or Principal Builder owns without the consent of the other Owners.

3.6 Conversion of Lots to Other Uses. Notwithstanding anything herein to the contrary, Declarant reserves the right to: (a) use any Lot owned by it for the purpose of ingress and egress to any adjoining property; (b) cause any Lot owned by it to be platted as a right of way; (c) impose additional easements on any Lot owned by Declarant; and (d) convert all or a portion of any Lot owned by it to Common Property.

#### **ARTICLE IV COMMON PROPERTY**

The Association will own and maintain the Common Property for the benefit of all Members and, when necessary, improve, convey, or lease the Common Property.

##### 4.1 Title to Common Property.

(a) Ownership. The Common Property will be owned by the Association for the benefit of all Owners.

(b) Conveyance. The Association is authorized to buy or lease real or personal property to be added to the Common Property. After termination of the Class B Membership, the Association may (with the consent of Declarant) sell or lease any part of the Common Property; however, membership approval is not needed for the Board to sell personal property or to grant easements on the Common Property.

(c) Dedication. If the county or municipal government requests that the Association convey title to or dedicate the Common Property or any portion thereof to the public, the Association will be authorized to make such conveyance or dedication, but only with the approval of the Members. Upon such dedication, all obligations of the Association regarding the property so dedicated will cease except for requirements imposed as a condition of the dedication.

##### 4.2 Obligation of Association to Take Title to Common Property and Permits.

(a) Obligation to Take Title. The Declarant shall convey or cause to be conveyed title in the Common Property to the Association, in one or more conveyances and at such time as in its sole discretion it deems appropriate. The Association shall accept such title and shall not have the right to decline the conveyance. Delivery of the deed of conveyance to the Association shall be conclusively presumed upon recording the deed. The conveyance shall be

subject to taxes for the year of conveyance, restrictions, conditions, and limitations of record, and easements for ingress, egress, drainage, and public utilities in favor of any Governmental Authorities or private parties as deemed appropriate by the Declarant. Upon recordation of any deed or deeds conveying Common Property to the Association, the Association shall be conclusively deemed to have accepted the conveyance evidenced by such deed or deeds. No title insurance or title opinion shall be provided to the Association by the Declarant.

(b) **Obligation to Accept and Comply with Permits.** The Declarant may have obtained land development, construction, and other permits from applicable Governmental Authorities and third parties that were necessary to develop and improve the Subdivision. Permits of this nature include, but are not limited to, permits for stormwater management, water wells, conservation operations, landscaping, maintenance and other matters, and may have been issued by the Governmental Authorities or other permitting agencies. The Declarant shall have the absolute right to transfer the permits to Escambia County or the Association, as applicable, at the appropriate time, and, if to the Association, the Association is obligated to accept the transfer and comply with the permits thereafter.

#### 4.3 Maintenance; Management; Contracts.

(a) **Association Responsibility.** The Association will be responsible for the management, control, and improvement of the Common Property and must keep the same attractive, clean, and in good repair in accordance with the Declaration and applicable governmental regulations. The costs for such maintenance to be included within the General Assessment.

(b) **Management Agreements.** The Association may contract with Declarant or any other party for the performance of all or any portion of the management of the Association and the Association's maintenance and repair obligations. Management cost will be included within the General Assessment.

4.4 **Capital Improvements.** The Association may make capital improvements to the Common Property and may modify the use of the Common Property.

4.5 **Damage or Destruction of Common Property by Owner.** If any Owner or any guest, tenant, licensee, agent, employee, family member, or pet of an Owner damages any of the Common Property as a result of negligence or misuse, the Owner hereby authorizes the Association to repair the damage. The cost of repair will be the responsibility of the Owner and will become an Individual Lot Assessment payable by the responsible Owner.

4.6 **Compliance with Laws.** Lots and the Common Property may be used and must be maintained in accordance with all applicable law, ordinances, and regulations including, without limitation, all regulations and requirements of the Governmental Authorities.

4.7 **Stormwater Management System.** Escambia County shall be responsible for the maintenance, operation and repair of the Stormwater Management System. Maintenance of the Stormwater Management System shall mean the exercise of practices that allow the systems to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by Governmental Authorities.



4.8 **Owners' Easement of Enjoyment of the Common Property.** Every Owner will have a right and easement of enjoyment in and to the Common Property, subject to the restrictions imposed in this Declaration, the Plat, any conservation easements encumbering the Common Property, and Rules and Regulations. This easement will be appurtenant to and shall pass with title to every Lot. Any Owner, subject to the provisions of this Declaration, the Articles and the Bylaws, may delegate the Owner's right to enjoyment of the Common Property to the Owner's family, tenants, and guests. The Board may suspend the right of any Owner, Owner's tenant, guest, or invitee, to use the Common Property and facilities for the failure of the Owner, Owner's tenant, occupant, licensee, guest or invitee to comply with any provision of the Declaration, Bylaws, or Rules and Regulations.

4.9 **Easements in Favor of Declarant and Association.** Declarant reserves for itself, its successors and assigns, the Association, and Governmental Authorities, the following perpetual easements:

(a) **Utilities.** Easements, for ingress, egress, installation, replacement, repair, and maintenance of all public and private utilities and conveniences, upon all property subject to public utility easements as shown on the Plat; across, over, through, and under the Common Property;

(b) **Stormwater.** Ten-foot (10') wide private drainage easements along each side lot line, for ingress, egress, installation, replacement, repair, and maintenance of the private drainage easements. A private drainage easement shall automatically be deemed abandoned as to the interior side lot lines if two or more Lots are combined into a single home site;

(c) **Police Powers; Security.** A blanket easement throughout the Subdivision for police powers and services supplied by the local, state, and federal governments; and

(d) **Non-access Easement.** There shall be a one-foot (1') nonaccess easement in favor of the Declarant along the west boundary line of the Subdivision to prohibit pedestrian and vehicular ingress and egress to and from the Lots by way of Bronson Road and any parcels of land that abut and lie adjacent to the Subdivision. Access to these Lots shall exclusively be across the road designated on the Plat. Notwithstanding the foregoing, the non-access easement shall not exist upon public roads.

(e) **Lot Maintenance Easement.** If an Owner fails to maintain the exterior of his or her Lot after ten (10) days prior written notice, the Association shall have an easement, and the authority and right to go onto said Lots for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner the costs of such maintenance as an Individual Lot Assessment.

## **ARTICLE V ASSOCIATION ORGANIZATION**

Although Declarant will control the Association during the development stage, the Owners eventually will be responsible for the continuation of the Association.

5.1 **Membership.** Every Owner is a mandatory Member of the Association.

Membership is appurtenant to and may not be separated from title to any Lot.

5.2 Voting Rights. The Association will have two classes of voting membership.

(a) Class A. Class A Members are all Owners of Lots other than Declarant, while Declarant is a Class B Member. Class A Members will be entitled to one vote for each Lot owned.

(b) Class B. The Class B Member is Declarant, who shall be entitled to ten (10) votes in all matters for each Lot owned by the Class B Member or its affiliates. Declarant may assign its Class B Membership. The Class B Membership will end and be converted to Class A Membership three (3) months after Turnover.

(c) Members other than Declarant may elect at least one Member to the Board, if fifty percent (50%) of the Lots in all phases of the Subdivision which will ultimately be operated by the Association have been conveyed to the Members.

5.3 Exercise of Vote. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the number of votes for that Lot will not be increased, and the Members must determine among themselves how the Lot's vote may be exercised. Corporations, partnerships, and other entities must notify the Association of the natural person who will be considered a Member of the Association and be entitled to exercise its vote.

5.4 Board of Directors.

(a) Composition. The Board initially will consist of at least three persons appointed by Declarant. Upon termination of the Class B Membership, the Board will consist of at least three directors, selected in accordance with the Articles and Bylaws, but in any event, the number of directors must always be three or a multiple of three.

(b) Classes. Each director will be appointed or elected to one of three classes: Class 1, Class 2 or Class 3. Directors will be elected by class to provide for staggered terms. If the number of directors is increased, it shall be in multiples of three and each new position must be assigned to a class so that each class will have an equal number of directors.

(c) Term of Office. The initial term for the Class 1 director will be for one (1) year. The initial term for the Class 2 director will be for two (2) years. The initial term for the Class 3 director will be for three (3) years. Subsequent terms for directors of any class will be for three (3) years; however, directors will always serve until resignation, removal, or the election of their successors.

(d) Qualifications. After termination of the Class B Membership, each director must be a Member. If a director ceases to be a Member during the term of office, each person will be automatically removed from the Board, effective upon such occurrence.

(e) Voting Procedure. At each annual meeting, the Members will elect the directors to replace the directors of the class whose term of office is then expiring. Each Class A Member will have one vote for each seat to be filled and the Class B Member will have ten (10)

votes for each Lot owned by the Class B Member or its affiliates, for each seat to be filled. No cumulative voting will be permitted. The candidate(s) receiving the highest number of votes will be declared elected. If there is a tie vote, the Class B Member will be given one additional vote and the opportunity to cast such vote to break the tie. The meeting will, in other respects, be conducted in accordance with the Articles and Bylaws.

(f) **Removal.** Any director may be removed from office, with or without cause, by at least a majority vote of the Members.

(g) **Vacancies; Replacement of Directors.** Any vacancy occurring in positions as director may be filled by a majority vote of the remaining Board members. If the remaining Board members do not constitute a quorum, a special meeting of the Association may be called by any officer or by any Member to elect new members to the Board.

(h) **Compensation.** Directors will not receive compensation for their services unless approved by the Members. This will not prevent a Class B Member or an affiliate of a Class B Member from being compensated for management or other services.

