

**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS**

**FOR**

**MAGNOLIA COURT AT WATERWAY VILLAGE**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**MAGNOLIA COURT AT WATERWAY VILLAGE**

**DIVOSTA HOMES, L.P.**, a Delaware limited partnership, the present fee title owner of the property legally described in Exhibit "A" hereto, hereinafter called "Developer", to its grantees, successors and assigns and all future owners of Parcels located in Magnolia Court at Waterway Village, as more particularly described in Exhibit "A" attached hereto and made a part hereof, hereby makes the following Declaration of Covenants, Conditions and Restrictions.

It is the intent of the Developer to ultimately develop the real property, as described in Exhibit "A", as a planned unit development named "Magnolia Court at Waterway Village" consisting of up to 93 residential dwellings. Upon recording this Declaration, the Developer hereby submits the real property described in Exhibit "A" to the terms and conditions of this Declaration.

The Developer reserves the right to amend this Declaration in order to remove real property that it owns from the terms of this Declaration. In the event the Developer removes real property from the terms of this Declaration ("Removed Property"), the Developer hereby reserves the right, on behalf of its successors and assigns, to grant the owners of residential dwellings in the real property that has been submitted to and/or removed from the terms of this Declaration, use and easement rights to all or portions of the Removed Property and/or the Common Area, all upon such terms as the Developer may impose in an agreement recorded in the Public Records of Indian River County, Florida.

For the purpose of enhancing and protecting the value, attractiveness and desirability of the residential dwellings constituting such development, the Developer hereby declares that all of the real property subjected to this Declaration and each part thereof shall be developed as a planned unit development and shall be held, sold and conveyed only subject to the following easements, covenants, conditions and restrictions which shall constitute covenants running with the land and shall be binding on all parties having any right, title or interest in the above described property, or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof and the Association.

Although Magnolia Court at Waterway Village is anticipated to have up to 93 residential dwellings, the Developer makes no representation or warranty regarding the timing of or guarantees the construction of residential dwellings or the number or types of residential dwellings which will ultimately be constructed. From time to time, the Developer and others may present to the public certain renderings, plans and models showing possible future development of Magnolia Court at Waterway Village and surrounding areas. The Developer does not represent or warrant in any way that future improvements in Magnolia Court at Waterway Village and surrounding areas will be actually developed or developed in accordance with such renderings, plans and models. The Developer reserves the right to seek approval from applicable zoning and regulatory authorities to increase the number of residential dwellings that may be constructed in Magnolia Court at Waterway Village and therefore the number of Parcels that may be subjected to this Declaration. Accordingly, the Developer reserves the right to subject additional real property to this Declaration that is not legally described in Exhibit "A". If the Developer adds and subjects real property that is not described in Exhibit "A" or obtains approval from zoning and regulatory authorities to increase the maximum number of Parcels that may be conveyed, the Turnover Date set forth in Section 15 below shall be extended.

1. DEFINITIONS. The terms used in this Declaration and its recorded exhibits shall have the definitions set forth in Chapter 720, Florida Statutes (2018) (the "Act"), unless otherwise defined below (it being the intent hereof that future amendments to the Act not be retroactively applied to impair substantive rights of the Developer set forth herein):

1.1 "Architectural Reviewer" means and refers to the entity responsible for review and approval of construction and alterations to improvements, as more particularly described in Section 5 herein.

1.2 "Assessment" shall have the meaning set forth in Section 720.301 of the Act.

1.3 "Association" shall mean and refer to Magnolia Court at Waterway Village Homeowners Association, Inc., a Florida corporation not for profit.

1.4 "Board of Directors" means and refers to the Board of Directors of the Association.

1.4.1 "Builder" means and refers to a builder, contractor or other person who purchases one or more Parcels from the Developer or a Builder to construct improvements thereon for resale. There may be more than one Builder in Magnolia Court at Waterway Village.

1.5 "Common Area" means and refers to all real property which is now or hereafter owned or leased by the Association or dedicated for use or maintenance by the Association or its Members, including, regardless of whether title has been conveyed to the Association: real property the use of which is dedicated to the Association or its Members by a recorded plat; or real property committed by this Declaration to be leased or conveyed to the Association.

1.5.1 "Common Expenses" means and refers to all expenses properly incurred by the Association in the performance of its duties.

1.5.2 "Conservation Area" means and refers to that portion of the Common Area, if any, other than a Preservation Area, which may include native habitats set aside to fulfill open space requirements, and which is intended to be maintained by the Association without specific management guidelines.

1.6 "Developer" means and refers to DiVosta Homes, L.P., a Delaware limited partnership. Any or all of the Developer's rights and obligations may be assigned, in whole or in part, from time to time, to other parties. The Developer may allow other parties to exercise, on a one-time or limited basis, any Developer rights without transferring or relinquishing all of such rights, and in such case, a recorded instrument shall not be required. Unless otherwise provided in a written assignment, the assignment of all of the Developer's rights and obligations shall not result in the Developer relinquishing its rights with respect to real property that it owns, nor being relieved of its obligations that accrued as of such date. The Developer shall not be liable for acts or omissions made by or on behalf of a successor Developer.