5.5 **Relationship to Articles and Bylaws.** The Articles and Bylaws will govern all matters of the Association not set forth in this Declaration. The terms of this Declaration will prevail over any conflicting provisions in the Articles and Bylaws.

## **ARTICLE VI OPERATION OF ASSOCIATION AND BOARD**

In addition to this Declaration, the Association must operate in accordance with Chapters 617 (Corporation Not for Profit) and 720 (Homeowners Associations) of the Florida Statutes, as amended from time to time. Most day-to-day decisions about the maintenance of the Common Property and enforcement of the Declaration are the responsibility of the Board, acting on the Members' behalf. For those decisions requiring Members' approval, the Annual Meeting provides a public opportunity for discussion.

### 6.1 Annual Meeting.

(a) **When called.** The Annual Meeting will be called every year for the election to the Board of the class of directors whose term then expires and for other business requiring approval of the Members. The meeting date shall be as determined by the Articles and Bylaws.

(b) **Quorum.** Voting at an annual meeting requires the presence of: (i) Members (in person or by proxy) representing twenty percent (20%) of votes; and (ii) Declarant or its representative so long as Declarant owns at least one (1) Lot.

(c) **Notice.** Notice of the annual meeting may be given by: (i) mailing a notice to each Member at the last address furnished to the Association; (ii) delivering notices to the Member's dwelling or Lots; or (iii) posting conspicuous notices for the meeting in the Common Property. Notice should be given at least thirty (30) days before the annual meeting.

### 6.2 Board Meetings.

(a) **Board's Responsibility.** Except as specifically provided in this Article or elsewhere in this Declaration, the Board has been delegated the power, and has the authority to act on behalf of the Association in all matters.

(b) **Quorum.** Voting at a Board meeting requires the presence of at least two (2) of the directors (in person or by proxy). Except as prohibited by law, action required to be taken by vote of the Board may be taken in the absence of a meeting by obtaining the written approval of a majority of the Board.

(c) **Notices.** Notices of all meetings of the Board shall be posted in a conspicuous place in the Common Property or otherwise at an entrance to the Subdivision, forty-eight (48) hours in advance, absent emergency. If the Board desires to levy an assessment at a meeting, the notice must include a statement describing the assessment being considered. All meetings must be open to the Members, except for meetings permitted by law to be closed. This provision shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of Association funds and to meetings of anybody vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a Member.

6.3 **Record Keeping.** The Board shall keep, or cause to be kept, a record of all meetings, both of the Board and of the Association. For each action taken, the record must state the vote and a description of the action approved, and, if applicable, the reasons why the action was considered necessary and a summary of the information on which the decision was based. The record must be available for inspection by any Member, except for records of closed meetings of the Board. Officers may be elected by the Board by secret ballot. The Association shall maintain such items as are designated official records in accordance with Chapter 720, Florida Statutes, for the time periods designated, with inspection and copying rights for members as prescribed therein.

## **ARTICLE VII ASSOCIATION BUDGET**

To fulfill its obligation to administer and manage the Association and maintain the Common Property, the Board is responsible for the fiscal management of the Association.

7.1 **Fiscal Year.** The fiscal year of the Association will begin January 1 of each year and end on December 31 of that year. The Board may elect another fiscal year. The Board must prepare an annual Budget.

7.2 **Budget.** A copy of the budget must be provided to each Member, or notice must be given to the Members that a copy of the budget is available upon request and without charge. The annual budget will estimate total expenses to be incurred by the Association in carrying out responsibilities. The budget must include:

(a) The cost of wages, materials, insurance premiums, services, supplies, and other expenses for the rendering of all services required or permitted under this Declaration;

(b) Reasonable amounts, as determined by the Board, for working capital for the Association and for reserves;

- (c) Fees for professional management of the Association (which may include Declarant), legal counsel, and accounting;
- (d) Taxes, if the Common Property is taxed separately from the Lots;
- (e) An itemized list of all fees or charges for recreational amenities; and
- (f) An estimate of revenues from the General Assessment.

7.3 Reserves. The Association shall accumulate and maintain adequate reserves for working capital, contingencies, and replacements, to be included in the annual budget and collected as part of the annual General Assessment. This shall not occur until the termination of Declarant's guarantee described in Section 8.2 of this Declaration. Extraordinary expenses not originally included in the annual budget will be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose. If there is an excess of reserves at the end of a fiscal year, such excess may be used to reduce the following year's Assessments.

#### 7.4 Preparation and Approval of Annual Budget.

(a) Initial Budget. Declarant will prepare the first annual budget. Any reserves established by the Declarant must designate the components for which the reserve accounts may be used.

(b) Subsequent Years. Budgets other than the initial budget will be prepared at the direction of the Board at least one (1) month before the end of the fiscal year. The budget and the annual General Assessment must be adopted by the Board.

7.5 Effect of Failure to Prepare or Adopt Budget. The Board's failure or delay in preparing or adopting the annual budget for any fiscal year will not waive or release a Member's obligation to pay General Assessments, whenever the amount of such Assessments is finally determined. In the absence of an annual Association budget, each Member shall continue to pay the assessment at the rate established for the previous fiscal period until notified otherwise.

7.6 Financial Reporting. The Board shall prepare an annual financial report for the Association within ninety (90) days of the close of the fiscal year and provide each Member with a copy of the report, or a written notice that a copy of the financial report is available upon request, without charge to the Member. The report must be in the form required by the Florida Statutes.

7.7 Capital Improvements. The Board shall determine whether capital improvements should be paid from General Assessments or by Special Assessment. If the cost of all capital improvements to be paid within a single year totals more than twenty-five percent (25%) of the Association's annual budget, the capital improvements must be approved by majority vote of the Members. Any repair or replacement of existing improvements will not be considered a capital improvement.

7.8 Reserves shall be kept separate from other Association funds. All other sums collected by the Board with respect to Assessments and charges of all types may be commingled in a single fund.

7.9 Amendment of Budget. The Board may amend the budget during any fiscal year and increase the amount of the annual General Assessment for such year if it appears that there will be insufficient income to meet the obligations of the Association.

## ARTICLE VIII COVENANTS TO PAY ASSESSMENTS

The cost of fulfilling the Association's financial obligations is divided among the Members by means of Assessments in accordance with this Declaration. To ensure that the Association has a reliable source of funds and to protect those Members who contribute their share, Assessments are mandatory and are secured both by a lien on the Lots and the Member's personal obligation.

8.1 Obligations for Assessments. Declarant covenants for each Lot upon which a completed home has been constructed, and, by acceptance of a deed or other transfer instrument, whether or not expressed in such deed or instrument, each Owner of any Lot is deemed to covenant and agree to pay to the Association the Assessments including:

- (a) General Assessments;
- (b) Special Assessments; and
- (c) Individual Lot Assessments.

8.2 Guarantee of Class B Member. The Class B Member agrees that, until the end of the first fiscal year of the Association or such extended period as set forth hereinbelow, it will guarantee that the General Assessments shall not exceed \$250.00 per Lot per year during the first fiscal year of the Association and an increase of five percent (5%) on each anniversary thereof. The Class B Member will be exempt from General Assessments in consideration of its guarantee. The Class B Member may elect to renew the Budget Guarantee for one or more additional fiscal years, during which the Class B Member will not be liable for any Assessments on any Lots it owns. Such election shall be deemed to occur on an annual basis unless, prior to the end of the fiscal year of the Association, the Class B Member gives notice of its intention to not elect to renew its guarantee. A Lot exempt from Assessments pursuant to this Section is referred to as an "Exempt Lot."

8.3 Equitable Division of Assessments. The General Assessment and Special Assessments shall be assessed among all Lots equally, except that Exempt Lots will not be subject to assessment. The General Assessment will be assessed on Lots at the rate established by the Board.

8.4 General Assessment.

(a) Establishment by Board. The Board will set the date or dates the General Assessment will be due, and it may provide for payment in monthly, quarterly, semiannual, or annual installments.

(b) All of Declarant's Lots shall be exempt forever to the extent allowed by Florida law.

(c) Late Fee and Interest. The Board may impose a reasonable late fee. Additionally, interest will accrue at the highest lawful rate on delinquent payments

8.5 Special Assessment. In addition to the General Assessment, the Board may levy, in any fiscal year, a Special Assessment applicable as follows:

(a) Capital Improvements. Any capital improvement that has been approved in accordance with this Declaration.

(b) Emergency Assessment. By a two-thirds (2/3) vote, the Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense that this Declaration requires the Association to pay (including, after depletion of reserves, any unexpected expenditures not provided by the budget, or unanticipated increases in the amounts budgeted).

(c) Exemption. Exempt Lots will not be subject to Special Assessments, nor will an Exempt Lot be subject to payment of any Special Assessment or any portion thereof declared or assessed while such Lot was an Exempt Lot even if payments for such Special Assessments are made in installments becoming due subsequent to the time such Lot no longer is considered an Exempt Lot. [For example, if a Special Assessment is declared on January 1 while Lot 7 is an Exempt Lot, but the payment of the Special Assessment is not required until March of the same year, then even if Lot 7 is not an Exempt Lot as of February of such year, Lot 7 still will be considered exempt from such Special Assessment.]

8.6 Individual Lot Assessments. The Association may levy at any time an Individual Lot Assessment against a particular Lot for the purpose of defraying, in whole or in part, the cost of any special services to that Lot or any other charges designated in this Declaration as an Individual Lot Assessment. An Individual Lot Assessment may be levied on account of any legal expenses (at trial or on appeal) and costs incurred by the Association in enforcing this Declaration or in enforcing any other declaration the Association is authorized to enforce.

8.7 Effect of Nonpayment of Assessment; Remedies.

(a) Personal Obligation. All Assessments, together with any late fees, interest, and costs of collection when delinquent, including reasonable attorneys' fees (pre-suit or post-suit) whether or not a lawsuit is brought (collectively, the "Assessment Charge") shall be the personal obligation of the person or entity who was the Owner of the Lot at the time the Assessment Charge was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Lot.

(b) Creation of Lien. The Assessment Charge also shall be a continuing lien on

the Lot against which the Assessment Charge is made, which lien is effective upon recording a claim of lien but relating back to and having a priority as of the date of this Declaration. This lien in favor of the Association will secure the Assessment Charge that is then due and that may accrue subsequent to the recording of the claim of lien and before entry of final judgment of foreclosure. The lien in favor of the Assessment Charge is subject to the subordination provisions of Section 8.7(d).

(c) **Lawsuit for Payment; Foreclosure of Lien.** The Association may bring an action at law against the Owner personally obligated to pay the Assessment Charge or may foreclose the lien in a manner similar to foreclosure of a mortgage lien, or both, as provided in Section 720.3085, Florida Statutes. The Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Lot foreclosed at such foreclosure sale to acquire, hold, lease, mortgage, and convey the Lot.

(d) **Subordination of the Lien to Mortgages.** The lien of the Assessment Charge will be inferior to the first mortgage lien of any Mortgagee. Sale or transfer of any Lot pursuant to foreclosure of such a mortgage, including a deed in lieu of foreclosure, shall extinguish the lien as to payments that became due before the sale or transfer. The transferees of such Lot shall be liable for any Assessments coming due after the sale or transfer.

(e) **Other Remedies.** Subject to applicable law and as set forth in Article X, the Association may assess fines and suspend the use of Common Property and facilities, and voting rights of any Member, Owner, or any Member or Owner's occupant, tenant, guest, licensee, or invitee for any period for failure to comply with any provision of the governing documents, or during which any Assessments against the Owner's Lot remain unpaid.

8.8 **Certificate of Payment.** The treasurer of the Association or the manager of the Association, upon request of any Owner, shall furnish a certificate signed by a member of the Board or by the manager, if authorized by the Board, stating whether any Assessments are owed by that Owner. The Board may establish a reasonable fee for such certificate. Such certificate will be conclusive evidence of payment of Assessments through the date of the certificate.

## **ARTICLE IX INSURANCE AND INDEMNITY**

Insurance is essential to protect the interests of the various Owners and to ensure that funds will be available for rebuilding after a casualty; however, because insurance costs may increase significantly or new types of coverage may be available, this Article gives some flexibility to the Board to select insurance coverage that is reasonable for the conditions that exist at that time.

9.1 **Review of Coverage.** The Board shall review limits of coverage for each type of insurance at least once each year.

9.2 **Casualty Insurance.** The Board shall be required to obtain and maintain fire insurance as appropriate. Endorsements for extended coverage, vandalism, malicious mischief, and windstorm should be obtained if available at reasonable cost. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in



any event not less than eighty percent (80%) of the insurable value (based upon replacement) of the improvements constructed on the Common Property.

9.3 **Public Liability.** The Board shall obtain public liability insurance, in such limits as the Board may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Common Property. Whenever practicable, such insurance should be issued on a comprehensive liability basis and should contain a "severability of interest" endorsement that shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board, or other Owners. Such insurance must always name Declarant as an additional insured until fifty (50) years after the date of this Declaration.

9.4 **Association Management.** Unless waived annually by a majority of the voting interests present at a properly called Association meeting, the Association is required to maintain insurance or a fidelity bond for all persons who control or disburse funds of the Association in an amount to cover the maximum funds that will be in the custody of the Association or its management at any one time. The term "persons who control or disburse funds of the Association" shall include, but not be limited to, all individuals authorized to sign checks on behalf of the Association, the Association's President, Secretary, Treasurer and the Association's Manager. The cost of such insurance shall be included as a common expense of the Association.

9.5 **Director's Liability Insurance.** The Board may obtain liability insurance insuring against personal loss for actions taken by members of the Board in the performance of their duties. Such insurance shall be of the type and amount determined by the Board in its discretion.

9.6 **Other Insurance.** The Board shall obtain and maintain worker's compensation insurance if and to the extent necessary to meet the requirements of law, and such other insurance as the Board may deem prudent.

9.7 **Repair and Reconstruction after Fire or Other Casualty.** If fire or other casualty damages or destroys any of the Common Property, the Board shall arrange for and supervise the prompt repair and restoration of the improvements. The Board shall obtain funds for such reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and then from any Special Assessments that may be necessary after exhausting insurance and reserves.

9.8 **Indemnity of Declarant.** In consideration of Declarant conveying the Common Property to the Association, the Association and each Owner releases, indemnifies, and holds Declarant, its officers, employees and agents harmless from any and all liability arising out of the Common Property and shall defend Declarant against all claims of any third party. Such indemnity includes any attorneys' fees and costs incurred by Declarant at trial and on appeal.

9.9 **Attorney Fees.** In the event of any litigation arising out of this Declaration, the prevailing party shall be entitled to recover all costs incurred including, but not limited to, reasonable attorney's fees at all trial and appellate levels and post-judgment proceedings.

## ARTICLE X ENFORCEMENT

This Article provides for the enforcement of the covenants, conditions and restrictions contained in the Declaration and the procedure for enforcement and imposition of fines, suspensions and other remedies.

10.1 Release from Minor Violations. Declarant and the Architectural Review Committee or either of them shall have the right, by written instrument, at any time to release a Lot from minor violations of this Declaration or the Plat including, without limitation: (a) encroachments into easements; (b) encroachments over building restriction lines; and (c) construction of less than the required minimum square footage for the dwelling provided that the square footage is at least ninety-five percent (95%) of the required minimum. Notwithstanding the foregoing, only Escambia County can release a Lot from violations of an ordinance or an encroachment of an easement in favor of Escambia County.

10.2 Enforcement. In addition to the enforcement provisions set forth in Section 3.2(f), the covenants and restrictions contained in this Declaration may be enforced by Declarant, the Association, any Owner, and any Mortgagee in any judicial proceeding seeking any remedy recognizable at law or in equity, including an action or lawsuit seeking damages, injunction, specific performance, or any other form of relief, against any person, firm or entity violating or attempting to violate any covenant or restriction contained herein. The failure by any party to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of such covenant or restriction or of the right of such party to thereafter enforce such covenant or restriction. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels. The Governmental Authorities will have the right to enforce, by proceedings at law or in equity, the provisions contained in the Declaration that relate to the maintenance, operation, and repair of the Stormwater Management System. ALL PARTIES AGREE THAT ANY DISPUTE SHALL BE DETERMINED BY A JUDGE AND NOT A JURY AND WAIVE THEIR RIGHT TO A JURY TRIAL IN ANY LITIGATION ARISING OUT OF THIS DECLARATION OR AMENDMENTS.

10.3 Member Fines and Suspensions. In compliance with Section 720.305(2), Florida Statutes, the Board may levy reasonable fines or suspensions.

(a) Fines. Up to \$100.00 per violation against any Member, Owner, or any Member's or Owner's occupant, tenant, guest, licensee, or invitee for the failure to comply with any provision of the Declaration, Bylaws, or Rules and Regulations. A fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$5,000.00 in the aggregate. A fine of less than \$1,000.00 may not become a lien against a Lot, however, an aggregate fine of \$1,000.00 or more may be converted into a lien against the Lot by recordation. Any such lien is effective upon recording, but relates back to and has priority as of the date of the recording of this Declaration and is subject to the subordination provisions of Section 8.7(d). In any action to recover a fine or foreclose a lien, the prevailing party is entitled to reasonable attorneys' fees and costs from the non-prevailing party as determined by the court.

(b) Suspensions. In addition, the Board may suspend the right of any Member, Owner, or any Member's or Owner's occupant, tenant, guest, licensee, or invitee, to use the Common Property and facilities for the failure to comply with any provision of the Declaration, Bylaws, or Rules and Regulations. Any suspension does not apply to: any portion of Common Property used to provide access or utility services to the Lot; or vehicular and pedestrian ingress to and egress from the parcel including, but limited to, the right to park.

(c) Fines and Suspensions Committee.

i. The Board shall appoint a Fines and Suspensions Committee (the "Committee") of no less than three Members.

ii. A fine or suspension may not be imposed by the Board without a minimum of fourteen (14) days notice to the Owner(s) and Member(s) and if applicable, occupant, tenant, guest, licensee or invitee and an opportunity to be heard before the Committee. To ensure all Members or other persons against whom a fine or suspension is levied by the Board are equally afforded an opportunity to be heard, the Committee will hear all fines and suspensions of the right to use Common Property and facilities levied by the Board.

iii. The Committee's role shall be limited to confirmation or rejection of a fine or suspension levied by the Board. A fine or suspension must be confirmed by a majority vote of the Committee prior to imposition by the Board. If a fine or suspension is not approved by majority vote of the Committee, the fine or suspension shall not be imposed.

#### 10.4 Board Procedure for Imposition of Fines, Suspensions of the Use of Common Property and Facilities and the Suspension of Voting Rights.

(a) If confirmed by the Committee, the Board's proposed fine or suspension of the right to use Common Property and facilities is imposed without further Board action. If imposed, the Association must provide written notice of the fine or suspension by U.S. Mail or hand delivery to the Member, Owner and, if applicable, occupant, tenant, guest, licensee or invitee. Payment for any fine imposed is due on or before five (5) days from the date of the Committee meeting at which the fine was approved. Any suspension is effective on the date of the written notice.