1.7 "Declaration" means and refers to this Declaration of Covenants, Conditions and Restrictions, and any amendments hereto.

1.8 "Family" or "Single Family" shall refer to one natural person (as opposed to an artificial entity); or a group of two (2) or more natural persons living together each of whom is related to each of the others by blood, marriage, legal custody or adoption; or not more than two (2) persons not so related, who reside together as a single housekeeping unit, along with their children, if any.

1.9 "Governing Documents" means and refers to this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations, Architectural Review Guidelines and the resolutions of the Association. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority stated above.

1.10 "Guest" or "Guests" means any person or persons physically present in, or occupying a Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration, or using the Common Area at the invitation of an Owner or other legally permitted occupant.

1.11 "Institutional Mortgagee" means the mortgagee or assignee of a first mortgage against a Parcel, which mortgagee or assignee is a bank, savings and loan association, mortgage company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Parcel or Unit which mortgage is guaranteed or insured (as evidenced by a recorded instrument) by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private agency engaged in the business of purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns. An "Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a Unit.

1.12 "Lease" means the grant by an Owner of a temporary right to occupy the Owner's Unit for valuable consideration.

1.13 "Magnolia Court at Waterway Village" means and refers to the planned unit development created pursuant to this Declaration, which is the real property legally described in Exhibit "A" attached hereto. "Magnolia Court at Waterway Village" shall have the same meaning as the term "Community", as defined in Section 720.301(3) of the Act.

1.14 "Member" means and refers to all persons who are members of the Association as provided in the Governing Documents.

1.15 "Owner" means and refers to any person or persons, entity or entities, who is or are the record owner(s) of the fee simple title to any Parcel in Magnolia Court at Waterway Village.

1.16 "Parcel" or "Parcels" means any platted or unplatted lot, tract, condominium unit, or other discrete area of real property within Magnolia Court at Waterway Village which is capable of separate conveyance and has been subjected to this Declaration, but shall exclude: Common Area; all property dedicated or deeded to Indian River County, Florida; the St. Johns Water Management District ("SJWMD") or any other governmental authority, taxing district, or a public or private utility, including, without limitation, roads, environmental buffers, landscape buffers, lakes, Conservation Areas, Preservation Areas and Wetlands, if any. Wherever herein the term "Parcel" is used in this Declaration, it shall be interpreted as if followed by the words "and Unit constructed thereon" except where the context clearly requires otherwise.

1.17 "Preservation Area" means that portion of the Common Area, if any, which is intended to be preserved and maintained by the Association in its existing (or restored) natural and native condition in perpetuity, excepting, however, those portions, if any, that are the Master Association's responsibility.

1.18 "Primary Occupants" means the two (2) natural persons approved for occupancy, together with their Family, in accordance with Section 12 herein.



1.19 "Rules and Regulations" means and refers to the rules and regulations adopted, amended and rescinded from time to time by resolution of the Board of Directors.

1.20 "Single Family Residence" means and refers to a Unit which is restricted to occupancy only by the Owner or Primary Occupants and their Family, Guests and Tenants as further provided herein.

1.21 "Stormwater Management System" means and refers to a drainage system consisting of swales, inlets, culverts, retention ponds, ditches, water control features, floodplain compensation areas, wetlands and any associated buffer areas and wetland mitigation areas, detention ponds, lakes, outfalls, storm drains and other similar and/or related improvements, and all connecting pipes and easements, to the extent that any such facilities, areas or conditions apply to Magnolia Court at Waterway Village, which is designed and constructed or implemented to control discharges 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 quantity and quality of discharges from the system, as permitted pursuant to the permit issued by the SJWMD.

1.22 "Tenant" or "Tenants" means and refers to one who leases or rents from an Owner and holds temporary possession of a Unit.

1.23 "Turnover Date" shall mean the date upon which control of a majority of the seats on the Board of Directors is transferred to the Members other than the Developer as described in Section 15 herein. "Turnover" shall mean and refer to the process by which the Developer transfers control of the Board of Directors to the Members other than the Developer and transfers physical possession or control of those records set forth in Section 720.307 of the Act. "Turnover Meeting" shall mean the meeting of the Members on the Turnover Date at which the Turnover is completed. The term "Members other than the Developer" does not include Builders.

1.24 "Unit" means and refers to any or all the residences which will be constructed on the Parcels, each intended for use and occupancy as a Single Family Residence.

1.25 "Wetland" means and refers to any area within Magnolia Court at Waterway Village identified or designated as habitat for wetland species of plants and/or animals by the SJWMD or by Indian River County, Florida, or by the United States Army Corps of Engineers, or by any other agency of the State of Florida or the United States government, whether or not such area is included within the Stormwater Management System or is an isolated area that is not connected to the Stormwater Management System.