(b) If a Member is more than ninety (90) days delinquent in paying any fee, fine or other monetary obligation due to the Association, the Board may suspend the rights of the Member, Owner, or any Member or Owner's occupant, tenant, guest, licensee, or invitee to use Common Property and facilities until the fee, fine or other monetary obligation is paid in full. This suspension does not apply to that portion of Common Property used to provide access or utility services to the Lot. A suspension may not prohibit a Member, Owner, occupant, tenant, guest or invitee from having vehicular and pedestrian ingress and egress from the Lot including, but not limited to, the right to park. The notice and hearing requirements in Section 10.3, above, do not apply to a suspension under this provision. The suspension must be approved at a properly noticed meeting of the Board. Upon approval, the Board must notify the Member, Owner, and any Member's or Owner's occupant, tenant, guest, licensee, or invitee by U.S. Mail or hand delivery.

(c) The Board may also suspend the voting rights of a Member or Owner for

the nonpayment of any fee, fine, or other monetary obligation due to the Association that is more than ninety (90) days delinquent. A voting interest or consent right allocated to a Lot, Member or Owner which has been suspended by the Association shall be subtracted from the total number of voting interests in the Association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action by this Declaration. The notice and hearing requirements in Section 10.3, above, do not apply to a suspension under this provision. The suspension imposed under this provision shall terminate upon full payment of the delinquent monetary obligation due or overdue to the Association. The suspension must be approved at a properly noticed meeting of the Board. Upon approval, the Board must notify the Member or Owner by U.S. Mail or hand delivery.

10.5 Owner's Failure to Maintain Lot. If an Owner shall fail to maintain his or her Lot or any improvements located thereon in compliance with the covenants and restrictions contained in this Declaration and all other governing documents, the Association shall have the right and may, through its agents, employees, and contractors, enter into or upon said Lot and repair, maintain, and restore the Lot and/or the exterior portions of any building or improvement located on the Lot. The cost of such repair, maintenance, or restoration, together with a reasonable administrative charge shall be charged against the Lot as an individual Lot Assessment. Before the Association may enter into or upon said Lot, a written notice shall be mailed to the owner at the address for the Owner on record with the Association informing the Owner of the Lot violation(s). If the Owner fails to correct the Lot violation(s) within thirty (30) days from the receipt of the notice, the Association may immediately enter onto or upon said Lot in order to repair, maintain, or restore the Lot. The thirty (30) day notice requirement contained in this Section 10.5 is waived in the event of an emergency.

10.6 Tenant Violations. In addition to the remedies provided above, in the event the Association determines that a tenant is in violation of the Declaration or the Rules and Regulations, the Association shall notify the Owner and the tenant of the violation and afford the tenant and the Owner an opportunity for a hearing. If the violation continues for fifteen (15) days, the Association shall have the right to evict the tenant. Each Owner by acceptance of a deed for a Lot hereby irrevocably appoints the Association as its attorney in fact and agent in such an eviction action. All costs related to such action shall be the responsibility of the Owner and shall constitute an Individual Lot Assessment.

## **ARTICLE XI GENERAL PROVISIONS**

This article sets forth rules of interpreting the Declaration and amending the Declaration.

11.1 Incorporation of the Land Use Documents. Any and all deeds conveying a Lot shall be conclusively presumed to have incorporated therein all of the terms and conditions of this Declaration.

11.2 Assignment. Declarant shall have the right, from time to time, to assign any of its rights or obligations pursuant hereto in part or in whole.

11.3 Notices. Notices shall be given as to Owners by posting at the Owner's dwelling or vacant Lot, or mailing first-class postage prepaid to the Owner's address maintained by the Association, or by posting a notice applicable to all Owners at the Common Property, and as to Declarant, by sending certified mail to the corporate address of Declarant filed with the Florida Secretary of State.

11.4 Amendment.

(a) Subject to the provisions of Section 11.5, Declarant specifically reserves the absolute and unconditional right, as long as Declarant owns any of the Lots, to amend this Declaration without the consent or joinder of any party to: (i) conform to the requirements of Governmental Authorities, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, Department of Housing and Urban Development, or any other generally recognized institution involved in the purchase and sale of home loan mortgages; (ii) conform to the requirements of mortgage lenders or title insurance companies; or (iii) perfect, clarify, or make internally consistent the provisions herein.

(b) Subject to the provisions of Section 11.5 and applicable law, Declarant reserves the right to amend this Declaration in any other manner without the joinder of any party, as long as said amendment is made in good faith and is not arbitrary or capricious, does not destroy the general plan of the development, does not prejudice the rights of the Members to enjoy the benefits of Common Property, does not materially shift the economic burdens from the Declarant to the Members and no Owner's right to the use and enjoyment of the Owner's Lot is materially altered.

(c) Subject to the provisions of Section 11.5 and applicable law, this Declaration may be amended by consent of Owners of fifty percent (50%) or more of the Lots as evidenced by recording an instrument executed by said Owners in the Public Records, provided that no such amendment will be effective without the consent of Declarant, or its assigns, until Declarant and its affiliates own no Lots within the Subdivision. Within thirty (30) days of the recording of an amendment in the Public Records, the Association shall provide copies of the Amendment to all of the Members.

(d) Declarant, without the consent of any party, may bring within the scheme of this Declaration additional land by Supplemental Declaration in accordance with the procedures set forth in Section 2.2.

(e) Any amendment to the Declaration that would alter the Stormwater Management System, beyond maintenance in its original condition, including mitigation or preservation areas and the water management portions of the common areas, must have the prior approval of the Northwest Florida Water Management District or other applicable Governmental Authorities.

11.5 Mortgagee's Consent to Amendments. This Declaration contains provisions concerning various rights, priorities, remedies, and interests of the Mortgagees. Such provisions

are to be construed as covenants for the protection of the Mortgagees on which they may rely in making loans secured by mortgages on the Lots. Accordingly, no amendment or modification of this Declaration impairing such rights, priorities, remedies, or interests of a Mortgagee shall be adopted without the prior written consent of Mortgagees holding liens on thirty percent (30%) or more of the Lots encumbered by mortgages to Mortgagees. Each Mortgagee agrees that it will either consent to a proposed amendment or give notice of refusal to consent by written notice to the party requesting such consent within thirty (30) days after the request is received. If a Mortgagee does not respond within sixty (60) days after the date of mailing of the written notice, the Mortgagee's consent will be deemed given, and an affidavit to such effect recorded in the Public Records by the party requesting the consent will be sufficient evidence to make the requested amendment; provided, that a photocopy of the documentation proving receipt of the request to the Mortgagee is attached to the affidavit. This Section shall not apply or be construed as a limitation on those rights of Declarant, the Association, or the Owners to make amendments that do not adversely affect the Mortgagees.

11.6 Captions and Statement of Purpose. Captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only, and in no way shall such captions or headings define, limit, or in any way affect any of the terms or provisions of this Declaration. The Statement of Purpose is a summary of general information only and in no way shall such statement define, limit, or in any way affect any of the terms or provisions of this Declaration.

11.7 Gender and Plural Terms. Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any noun or pronoun herein may be deemed the corresponding plural form thereof and vice versa.

11.8 Severability; Amendments to Laws. If any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, that judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation of the foregoing, the invalidation of any of the covenants, restrictions, terms, or conditions of this Declaration, or a reduction in the term of the same by reason of the legal rule against perpetuities, shall in no way affect any other provision, which shall remain in full force and effect for such period of time as may be permitted by law. Any amendment to applicable law that has the effect of reducing the rights of Declarant or increasing the liabilities of or duties imposed on Declarant will not be incorporated into this Declaration by reference. All other references to applicable laws and regulations will incorporate amendments to those laws and regulations.

11.9 Duration and Renewal. This Declaration (but excluding the easements herein created, which are perpetual) and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens, and liens contained herein including, without limitation, the provisions for assessment of Lots, shall run with and bind all of the Lots and inure to the benefit of Declarant, the Owners, and their respective legal representatives, heirs, successors, and assigns, for a term of ninety (90) years from the date hereof, 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 before the termination of the 90-year period or before each such 10-year extension,

as the case may be, there is recorded in the Public Records an instrument agreeing to terminate this Declaration, which instrument is signed by a majority of all Owners and all Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the 90-year term or the 10-year extension during which such instrument was recorded, as the case may be.

11.10 Venue. This Declaration shall be governed by and enforced and construed under the laws of the State of Florida, without regard to its conflicts of laws provisions. Venue in any proceeding involving this Declaration will be in Escambia County, Florida.

**11.11 DISCLAIMER OF REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF. IF ANY SUCH WARRANTY CANNOT BE DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED. THIS SECTION 11.11 SHALL NOT BE AMENDED.**

**11.12 EACH OWNER HEREBY ACKNOWLEDGES THAT THEY HAVE RECEIVED THE WARNING THAT SWIMMING IN OR IN ANY WAY ENTERING THE RETENTION PONDS WITHIN THE SUBDIVISION IS STRICTLY PROHIBITED, AND OWNER EXPRESSLY ASSUMES ALL RISK OF SUCH ACTIVITIES FOR THEMSELVES, THEIR GUESTS AND INVITEES, AND WILL HOLD ASSOCIATION AND DECLARANT HARMLESS FOR LIABILITY ARISING FROM THE RETENTION PONDS WITHIN THE SUBDIVISION OR OTHERWISE USED IN CONNECTION WITH THE SUBDIVISION.**

*(end of text – signature pages to follow)*

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed the day and year first above written.

Witnesses:

Breland Homes Coastal, LLC,  
a Delaware limited liability company

Carol Beckworth  
Print Name: Carol Beckworth

Andrea J. Jorn  
Print Name: Andrea Jorn

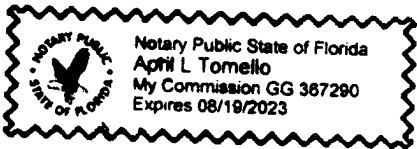
[Signature]  
By: Todd McCrory  
Its: President

STATE OF Florida  
COUNTY OF Escambia

THE FOREGOING INSTRUMENT was acknowledged before me by means of  physical presence or  online notarization on this 12<sup>th</sup> day of July, 2021, by Todd McCrory as President of Breland Homes Coastal, LLC, a Delaware limited liability company, who  is personally known to me or  has produced \_\_\_\_\_, as identification.

April L. Tomello  
SIGNATURE OF NOTARY

April L. Tomello  
NAME LEGIBLY PRINTED,  
TYPEWRITTEN OR STAMPED



(SEAL)

My Commission Expires: 8/19/2023



**EXHIBIT "A"**

DESCRIPTION FOR PARCEL REFERENCE NUMBER 022S326000170003 PER OR BOOK 4305, PAGE 212:

Lots Seventeen (17) and Eighteen (18), Block "C", Subdivision Number One (1) of Perdido Heights, being in Lot Six (6) of Fractional Section Two (2), Township Two (2) South Range Thirty-Two (32) West, according to Plat recorded in Deed Book 102, Page, 250, of the Public Records of Escambia County, excepting and reserving therefrom, the North Fifty (50) feet of the West One Hundred Twenty-five (125) feet of Lot Eighteen (18), Block "C" in Subdivision Number One (1) of Perdido Heights being Lot Six (6) of Fractional Section Two (2), Township Two (2) South, Range Thirty-two (32) West, according to Plat recorded in Deed Book 102, Page 250, this lot being more particularly described as follows: Beginning at an iron pipe (the original Northwest (NW) corner of Lot Eighteen (18) above described, said iron pipe being set in the East right of way line of State Road No. 341 (or Park Road) at a point Six Hundred Sixteen (616) feet distant, (measured in a Northerly direction) along said East right of way line, from the South boundary line of said Section Two (2); from said point of beginning run thence Easterly along the North line of Lot Eighteen (18) for a distance of One Hundred Twenty-five (125) feet; thence in a Southerly direction Fifty (50) feet; thence Westerly One Hundred Twenty-five (125) feet and thence in a Northerly direction Fifty (50) feet to the point of beginning.

DESCRIPTION FOR PARCEL REFERENCE NUMBER 022S326000150004 PER OR BOOK 6404, PAGE 61:

Lots 15 and 16, Block D, according to plat of Resubdivision of Subdivision Number 1 to Perdido Heights recorded in Plat Book 1, at page 3, of the public records of Escambia County, Florida, situate in Lot 6 of Fractional Section 2, Township 2 South, Range 32 West.

DESCRIPTION For PARCEL REFERENCE NUMBFR 022S326000150003 PER OR BOOK 4305, PAGE 211:

Lots fifteen (15), sixteen (16), nineteen (19) and twenty (20) of Block "C" in Subdivision one (I) of Perdido Heights in Township two South of Range thirty-two West in Escambia County, Florida, according to Plat Recorded in Plat Book 1 in, Page 3 of the Public Records of said County.

**BYLAWS OF**  
**KISSIMMEE POINTE HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I - Name, Registered Office and Registered Agent**

**Section 1. Name.** The name of this corporation is KISSIMMEE POINTE HOMEOWNERS' ASSOCIATION, INC., hereinafter the "Association."

**Section 2. Registered Office and Registered Agent.** The address of the Association's registered office and the name of the Association's Registered Agent and his address is Stephen R. Moorhead, 127 Palafox Place, Suite 200, Pensacola, FL 32502.

**ARTICLE II - Definitions**

The terms used in these Bylaws shall have the same definitions and meanings as those set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Kissimmee Pointe, as recorded in the public records of Escambia County, Florida, (the "Declaration") and in the Articles of Incorporation of Kissimmee Pointe Homeowners' Association, Inc. (the "Articles of Incorporation") unless herein provided to the contrary, or unless the context otherwise requires.

**ARTICLE III - Meetings of Members**

**Section 1. Place of Meetings.** Meetings of the Members shall be held at such place (within or without the State of Florida) as the Board or Members may from time to time select.

**Section 2. Annual Meeting.** An annual meeting of the Members shall take place in the month of November at such date and time designated by the Board. At the annual meeting, the Members shall elect a Board and transact other business. If an annual meeting has not been called and held within six (6) months after the time designated for it, any Member may call it.

**Section 3. Special Meetings.** Special meetings of the Members may be called by the president, by a majority of the Board, or by the holders of one-fourth or more of the outstanding votes. Business conducted at a special meeting is limited to the purposes described in the notice of the meeting.

**Section 4. Notice of Meetings.** A written or printed notice of Members' meetings, stating the place, day and hour of the meeting, and in case of a special meeting the purpose or purposes of the meeting shall be given by the Secretary of the Association, or by the person authorized to call the meeting, to each Member of record entitled to vote at the meeting. This notice shall be sent to each Member (as of thirty (30) days prior to the date of mailing such notice) at least fourteen (14) days and not more than sixty (60) days before the date named for the meeting (unless a greater period of notice is required by law in a particular case) by United States mail or delivery to the parcel Owner's mailing address reflected on the county property appraiser's website for the county in which the parcel is located. Alternatively, the Association may provide notice by electronic transmission in a manner authorized by the Association if the Member has consented in writing to receive such notice by electronic transmission. Notice must

also be posted in a conspicuous place in the community at least forty-eight (48) hours in advance of a meeting.

Section 5. Waiver of Notice. A Member, either before or after a Members' meeting, may waive notice of the meeting, which waiver of notice must be in writing, and his or her waiver shall be deemed the equivalent of giving notice. Neither the affairs transacted, nor the purpose of the meeting need be specified in the waiver. Attendance at a Members' meeting, either in person or by proxy of a person entitled to notice, shall constitute a waiver of notice and waiver of any and all objections to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, unless the Member attends the meeting solely for the purpose of stating, at the beginning of the meeting, any such objection or objections to the transaction of affairs.

Section 6. Voting Rights. Subject to the provisions of the laws of the State of Florida and to the Articles of Incorporation, each Member shall be entitled at each Members meeting to one (1) vote per Lot owned.

Section 7. Proxies. A Member entitled to vote may vote in person or by a proxy executed in writing by the Member or his or her attorney-in-fact. To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy and filed with the Secretary. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires ninety (90) days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executed it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place.

Section 8. Quorum. The presence in person or by proxy at a meeting of Members entitled to cast thirty percent (30%) of the votes of the membership shall constitute a quorum at Members' meetings for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. At a duly organized meeting, Members present can continue to do business until adjournment even though enough Members withdraw to leave less than a quorum. Decisions that require a vote of the Members must be made by the concurrence of at least two-thirds majority of voting interests present, in person or by proxy, at a meeting at which a quorum has been attained, except for a vote for election to the Board.

Section 9. Adjournments. Any meeting of Members may be adjourned. Adjournment of an annual or special meeting to a different date, time, or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place in compliance with Article III, Section 4 except that such notice must be given to new Members as of the new record date who were not Members as of the previous record date. At an adjourned meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting originally called.

Section 10. Informal Action by Members. Any action that may be taken at a Members' meeting may be taken without a meeting if a consent in writing, setting forth the

action, shall be signed by the holders of not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and filed with the Secretary of the Association, except the election of the Board must be held at an annual meeting. Within ten (10) days after obtaining such authorization by written consent, notice must be given to those Members who have not consented in writing to such action taken. The notice must fairly summarize the material features of the authorized action.

**Section 11. Voting Lists.** The Secretary of the Association shall make, at least ten (10) days before each meeting of Members, a complete list of the Members entitled to vote at such meeting or any adjournment thereof. Such list shall be kept on file at the registered office of the Association, for a period of ten (10) days prior to such meeting and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member at any time during the meeting.

#### ARTICLE IV - Board of Directors

**Section 1. Number, Qualification and Term.** The business and affairs of the Association shall be managed by a board of at least three (3) Directors, who must be Members of the Association. Any Member who has criminal charges pending against him or her may not be appointed or elected to a position as a Director. Each Director, except one appointed to fill a vacancy, shall serve his or her term as follows: The initial Board named in the Articles of Incorporation shall hold office as provided therein as Class 3 Directors in staggered three-year terms with their successors elected at the annual meeting of the Members at the time of the expiration of those terms. The number of Directors may be increased or decreased by a vote of the Members which must be made by a concurrence of at least two-thirds majority of voting interests present, in person or by proxy at a meeting at which a quorum has been attained with the terms to be likewise staggered in a form approved by the Members.

**Section 2. Certification.** Within ninety (90) days after being elected or appointed to the Board, each Director shall submit written certification to the Association's Secretary that: (i) he or she has read the governing documents of the Association including, but not limited to, all current rules and policies; (ii) that he or she will work to uphold such documents, rules and policies to the best of his or her ability; and (iii) that he or she will faithfully discharge his or her fiduciary responsibility to the Association and the Members. In lieu of the written certification, each Director may complete the curriculum administered by an education provider approved by the Florida Department of Business and Professional Regulation within one (1) year before or ninety (90) days after the date of election or appointment. This certification is valid for the uninterrupted tenure of the Director on the Board, and any Director that does not comply with the requirement shall be suspended from the Board until this requirement is met, with it being the option of the Board to temporarily fill the vacancy of the Director during the period of suspension.

**Section 3. Vacancies.** Any vacancy occurring in the Board, including any vacancy created by reason of an increase in the number of Directors, shall be filled by the affirmative vote of a two-thirds majority of the remaining Directors. A Director elected to fill a vacancy shall

hold office until the election of Directors at the end of that staggered term. This provision shall not apply to any vacancy occurring as a result of removal.