## 2. WATERWAY VILLAGE, WATERWAY VILLAGE HOMEOWNERS ASSOCIATION, INC.; NAMES AND LOGOS.

2.1 Waterway Village and Waterway Village Homeowners Association, Inc. Magnolia Court at Waterway Village is located within that certain development of regional impact known as "Waterway Village", as more particularly described in the Declaration of Covenants, Conditions and Restrictions for Waterway Village recorded in O.R. Book 2065, Pages 1776 et seq., Public Records of Indian River County, Florida ("Master Declaration"), including any exhibits and Supplements and amendments thereto, all as amended and supplemented from time to time. "Master Association" means Waterway Village Homeowners Association, Inc., the homeowners' association responsible for the operation of Waterway Village. "Master Documents" means the Master Declaration, any Supplemental Declarations

and amendments thereto, and the Articles of Incorporation, Bylaws, rules and regulations, architectural guidelines, resolutions and any other exhibits, all as amended from time to time.

Each Owner becomes a member of the Master Association and that membership is appurtenant to and inseparable from ownership. Although Owners are members of the Master Association and entitled to attend Master Association meetings, they are not entitled to vote directly with respect to Master Association issues. Rather, a "Voting Representative" shall be entitled to cast votes on behalf of Owners at meetings of the Master Association's members. As set forth more fully in the Master Documents, each Owner is obligated to pay operating expenses and assessments of the Master Association.

The provisions of the Governing Documents shall be cumulative with the provisions of the Master Documents; however, in the event of conflict between or among the provisions of the Governing Documents and the Master Documents, the latter shall be superior to the Governing Documents. The foregoing priorities shall not prevent enforcement by the Association of provisions of the Governing Documents that are stricter than those of the Master Documents.

2.2 Names and Logos. No person shall use the terms "Waterway Village", "DiVosta", "Magnolia Court at Waterway Village", any derivative thereof or any "Waterway Village", "DiVosta" or "Magnolia Court at Waterway Village" logos in any printed or promotional material without the prior written consent of the Developer. However, Members, realtors and other persons may use the term "Waterway Village" and "Magnolia Court at Waterway Village" in printed or promotional matter where such term is used solely to specify that a particular Parcel is located within Waterway Village and Magnolia Court at Waterway Village. The Association shall be entitled to use the term "Magnolia Court at Waterway Village" in its name.

3. ASSOCIATION; MEMBERSHIP; VOTING RIGHTS. The administration, management and ownership of the Common Area shall be by the Association, which shall perform its functions pursuant to the following:

3.1 Articles of Incorporation. A copy of the Articles of Incorporation is attached as Exhibit "B".

3.2 Bylaws. A copy of the Bylaws is attached as Exhibit "C".

3.3 Delegation of Management. The Association may contract for the management and maintenance of Magnolia Court at Waterway Village and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Area, with funds made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties provided in the Governing Documents.

3.4 Membership. Every person or entity who is an Owner shall be a Member, except that if a Parcel is subject to an agreement for deed, the purchaser in possession shall be considered the Owner for purposes of determining voting and use rights.

(A) Class "A". Class "A" Members shall be all those Owners as defined in Section 1, with the exception of the Class "B" Member. Class "A" Membership shall become effective upon the last to occur of the following:

(1) Recording a deed or other instrument evidencing legal title to the Parcel in the Public Records of Indian River County, Florida.

(2) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.

(3) Delivery to the Association, if required, of a written designation of the Primary Occupants.

The failure to comply with the prerequisites set forth in (2)-(3) above shall not release the Owner from the obligation to comply with the Governing Documents, but shall otherwise preclude such Owner from obtaining the benefits of membership, including, without limitation, the right to receive notices and the right to vote on Association matters.

(B) Class "B". The Class "B" Member shall be the Developer or any successor to the Developer's development rights and obligations.

Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which Membership is based.

3.5 Voting Interests. In accordance with Section 720.301(13) of the Act, the term "Voting Interest" means the voting rights distributed to the Members pursuant to the Governing Documents. The Class "A" Members of the Association are entitled to one vote for each Parcel they own. The total number of Class "A" votes shall not exceed the total number of Parcels subject to this Declaration. The vote of a Parcel is not divisible. If a Parcel is owned by one natural person, his right to vote shall be established by the record title. If a Parcel is owned jointly by two (2) or more natural persons who are not acting as trustees, that Parcel's vote may be cast by any one of the record Owners. If two (2) or more Owners of a Parcel do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the Owner is a corporation, partnership, limited liability company, trust, trustee or other entity other than a natural person, the vote of that Parcel shall be cast by any officer, director, partner, manager, managing member or trustee, as the case may be.

The Class "B" Member shall be entitled to a number of votes equal to the total number of Parcels owned by the Class "A" Members plus one vote; provided that subsequent to the Turnover Date, the Class "B" Member shall be entitled to one vote for each Parcel it owns.

3.6 Approval or Disapproval of Matters. Whenever the decision or approval of the Owner of a Parcel is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person authorized to cast the vote of such Parcel at an Association meeting as stated in Section 3.5 above, unless the joinder of all Owners is specifically required.

3.7 Change of Membership. A change of membership shall be established as provided in Section 3.4 above; and the membership of the prior Owner shall thereby be automatically terminated.

3.8 Termination of Membership. The termination of membership in the Association does not relieve or release any former Member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

3.9 Association As Owner of Parcels. The Association has the power to purchase Parcels and Units, and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors.

3.10 Membership Roster. The Association shall maintain a current roster of names and mailing addresses of Owners and Primary Occupants. A copy of the up to date roster shall be available to any Owner upon request, subject to the exclusion of information that is protected from disclosure pursuant to the Act.

3.11 Limitation on Liability. Notwithstanding the duty of the Association to maintain and repair the Common Area, the Association shall not be liable to Owners for property damage other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or Owners or other persons.

3.12 Board of Directors. Except as otherwise provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the Members shall be required. The Officers and Directors of the Association have a fiduciary relationship to the Members. An Owner does not have the authority to act for the Association by virtue of being an Owner.

3.13 Powers and Duties. The powers and duties of the Association include those set forth in the Governing Documents.

4. COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS AND CHARGES.

4.1 Creation of Lien and Personal Obligation for Assessments and Charges. Subject to the limitations on assessment liability set forth elsewhere in this Declaration, the Developer, for each Parcel within Magnolia Court at Waterway Village, hereby covenants, and each subsequent Owner of any Parcel (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(A) the Parcel's pro rata share of annual Assessments based on the annual budget adopted by the Association;

(B) the Parcel's pro rata share of special Assessments for Association expenditures not provided for by annual Assessments;

(C) any charges against less than all of the Parcels specifically authorized in this Declaration or the Bylaws;

(D) initial contributions, as authorized pursuant to Section 4.8 below and as determined by the Developer. Initial contributions are not Assessments;

(E) resale assessments, as authorized pursuant to Section 4.9 below ("Resale Assessments"); and

(F) Assessments for the costs of the Association maintaining, repairing and replacing lawns and landscaping (including irrigation equipment), as set forth in Section 7.1 below ("Landscaping Assessments"). Landscaping Assessments shall be considered Assessments, except that Landscaping Assessments may vary by amount based upon the size of Parcels and will be shared solely by the Owners of Parcels of the same size.

Assessments and charges shall be established and collected as provided herein and in the Bylaws. The Assessments and charges, together with interest, costs, and reasonable attorney's fees shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid Assessments and charges coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor the amounts paid by the transferee. Except as provided elsewhere in this Declaration as to the Developer, Builders and first mortgagees (or their successors or assignees as a subsequent holder of the first mortgage), no Owner may be excused from the payment of Assessments unless all Owners are similarly excused.

4.2 Share of Assessments. Except as otherwise provided as to the Developer, Builders and first mortgagees (or their successors or assignees as a subsequent holder of the first mortgage) or as otherwise provided pursuant to this Declaration, each Parcel (and the Owner thereof) which has been submitted to the terms of this Declaration and which contains a Unit for which a final certificate of occupancy has been issued, shall be liable for its pro rata share of all Assessments. A Parcel which has been submitted to the terms of this Declaration containing land or improvements for which a final certificate of occupancy has not been issued, shall pay Assessments equal to five (5) percent (5%) of the Assessments which are payable by Parcels containing a Unit for which a final certificate of occupancy has been issued. All Common Area and any property dedicated to and accepted by any governmental authority, taxing district, SJWMD or public or private utility, shall be exempt from payment of Assessments and charges.

4.3 Developer Subsidy. Notwithstanding anything to the contrary contained in this Declaration, at any time prior to the Turnover Date the Developer may elect, for each fiscal year or portion thereof, to: (a) pay Assessments on its Parcels that are subject to this Declaration as set forth in Section 4.2 hereof; or (b) not pay Assessments on its Parcels that are subject to this Declaration and in lieu thereof, to pay the difference between (i) the Association's actual operating expenses incurred (either paid or payable), but not any capital improvement costs, reserves and special Assessments; and (ii) the amount of revenues earned (either received or receivable) from all sources (including, without limitation, Assessments, interest, late charges, fines, charges and other income sources and any surplus carried forward from the preceding year(s)). The option described in (b) above shall be referred to herein as the "Developer Subsidy". Master Association assessments and charges are not included within the Developer's Subsidy. Any amounts paid by the Developer that exceed the Developer Subsidy obligation are referred to herein as "surplus" and shall be considered a loan from the Developer to the Association. Any surplus may either be paid to the Developer after the conclusion of the fiscal year upon demand or carried forward to the next fiscal year. Any surplus remaining at the Turnover Date shall be paid to the Developer upon demand.