Section 4. Compensation. Directors shall not receive a salary for their services unless approved by the Members. A Director may serve the Association in a capacity other than Director and receive compensation for the services rendered in the other capacity.

Section 5. Removal.

(a) Any Director may be removed from office with or without cause by the vote or agreement in writing by a majority of all votes of the membership in accordance with Section 720.303(10), Florida Statutes. The notice of a meeting of the Members to recall a Director shall state the specific Director(s) sought to be removed. A proposed removal of a Director at a meeting shall require a separate vote for each Director sought to be removed. Where removal is sought by written agreement, a separate agreement is required for each Director to be removed. If removal is effected at a meeting, any vacancies created thereby shall be filled by the Members at the same meeting. Any Director who is removed from the Board shall not be eligible to stand for reelection until the next annual meeting of the Members. Any Director removed from office shall turn over to the Board within seventy-two (72) hours any and all records of the Association in his or her possession.

(b) A Director charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property shall be immediately removed from office. The Board shall fill the Director's vacancy in accordance with these Bylaws until the end of the period of the suspension or the end of the Director's term of office, whichever occurs first. If the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Director shall be reinstated for any remainder of his or her term of office.

Section 6. Place of Meetings. The Board may hold annual or special meetings at any place (within or without the State of Florida) that a majority of Directors may by resolution appoint.

Section 7. Annual Meeting. The Board shall meet each year immediately after the annual meeting of the Members at the place that meeting has been held to elect officers and consider other business. Special meetings of the Board may be called by the Chairman of the Board or by the President.

Section 8. Notice of Meetings. All meetings of the Board and any committee or similar body which a final decision is made regarding the expenditure of Association funds and meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific residential parcel owned by a Member, must be open to all Members except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Notices of all Board meetings must be posted in a conspicuous place in the community at least forty-eight (48) hours in advance of a meeting, except in an emergency. In

the alternative, if notice is not posted in a conspicuous place in the community, notice of each Board meeting must be mailed or delivered to each Member at least seven (7) days before the meeting, except in an emergency. Notice by electronic transmission may also be provided to Members for Board meetings, committee meetings requiring notice under this Section and annual and special meetings, as long as the manner of the electronic transmission is authorized by law for such meetings and the Members have consented in writing to receive notice by facsimile or e-mail and the Members have provided a facsimile number or e-mail address to be used by the Association.

Section 9. Waiver of Notice. A Director may waive in writing notice of a special meeting or annual meeting of the Board either before or after the meeting, and his or her waiver shall be deemed the equivalent of giving notice. Attendance of a Director at any meeting shall constitute waiver of notice of that meeting, unless he or she attends for the express purpose of objecting to the transaction of business because the meeting has not been lawfully called or convened.

Section 10. Quorum. Unless otherwise provided for in the Articles of Incorporation, at any meeting of the Board a majority of the Directors in office shall be necessary to constitute a quorum for the transaction of business. If a quorum is present when a vote is taken, the affirmative vote of a majority of the Directors in attendance shall be the acts of the Board. Directors shall be deemed present at any meeting if a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other is used.

Section 11. Adjournment. A meeting of the Board may be adjourned. Notice of the adjourned meeting or of the business to be transacted there, other than by announcement at the meeting at which the adjournment is taken, shall not be necessary. At an adjourned meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting originally called.

#### ARTICLE V - Nomination and Election of Directors

Section 1. Nomination. All nominations for election to the Board shall be taken from the floor at the annual meeting and such nominations may be made from Members. However, all Members of the Association shall be eligible to serve on the Board, and any Member may nominate himself or herself as a candidate for the Board at the meeting where the election is to be held.

Section 2. Election. Election to the Board shall be by voice vote or a show of hands, unless objected to by thirty percent (30%) of the Members present at that meeting, in which case, the election shall be by written ballot. The persons receiving the largest number of votes shall be elected (i.e., the Board must be elected by a plurality of the votes cast by eligible voters). Cumulative voting is prohibited. Any challenge to the election process must be commenced within sixty (60) days after the election results are announced.

ARTICLE VI - Powers and Duties of Board of Directors

Section 1. Powers. The Board shall have the power to:

(a) Adopt and publish rules and regulations governing the use of the Common Property; and

(b) Levy reasonable fines, not to exceed \$100.00 per violation, against any Owner, Member, occupant, licensee, tenant, guest or invitee. Such fine or suspension may not be imposed without notice of at least fourteen (14) days to the parcel Owner(s) and, if applicable, the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) Members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee of the Association. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. If approved, the proposed fine or suspension is imposed without further Board action. If imposed, the Association must give written notice of the fine or suspension by U.S. Mail or hand delivery to the Member, Owner and tenant, occupant, guest, invitee, or licensee. Payment for any fine is due on or before five (5) days from the committee meeting approving the fine. Any suspension is effective on the date of the written notice; and

(c) Fine any Member because of the failure of the Member to pay assessments or other charges when due; and

(d) Declare the office of a Director to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board; and

(e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and

(f) Exercise for the Association all powers, duties and authority vested in or delegated to this Association by these Bylaws, or the Articles of Incorporation, and which are not reserved to the membership by other provisions of these Bylaws, or the Articles of Incorporation.

Section 2. Duties. It shall be the duty of the Board to:

(a) Cause to be kept a complete record of all its acts and Association affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth of the Owners;

(b) Supervise all Officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) With respect to assessments, to mail written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of its due date;

(d) Issue, or to cause an appropriate office to issue, upon demand by any person, a sealed certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If the certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) Procure and maintain adequate liability on property owned by the Association if the Directors, in their discretion, deem such insurance necessary;

(f) Cause all Officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) Cause the Common Property to be improved, repaired and maintained.

Section 3. Delegation. The Board shall have the authority to delegate and constitute committees for purposes beneficial to the advancement of the interests of the Association.

ARTICLE VII - Officers, Agents and Employees

Section 1. Officers. The executive Officers of the Association shall be chosen by the Board and shall consist of a President, Vice-President, Secretary and Treasurer. Other Officers, assistant officers, agents or employees that the Board from time to time may deem necessary may be elected by the Board or be appointed in a manner prescribed. Any two or more offices may be held by the same person. Officers shall hold office until their successors are chosen and have qualified, unless they are sooner removed from office as provided in these Bylaws.

Section 2. Vacancies. When a vacancy occurs in one of the executive offices by death, resignation or otherwise, it shall be filled by the Board. The Officer so selected shall hold office until his or her successor is chosen and qualified.

Section 3. Removal of Officers and Agents.

(a) An Officer or agent of the Association may be removed by a unanimous vote of the Board, whenever in their judgment the best interests of the Association will be served by the removal. The removal shall be without prejudice to the contract rights, if any, of the persons so removed. A Director charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property shall be immediately removed from office. The Board shall fill the Director's vacancy in accordance with these Bylaws until the end of the period of the suspension or the end of the Director's term of office, whichever occurs first. If the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Director shall be reinstated for any remainder of his or her term of office.

(b) An Officer charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property shall be immediately removed from office. The Board shall fill the Officer's vacancy in accordance with these



Bylaws until the end of the period of the suspension or the end of the Officer's term of office, whichever occurs first. If the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Officer shall be reinstated for any remainder of his or her term of office.

Section 4. President: Powers and Duties. The President shall be the chief executive officer of the Association and shall have general supervision of the business of the Association. He or she shall preside at all meetings of Members and Directors and discharge the duties of a presiding Officer, shall present at each annual meeting of the Members a report of the business of the Association for the preceding fiscal year, and shall perform whatever other duties the Board may from time to time prescribe.

Section 5. Vice-President: Powers and Duties. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. He or she shall also perform whatever duties and have whatever powers the Board may from time to time assign.

Section 6. Secretary: Powers and Duties. The Secretary shall attend all meetings of the Directors and of the Members and shall keep or cause to be kept a true and complete record of the proceedings of those meetings. He or she shall keep the corporate seal of the Association and when directed by the Board shall affix it to any instrument requiring it. He or she shall give, or cause to be given, notice of all meetings to the Directors or to the Members and shall perform whatever additional duties the Board and the President may from time to time prescribe.

Section 7. Treasurer: Powers and Duties. The Treasurer shall have custody of corporate funds and securities. He or she shall keep full and accurate accounts of receipts and disbursements and shall deposit all corporate monies and other valuable effects in the name and to the credit of the Association in a depository or depositories designated by the Board. He or she shall disburse the funds of the Association and shall render to the President of the Board, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Association.

Section 8. Delegation of Duties. Whenever an Officer is absent or whenever for any reason the Board may deem it desirable, the Board may delegate the powers and duties of an officer to any other Officer or Officers or to any Director or Directors.

#### ARTICLE VIII - Special Corporate Acts

Section 1. Execution of Written Instrument. Unless otherwise specifically determined by the Board or otherwise required by law, formal contracts of the Association, promissory notes, deeds, mortgages, assignments, satisfactions and other evidence of indebtedness of the Association, and other corporate instruments or documents, shall be executed, signed or endorsed by the President or any Vice President or chief executive officer and sealed with the common or corporate seal of the Association.

Section 2. Signing of Checks and Notes. Checks, notes, drafts and demands for money shall be signed by the Officer or Officers from time to time designated by the Board.

### ARTICLE IX - Amendments

Section 1. The power to amend or repeal the Bylaws or to adopt a new code of bylaws is reserved to the Members of the Association. These Bylaws shall be amended only by the affirmative vote of two-thirds of the voting interests of the Association.