The Developer's election to choose the Developer Subsidy option may be evidenced by a notation in the Association's budget for the subsequent fiscal year or portion thereof, or otherwise. If the Developer fails to make an election prior to the beginning of any fiscal year, it shall be deemed to have elected the option chosen in the prior fiscal year unless it subsequently notifies the Association in writing that it wishes to use the alternate option with respect to its Parcels. The Developer's obligations hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials or a combination of a cash subsidy and "in kind" contributions. The Developer shall not be obligated to fund the Developer Subsidy until needed by the Association to fund cash expenditures by the Association.

The Developer may (but is not obligated to) loan, advance or otherwise make payments, "in kind" contributions of services or materials (or a combination thereof) to the Association to assist the Association in meeting its financial obligations, in addition to the Developer's obligation to either pay Assessments (to the extent required pursuant to Section 4.2 above) or fund the Developer Subsidy. Notwithstanding anything to the contrary contained in this Declaration, if, prior to the Turnover Date, the

Developer loans, advances or otherwise makes payments, "in kind" contributions of services or materials (or a combination thereof) in excess of its Assessment or Developer Subsidy obligations, any such excess sums shall be repaid to the Developer upon demand.

After the Turnover Date, the Developer shall pay Assessments on its Parcels that are subject to this Declaration, but the amount to be paid for a particular Parcel shall be determined by whether the Parcel contains a Unit which has been issued a final certificate of occupancy as of when the particular Assessment becomes due (i.e., as of the commencement of the fiscal year if the Assessment is billed annually, or as of the commencement of the quarter if the Assessment is billed quarterly). As set forth in Section 4.2 above, a Parcel which has been submitted to the terms of this Declaration containing land or improvements for which a final certificate of occupancy has not been issued, shall pay Assessments equal to five (5) percent (5%) of the Assessments which are payable by Parcels containing a Unit for which a final certificate of occupancy has been issued.

4.4 Establishment of Liens. Any and all Assessments and charges levied by the Association or collected on its behalf in accordance with the provisions of the Governing Documents, together with interest at the highest rate allowed by law, late fees, and costs of collection (including, but not limited to reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the Parcel against which such Assessment(s) or charge(s) are made, and shall also be the personal obligation of the Owner of such Parcel. This lien is superior to any homestead rights the Owner may acquire. No Owner may exempt himself from personal liability for Assessments and charges, or release his Parcel from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area, or by abandonment of his Parcel. The continuing lien may be perfected by the Association recording a Claim of Lien in the Public Records of Indian River County, Florida, setting forth the description of the Parcel, the name of the Owner, the name and address of the Association and the amount and due date of each unpaid Assessment and charge as of the date the Claim of Lien is recorded. The Claim of Lien may be executed by either an officer of the Association or its legal counsel. The effectiveness of the Claim of Lien shall relate back to the date this Declaration was recorded in the Public Records of Indian River County, Florida. However, with respect to first mortgages of record, the Association's lien is effective from and after recording of a Claim of Lien in the Public Records of Indian River County, Florida. A Claim of Lien shall secure payment of all Assessments and charges due at the time of recording (including interest, late fees, costs and attorney's fees as provided above), as well as all Assessments, interest, late fees, costs and attorney's fees coming due subsequently, until the Claim of Lien is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by that Claim of Lien, the party making payment is entitled to a Satisfaction of Lien.

4.5 Priority of Liens. The foregoing notwithstanding, the Association's lien for unpaid Assessments and charges shall be subordinate and inferior to the lien of all municipal, county, State of Florida and federal taxes, assessments and other levies which by law would be superior thereto. The Association's lien shall be subordinate and inferior to: all taxes, and other levies which by law would be superior thereto; the Master Association's lien; and the lien of any recorded first mortgage, unless the Association's Claim of Lien was recorded prior to the first mortgage, but shall be superior to, and take priority over any other mortgage or lien regardless of when recorded. Any Lease of a Unit shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the Lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee shall hold title subject to the liability and lien of any Assessment and charges coming due after foreclosure or conveyance in lieu of foreclosure. When a first mortgagee or its successor or assignee as a subsequent holder of the first mortgage obtains title to a Parcel as a result of a foreclosure of its first mortgage in which it sues the Owner and initially joins the Association in the mortgage foreclosure action, or obtains title to a Parcel as a result of a deed in lieu of foreclosure, such

first mortgagee or its successor or assignee as a subsequent holder of the first mortgage which acquires title shall be liable for unpaid Assessments and charges except as may be limited by the Act as it now exists and as it may be amended from time to time, plus interest, late fees, collection costs and attorneys' fees and costs incurred by the Association. Any Assessments and charges that such first mortgagee or its successor or assignee as a subsequent holder of the first mortgage which acquires title to a Parcel is not obligated to pay the Association pursuant to the Act shall be deemed to be Common Expenses collectible from Owners of all of the Parcels in Magnolia Court at Waterway Village, including such acquirer, its successors and assigns. However, if the Association's Claim of Lien was recorded prior to the first mortgage, the first mortgagee or its successor or assignee as a subsequent holder of the first mortgage which obtains title shall be liable for all unpaid Assessments and charges plus interest, late fees, collection costs and attorneys' fees.