Section 2. Any proposal to amend the Declaration, Articles of Incorporation, Bylaws, or any amendments or supplements thereto ("Governing Documents") must contain the full text of the provision to be amended and may not be revised or amended by reference solely to the title or number. Proposed new language must be underlined and proposed deleted language must be stricken. If the proposed change is so extensive that underlining and striking through language would hinder, rather than assist, the understanding of the proposed amendment, a notation must be inserted immediately preceding the proposed amendment in substantially the following form: "Substantial rewording. See governing documents for current text." An amendment to a Governing Document is effective when recorded in the public records of the county in which the community is located. An immaterial error or omission in the amendment process does not invalidate an otherwise properly adopted amendment.

### ARTICLE X - Assessments

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments, which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the highest legal rate together with costs and reasonable attorneys' fees. Therefore, the Association or an Owner (on behalf of the Association) may bring an action at law against the Owner personally obligated to pay the same and foreclose the lien against the property. If the party initiating such action prevails, it shall be entitled to recover reasonable legal fees from the defendant and any such amounts so awarded shall be added to the amount of such assessment. No Owner may waive or otherwise avoid liability for the assessments provided for herein by virtue of non-use of the Common Property or abandonment of his or her Lot.

### ARTICLE XI - Loans

No loans shall be contracted on behalf of the Association, and no evidence of indebtedness shall be issued in its name, unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances.

### ARTICLE XII - Books and Records

Section 1. Books and Records. This Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Members, Board and committees. It shall keep at its registered office or principal place of business a record of its Members, giving the names and addresses of all Members.

Section 2. Members' Inspection Rights. Any Member, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, its relevant books and records of accounts,

minutes and records of Members, and to make extracts therefrom. At the Association's option, the records of the Association may be made available electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The Association shall also allow a Member to use a portable device, such as a smartphone, tablet or other technology for scanning/taking pictures to make an electronic copy of the records in lieu of providing the Member with a copy of such records.

Section 3. Financial Information. Not later than ninety (90) days after the close of each fiscal year, the Association shall prepare an annual financial report showing in reasonable detail the financial condition of the Association as of the close of its fiscal year, and a statement of sources and uses of funds.

#### ARTICLE XIII - Deadlock

(a) Should deadlock, dispute or controversy arise among the Members or Directors of the Association in regard to matters of management and company policy and should the Members, by using their legal power and influence as Members, be unable to resolve such deadlock, dispute or controversy, the matter shall be submitted by the Members to arbitration.

(b) Should the Members or Directors be unable to agree as to the scope of this provision or the application of this provision to the deadlock, dispute or controversy at issue, the scope and applicability of this provision shall be determined by the arbitrator.

(c) Notice shall be given to such objecting or dissenting Members that such deadlock exists within fifteen (15) days of such deadlock, by certified mail, postage prepaid, addressed to the remaining Members at the addresses listed on the Association books.

(d) The Members shall then select an arbitrator within sixty (60) days of the receipt of such notice of deadlock, upon a unanimous vote of the shares of stock outstanding and entitled to vote. The Members shall reserve the right to replace the arbitrator by unanimous vote of the Owners entitled to vote.

(e) Should the Members be unable to select an arbitrator or a successor arbitrator, the deadlock, dispute or controversy shall be resolved in accordance with the Florida Arbitration Code, Section 682 of the Florida Statutes.

(f) The decision of the arbitrator shall be final and binding upon all Members. The Members shall vote their shares as the arbitrator shall direct.

(g) To enforce these provisions, the arbitrator may obtain an injunction from a court having jurisdiction to direct the Members to vote as the arbitrator has determined.

#### ARTICLE XIV - Interested Directors or Officers

(a) No contract or other transaction between the Association and one or more of its Directors or Officers, or between an Association and any other corporation, partnership, firm, association or other organization in which one or more of its Directors or Officers are directors or officers, or are financially interested, shall either be invalid, void or voidable for this reason alone or by reason alone that such Director(s) or Officer(s) are present at, or participated in, the

meeting of the Board, or of a committee thereof, which approves such contract or transaction, or solely because his, hers or their votes are counted for such purposes:

1. If the fact of such common directorship, officership or financial interest is disclosed or known to the Board or committee, and the Board or committee approves such contract or transaction by vote sufficient for such purpose without counting the vote or votes of such interested Director(s) or Officer(s); or

2. If such common directorship, officership or financial interest is disclosed or known to the Members entitled to vote thereon, and such contract or transaction is approved by vote of the Members; or

3. If the contract or transaction is fair and reasonable as to the Association at the time it is approved by the Board, a committee or the Members.

(b) As an alternative to Section A.:

1. The disclosures required by Section A., above, may be entered into the written minutes of the meeting of the Board; or

2. The contract or other transaction may be approved by an affirmative vote of two-thirds of the Directors present at the meeting; or

3. At the next regular or special meeting of the Members, the existence of the contract or other transaction must be disclosed to the Members. Upon motion of any Member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the Members present. If the Members cancel the contract, the Association is only liable for the reasonable goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages or other penalty for such cancellation.

4. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee that approves such contract or transaction.

(c) No Officer or Director may solicit, offer to accept, or accept any good or service of value for which consideration has not been provided for his or her benefit or for the benefit of a Member of his or her immediate family from any person providing or proposing to provide goods or services to the Association, except for food to be consumed at a business meeting with a value of less than \$25.00 per individual or a service or good received in connection with trade fairs or education programs. If the Board finds an Officer or Director has violated this provision, the Board shall immediately remove the Officer/Director from office. The vacancy of the Officer/Director shall be filled according to law until the end of the Officer/Director's term of office.

*(end of text – signature page to follow)*

DATED this the 2<sup>ND</sup> day of September, 2021.

Signed, sealed and delivered in the presence of:

KISSIMMEE POINTE HOMEOWNERS' ASSOCIATION, INC., a Florida not for profit corporation

*Jeannie L. Brown*  
Print Name: Jeannie L. Brown  
*M. Faust*  
Print Name: M. Faust

*[Signature]*  
By: Todd McCrory  
Its: President

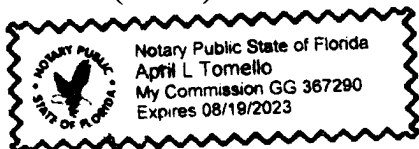
STATE OF FLORIDA  
COUNTY OF Florida

THE FOREGOING INSTRUMENT was acknowledged before me by means of  physical presence or  online notarization on this 2<sup>nd</sup> day of September, 2021, by Todd McCrory, as President of Kissimmee Pointe Homeowners' Association, Inc., a Florida not-for-profit corporation who  is personally known to me or  has produced \_\_\_\_\_, as identification.

*April L. Tomello*  
SIGNATURE OF NOTARY

April L. Tomello  
NAME LEGIBLY PRINTED,  
TYPEWRITTEN OR STAMPED

(SEAL)



My Commission Expires: 8/19/2023

**ARTICLES OF INCORPORATION OF  
KISSIMMEE POINTE HOMEOWNERS' ASSOCIATION, INC.**

The undersigned incorporator hereby adopts the following Articles of Incorporation for the purpose of forming a not for profit corporation under the "Florida Not-For-Profit Corporation Act."

**ARTICLE I  
CORPORATE NAME**

The name of the Corporation shall be KISSIMMEE POINTE HOMEOWNERS' ASSOCIATION, INC., hereinafter called the "Association."

**ARTICLE II  
EXISTENCE AND DURATION**

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

**ARTICLE III  
DEFINITIONS**

The terms used in these Articles shall have the same definitions and meanings as those set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Kissimmee Pointe recorded or to be recorded in the public records of Escambia County, Florida (the "Declaration"), unless herein provided to the contrary, or unless the context otherwise requires. Supplementary terms:

"Director" shall mean and refer to those persons elected to the Association's Board of Directors pursuant to Article V herein.

"Officer" shall mean and refer to those persons elected by the Board pursuant to Article VI herein.

"Member" shall mean and refer to those persons entitled to membership in the Association as provided in the Declaration.

"Property" shall mean and refer to the real property described within the Declaration.

Stephen R. Moorhead, Esquire  
FL Bar No. 613339  
Moorhead Real Estate Law Group  
127 Palafox Place, Suite 200  
Pensacola, FL 32502  
(850) 202-8522  
(850) 477-0982 (fax)

**ARTICLE IV**  
**PURPOSES AND POWERS**

The Association is not organized for pecuniary profit or financial gain, and no part of the Association's assets or income shall inure to the benefit of any Director, Officer or Member of the Association except as may be authorized by the Board of Directors in accordance with the terms and provisions of the Bylaws of the Association with respect to the compensation of Directors, Officers or Members of the Association for the rendition of unusual or exceptional services to the Association.

1. Purpose and Powers of Association. The purposes for which the Association is formed, and the powers that may be exercised by the Board of Directors of the Association, are:

(a) To own, operate, maintain, preserve or replace, and to provide architectural control over the Property, including the Common Property, and to those properties that may be annexed to the Property from time to time pursuant to the Declaration; and

(b) To acquire by gift, purchase, or otherwise, and to own, build, improve, operate, repair, maintain and replace, lease, transfer, and otherwise dispose of, real property, buildings, improvements, fixtures and personal property in connection with the business and affairs of the Association; and

(c) To dedicate, sell or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective without the consent of a majority of the Members to such dedication, sale or transfer, in writing or by vote at a duly called meeting of the Association, or without the prior written consent of Declarant so long as Declarant owns at least one (1) Lot; and

(d) To establish, levy, collect, and enforce payment of, all assessments and charges pursuant to the terms and provisions of the Declaration or Bylaws of the Association, and to use the proceeds thereof in the exercise of its powers and duties; and

(e) To operate, maintain and manage the Stormwater Management System (as defined in the Declaration) in a manner consistent with the requirements of the applicable Northwest Florida Water Management District (the "District") Permit and District rules, and shall assist in the enforcement of the restrictions and covenants contained herein; and

(f) To establish, levy, collect, and enforce payment of, adequate assessments and charges against members of the Association for the costs of maintenance, operation and repair of the Stormwater Management System (as defined in the Declaration) and mitigation or preservation areas including, but not limited to, work within retention areas, drainage structures and drainage easements; and

(g) To borrow money and to pledge, mortgage or hypothecate any or all of the real or personal property owned by the Association as security for money borrowed or debts incurred by the Association; and

(h) To annex additional real property to the Property pursuant to the terms and provisions of the Declaration; and

(i) To exercise such powers which are now or may hereafter be conferred by law upon an association organized for the purposes set forth herein, or which may be necessary or incidental to the powers so conferred; and

(j) To grant easements on or through the Common Property or any portion thereof; and

(k) To exercise all of the powers and privileges, and to perform all of the duties and obligations, of the Association as set forth in the Declaration, as the same may be amended from time to time; and

(l) To promulgate or enforce rules, regulations, bylaws, covenants, restrictions or agreements to effectuate the purposes for which the Association is organized; and

(m) To contract for the management of the Association and to delegate in such contract all or any part of the powers and duties of the Association, and to contract for services to be provided to Owners including, but not limited to, trash removal and other utilities or services; and

(n) To purchase insurance upon the Property or any part thereof and insurance for the protection of the Association, its Officers, its Directors and the Owners; and

(o) To employ personnel to perform the services required for the proper operation of the Association.

The foregoing clauses shall be construed both as purposes and powers, and the enumeration of specific purposes and powers shall not be construed to limit or restrict in any way the purposes and powers of the Association that may be granted by applicable law and any amendments thereto.

## ARTICLE V BOARD OF DIRECTORS

1. Number and Qualifications. The business and affairs of the Association shall be managed and governed by a Board of Directors. The number of Directors constituting the initial Board of Directors shall be three (3). The number of Directors may be increased or decreased from time to time in accordance with the Bylaws of the Association, but in no event shall there be less than three (3) nor more than five (5) Directors. Directors need not be Members of the Association.



2. Duties and Powers. All of the duties and powers of the Association existing under the Declaration, these Articles and the Bylaws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject to approval by Owners only when such approval is specifically required.

3. Election; Removal. Directors of the Association shall be elected at the Annual Meeting of the Members in the manner determined by and subject to the qualifications set forth in the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

4. Term of Initial Directors. The Declarant shall appoint the members of the first Board of Directors and their replacements, who shall hold office for the periods described in the Bylaws.

5. Initial Directors. The names and addresses of the initial Board of Directors, who shall hold office until their successors are elected and have taken office, as provided in the Bylaws, are as follows:

Todd McCrory - Class 1 (initial one-year term)  
2101 Clinton Ave. W  
Suite 201  
Huntsville, AL 35805

Wes Alford - Class 2 (initial two-year term)  
2101 Clinton Ave. W  
Suite 201  
Huntsville, AL 35805

Louis W. Breland - Class 3 (initial three-year term)  
2101 Clinton Ave. W  
Suite 201  
Huntsville, AL 35805

## ARTICLE VI OFFICERS

The affairs of the Association shall be administered by the Officers holding the offices designated in the Bylaws. The Officers shall be elected by the Board of Directors of the Association at its first meeting following the Annual Meeting of the Members and shall serve at the pleasure of the Board of Directors. The Bylaws may provide for the removal of Officers, for the filling of vacancies and for the duties of the Officers. The names and addresses of the Officers who shall serve until their successors are designated by the Board of Directors are as follows:

President            Todd McCrory  
                         2101 Clinton Ave. W  
                         Suite 201  
                         Huntsville, AL 35805

Vice President     Louis W. Breland  
                         2101 Clinton Ave. W  
                         Suite 201  
                         Huntsville, AL 35805

Secretary           Wes Alford  
                         2101 Clinton Ave. W  
                         Suite 201  
                         Huntsville, AL 35805

Treasurer          Todd McCrory  
                         2101 Clinton Ave. W  
                         Suite 201  
                         Huntsville, AL 35805

**ARTICLE VII  
MEMBERSHIP**

1.        Membership Rights. Every person or entity who is a record title owner of any Lot shall be a Member of the Association. Any person or entity who holds an interest in any Lot merely as security for the performance of an obligation shall not be a Member of the Association. Membership in the Association is appurtenant to a Lot and cannot be conveyed other than by conveyance of fee simple title to the Lot.

2.        Informal Action By Members. Any action that may be taken at a Members' meeting may be taken without a meeting if a consent in writing, setting forth the action, shall be signed by the holders of not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and filed with the Secretary of the corporation. Within ten (10) days after obtaining such authorization by written consent, notice must be given to those Members who have not consented in writing to such action taken. The notice must fairly summarize the material features of the authorized action.

**ARTICLE VIII  
AMENDMENT**

Amendments to these Articles shall be made in the following manner:

1.        Proposal. Notice of the subject matter for a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

2. Adoption. The resolution for the adoption of a proposed amendment may be proposed by either a majority of the Board of Directors or by not less than one third (1/3) of the Members. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that the approval is delivered to the Secretary at or prior to the meeting. The approval must be by not less than a majority of the votes of all the Members represented at a meeting at which a quorum of Members is present.

3. Limitation. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of Members, nor any changes in Article IV or Article XI of the Articles entitled "Purposes and Powers" and "Indemnification," respectively, without the approval in writing of all Members and the joinder of all record owners of mortgages on Lots. No amendment shall be made that is in conflict with the Declaration or Bylaws, nor shall any amendment make changes that would in any way affect the rights, privileges, powers or options herein provided in favor of, or reserved to, Declarant, or an affiliate of Declarant, unless Declarant shall join in the execution of the amendment. No amendment to this Paragraph C or Article VIII shall be effective.

4. Declarant's Amendment. The Declarant may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be affected solely by the Declarant.

5. Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the Public Records of Escambia County, Florida.

## ARTICLE IX BYLAWS

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

## ARTICLE X INCORPORATOR

The name and address of the incorporator of the Association are: Stephen R. Moorhead, 127 Palafox Place, Suite 200, Pensacola, Florida 32502.

## ARTICLE XI INDEMNIFICATION

1. Indemnity. The Association shall indemnify any person who is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director, employee, Officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or

proceeding, unless: (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he or she did not act in good faith, or in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe his or her conduct was unlawful; and (b) such court further specifically determines that indemnification should be denied.

The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

2. Expenses. To the extent that a Director, Officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph A, above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

3. Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon the receipt of an undertaking by or on behalf of the affected Director, Officer, employee or agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article XI.

4. Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of Members or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, employee or agent, and shall inure to the benefit of the heirs and personal representatives of such person.

5. Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the Association, or is or was serving, at the request of the Association, as a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the provisions of this Article.

6. Amendment. Notwithstanding anything herein to the contrary, the provisions of this Article XI may not be amended without the prior written consent of all persons whose interest would be adversely affected by such amendment.

**ARTICLE XII**  
**DISSOLUTION**

Unless the Board of Directors determines that because of a conflict of interest or other substantial reason it should not make any recommendation, the Board of Directors must adopt a resolution recommending that the Association be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of Members entitled to vote thereon, which may be either an annual or special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation must be given to each Member (as of thirty (30) days prior to the date of mailing such notice) entitled to vote at such meeting. This notice shall be sent at least ten (10) days and not more than sixty (60) days before the date named for the meeting to each Member by United States mail, or by telegram, charges prepaid, to his address appearing on the books of the Association. A resolution to dissolve the corporation shall be adopted upon receiving eighty percent (80%) of the votes which Members present at such meeting or represented by proxy are entitled to cast. At any time after dissolution is authorized, the corporation may dissolve by delivering to the Department of State articles of dissolution for filing.

In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Stormwater Management System (as defined in the Declaration) must be transferred to and accepted by an entity that complies with Rule 62-330.310, F.A.C., and Applicant's Handbook Volume I, Section 12.3, and be approved by the District prior to such termination, dissolution or liquidation.

**ARTICLE XIII**  
**INITIAL REGISTERED OFFICE AND AGENT AND CORPORATE OFFICE**

The street address of the initial registered office of the Association is:

127 Palafox Place, Suite 200  
Pensacola, FL 32502

and the name of the initial registered agent of the Association at said address is:

Stephen R. Moorhead

The address of the principal corporate office of the Association is:

2101 Clinton Ave. W  
Suite 201  
Huntsville, AL 35805

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IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation on this 21 day of June, 2021.

[Signature]  
Stephen R. Moorhead, Incorporator

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

THE FOREGOING INSTRUMENT was acknowledged before me by means of  physical presence or  online notarization on this 21 day of ~~April~~<sup>June</sup>, 2021, by Stephen R. Moorhead as Incorporator of Kissimmee Pointe Homeowners' Association, Inc., a Florida not-for-profit corporation who  is personally known to me or  has produced \_\_\_\_\_, as identification.



[Signature]  
SIGNATURE OF NOTARY

Anna-Marie Forshee  
NAME LEGIBLY PRINTED,  
TYPEWRITTEN OR STAMPED

(SEAL)

My Commission Expires: February 19, 2024

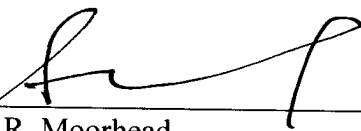
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**ACCEPTANCE OF APPOINTMENT AS REGISTERED AGENT**

I, Stephen R. Moorhead, hereby accept the appointment as registered agent for Kissimmee Pointe Homeowners' Association, Inc. as set forth in its Articles of Incorporation being filed simultaneously herewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 21  
day of June, 2021.

  
\_\_\_\_\_  
Stephen R. Moorhead

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