**4.6 Collection of Assessments and Charges.** If any Owner fails to pay any Assessment or charge, or installment thereof, within ten (10) days after the due date, the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

(A) To charge interest on such Assessment or charge, from the date it becomes due until paid at the highest rate allowed by law, as well as to impose a late fee not to exceed the greater of Twenty-Five Dollars (\$25.00) or five percent (5%) of the amount of each Assessment installment that is paid past the due date. The late fee shall not be considered a fine as provided for in Section 11.3, and the procedural requirements for levying fines set forth therein shall not apply.

(B) To deny Association approval of any proposed Lease of the Owner's Unit.

(C) To file an action in equity to foreclose its lien. The lien may be foreclosed by an action in the name of the Association in the manner set forth in the Act.

(D) To bring an action at law for a money judgment against the Owner without waiving its right to foreclose its lien.

(E) To suspend use rights to the Common Area and other facilities if the Owner is more than ninety (90) days delinquent in paying any fee, fine or other monetary obligation due to the Association.

**4.7 Estoppel Certificate.** Within ten (10) business days after receiving a written or electronic request for an estoppel certificate from an Owner or mortgagee, or his or its designee, the Association shall issue an estoppel certificate. The Association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate. The estoppel certificate must be provided by hand delivery, regular mail or e-mail to the requestor on the date of issuance of the estoppel certificate. The estoppel certificate may be completed by any Director, authorized agent, or authorized representative of the Association. The estoppel certificate must contain all of the information and must be substantially in the form set forth in Section 720.30851 of the Act. The Association may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which fee may not exceed the applicable amount set forth in Section 720.30851 of the Act.

**4.8 Initial Contributions.** Upon the initial conveyance of title to a Parcel from the Developer or a Builder, a non-refundable contribution in an amount determined by the Developer shall be made by the purchaser of such Parcel to the Association, to be used to pay Common Expenses. Notwithstanding anything to the contrary contained in this Declaration, the Developer, Builders and their subsidiaries, affiliates, successors and assigns, shall be exempt from payment of the contributions required by this Section 4.8.

4.9 Resale Assessments. Unless otherwise prohibited by FNMA, VA, HUD, FHA, FHLMC, or other similar governmental or quasi-governmental agency, a Resale Assessment shall be due and payable to the Association by the transferee upon the conveyance of title to a Parcel by an Owner subsequent to the initial conveyance of title to the Parcel from the Developer or a Builder. Prior to the Turnover Date, the Developer shall determine the amount of the Resale Assessment. Subsequent to the Turnover Date, the Board of Directors shall determine the amount of the Resale Assessment for a particular calendar year. The Board of Directors may increase the Resale Assessment in subsequent calendar years, but the amount shall not increase by more than ten percent (10%) over the previous calendar year. The Resale Assessment will be collected at closing and, upon payment, may be used to pay Common Expenses. Payment of the Resale Assessment shall be the legal obligation of the transferee of the Parcel. For the purposes of this Section 4.9, the term "conveyance" shall mean the transfer of title to a Parcel by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed, transfer of an interest in a land trust or similar conveyance of a beneficial interest. With the exception of the Developer or a Builder, if the Owner is a corporation, limited liability company or other business entity, the term "conveyance" shall include the sale, issuance or transfer of any voting capital stock or interest of the Owner or of any corporate entity which directly or indirectly controls the Owner which shall result in a change in the voting control of the Owner or the legal entity or persons who control the Owner. With the exception of the Developer or a Builder, if the Owner is a partnership, the sale, issuance or transfer of a majority interest therein, or the transfer of a majority interest in or a change in the voting control of any partnership which directly or indirectly controls the Owner, or the transfer of any portion of any general partnership or managing partnership interest which shall result in a change of control over the Owner, shall be deemed a "conveyance" within the meaning of this Section 4.9. Notwithstanding the foregoing, the following conveyances shall be exempt from payment of the Resale Assessment: (a) to any person who was a co-Owner immediately prior to such conveyance; (b) to the Owner's estate, surviving spouse or other heirs, resulting from the death of the Owner; (c) to a trustee or the Owner's current spouse, solely for bona fide estate planning or tax reasons; (d) to an Institutional Mortgagee or the Association pursuant to a Final Judgment of Foreclosure or deed in lieu of foreclosure; and (e) to the Developer, a Builder or their subsidiaries, affiliates, successors and assigns. Provided, however that upon a conveyance that occurs following the exempt transfers described in (a) through (e) above, the Resale Assessment shall be due and payable. Notwithstanding anything to the contrary contained in this Declaration, in no event shall the Developer, a Builder or their subsidiaries, affiliates, successors and assigns be obligated to pay the Resale Assessment.

4.10 One-Time Payment. Upon the initial conveyance of title to a Parcel from the Developer or a Builder, a non-refundable one-time payment in an amount determined by the Developer shall be made by the purchaser of the Parcel to the Developer. The one-time payment is not an Assessment or a capital contribution. The Developer shall have the right to use the one-time payment for any purpose in its discretion. Notwithstanding anything to the contrary contained in this Declaration, the Developer, Builders and their subsidiaries, affiliates, successors and assigns, shall be exempt from payment of the one-time payment required by this Section 4.10.

4.11 Enforcement Against Tenants. Subject to the procedures and limitations set forth in Section 720.3085(8) of the Act, if a Parcel is occupied by a Tenant and the Owner is delinquent in paying any monetary obligation due to the Association, the Association may make a written demand that the Tenant pay the subsequent rental payments and continue to make such payments until all monetary obligations of the Owner related to the Parcel have been paid in full to the Association. The Tenant must pay the monetary obligations to the Association until the Association releases the Tenant or the Tenant discontinues tenancy in the Parcel. The Association may evict the Tenant if the Tenant fails to make a required payment to the Association.



In the event that Section 720.3085(8) is removed from the Act, the remainder of this Section 4.11 shall be applicable to the Association's ability to collect rent from a Tenant. If an Owner has leased his Parcel and the Owner becomes delinquent in paying any monetary obligation due to the Association, the Association may make a written demand that the Tenant pay to the Association the subsequent rental payments and continue to make such payments until all monetary obligations of the Owner related to the Parcel have been paid in full to the Association. The Tenant must pay the monetary obligations to the Association until the Association releases the Tenant or the Tenant discontinues tenancy in the Parcel. If the Tenant paid rent to the Owner for a given rental period before receiving the demand from the Association and provides written evidence to the Association of having paid the rent within fourteen (14) days after receiving the demand, the Tenant shall begin making rental payments to the Association for the following rental period and shall continue making rental payments to the Association to be credited against the monetary obligations of the Owner until the Association releases the Tenant or the Tenant discontinues tenancy in the Parcel. The liability of the Tenant may not exceed the amount due from the Tenant to the Owner. The Owner shall provide the Tenant a credit against rents due to the Owner in the amount of moneys paid to the Association. The Association may evict the Tenant if the Tenant fails to make a required payment to the Association. However, the Association shall not be considered a landlord under Chapter 83, Florida Statutes. The Tenant shall not, by virtue of payment of monetary obligations to the Association, have any of the rights of an Owner. The Board shall have the authority as a condition of approving a Lease to require that the Tenant and the Owner enter into a Lease addendum that provides that all Lease payments shall be paid to the Association during such time as the Owner is delinquent in paying any monetary obligation owed to the Association. Alternatively, the Association may require that such language be included in the Lease.

4.12 Master Association Assessments and Charges. The Master Association may require the Association to collect assessments and other charges on behalf of the Master Association from the Owners, and to remit a lump sum check to the Master Association. The Master Association adopts these assessments and other charges, and neither Developer nor the Association has control over the amount or timing of such assessments and charges. In the event that the Master Association directs the Association to collect Master Association assessments and changes on behalf of the Master Association, these amounts shall be included within the Association's budget as a notation. However, in no event shall Master Association assessments and charges be considered Common Expenses of the Association. Master Association assessments and charges are not included within the Developer's Subsidy.

## 5. ARCHITECTURAL AND AESTHETIC CONTROL

5.1 Necessity of Architectural Review and Approval. Except for the Developer and Builders, no Owner shall make or permit the making of any alterations or additions to his Parcel (including landscaping), or in any manner change the exterior appearance of any portion of the Unit, without first obtaining the written approval of the Architectural Reviewer, which approval may be denied if the Architectural Reviewer determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to Magnolia Court at Waterway Village, in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the Unit, are subject to regulation by the Architectural Reviewer. The installation of hurricane shutters shall be subject to regulation by the Architectural Reviewer. No review or approval by the Architectural Reviewer shall imply or be deemed to constitute an opinion by the Architectural Reviewer, nor impose upon the Architectural Reviewer, the Association, the Board of Directors, the Developer, Builders, nor any other party, any liability for the design or construction of building elements, including, but not limited to, structural integrity, design, quality of materials, and compliance with building code or life and safety requirements. The scope of any such review and approval by the Architectural Reviewer is limited solely to whether the respective plans or work meet

certain requirements, standards, and guidelines relating to aesthetics and the harmony and compatibility of proposed improvements in Magnolia Court at Waterway Village.

5.2 Architectural Review. The architectural review and control functions of the Association shall be administered and performed by the Architectural Reviewer. Prior to the Turnover Date, the Developer shall be the Architectural Reviewer and shall have the exclusive right to exercise architectural review under this Section. The Developer shall have the authority to process applications in its sole discretion and procedures and in accordance with its building plans, specifications, plan of development, aesthetic requirements and any Architectural Review Guidelines. Prior to the Turnover Date, the Developer may designate a third party with authority to process and approve applications as required in this Section 5. Following the Turnover Date, the Association shall be the Architectural Reviewer, whether through the Board of Directors or an Architectural Review Committee. The Architectural Review Guidelines shall in no event apply to the Developer and Builders, whether before or after the Turnover Date.

5.3 Powers and Duties of Architectural Reviewer. When the Association is acting as the Architectural Reviewer, the Architectural Reviewer shall have the following powers and duties:

(A) To enact modifications and/or amendments to the Architectural Review Guidelines. Any modification or amendment to the Architectural Review Guidelines shall be consistent with the provisions of this Declaration. As long as the Developer owns at least one Parcel or other property in Magnolia Court at Waterway Village, the Architectural Reviewer shall not alter the Architectural Review Guidelines, without the Developer's prior written consent, which consent may be denied in the Developer's discretion. Notice of any modification or amendment to the Architectural Review Guidelines, including a verbatim copy of such change or modification, shall be posted on a website accessible by Members or otherwise delivered to each Member; provided that the posting or delivery of a copy of the modification or amendment to the Architectural Review Guidelines shall not constitute a condition precedent to the effectiveness or validity of such change or modification.

(B) To require submission of one complete set of all plans and specifications for any improvement or structure of any kind, including without limitation, any building, fence, wall, sign, site paving, grading, pool, parking and building additions, alteration, screen enclosure, sewer, drain, disposal system, decorative building, landscaping, landscape device or object or other improvement, the construction or placement of which is proposed upon any Parcel in Magnolia Court at Waterway Village, together with a copy of any required governmental permits. The Architectural Reviewer may also require submission of samples of building materials and colors proposed for use on any Parcel and may require such additional information as reasonably may be necessary for the Architectural Reviewer to completely evaluate the proposed structure or improvement in accordance with this Declaration and the Architectural Review Guidelines. Upon request by the Architectural Reviewer, the proposed contractor(s) shall supply a copy of all required business licenses and evidence of insurance with such coverages and amounts as the Architectural Reviewer may reasonably require. Reviews shall be coordinated with required governmental approvals. The Architectural Reviewer shall have sixty (60) days to respond once a complete set of plans and specifications have been submitted. Failure to respond within said sixty (60) days shall be deemed an approval.

(C) To approve or disapprove any improvement or structure of any kind, including without limitation, any building, fence, wall, sign, site paving, grading, pools, parking and building additions, alterations, screen enclosure, sewer, drain, disposal system, decorative building landscaping, landscape device or object, or other improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Parcel in Magnolia Court at Waterway Village and to approve or disapprove any exterior additions, changes, modifications or alterations (including, but not limited to, changes in exterior colors, finishes and materials) therein or thereon. All decisions of the

Architectural Reviewer shall be in writing and may, but need not be made by a certificate in recordable form.

(D) To approve or disapprove any change, modification or alteration to any improvement or structure as hereinabove described, and the plans and specifications if any upon which such change modification or alteration is based, prior to commencement of construction of such change, modification or alteration. If any improvement or structure as aforesaid shall be changed, modified or altered without prior approval of the Architectural Reviewer of such change, modification or alteration, and the plans and specifications therefore, if any, then the Owner shall upon demand, cause the improvement or structure to be restored to comply with the plans and specifications, originally approved by the Architectural Reviewer and shall bear all costs and expenses of such restoration, including costs and reasonable attorney's fees of the Architectural Reviewer or the Association. The Architectural Reviewer shall be specifically empowered to grant variances from the covenants, conditions and restrictions as contained herein and as are deemed reasonable, required or necessary to meet the needs of the particular building site. The granting of a variance shall not prevent the Architectural Reviewer from denying a variance in other circumstances.

(E) To adopt a schedule of reasonable fees and security deposits for processing requests for approval or proposed improvements. Such fees and security deposit(s), if any, shall be payable to the Association by check or money order at the time that plans and specifications are submitted to the Architectural Reviewer and subsequently if the Architectural Reviewer requires. In the event such fees and security deposit(s), as well as any other costs or expenses of the Architectural Reviewer pursuant to any other provisions of this Article are not paid by the Owner and the contractor who will perform the work, such fees, security deposit(s), costs and expenses shall become a lien on the Owner's Parcel. The Architectural Reviewer may, as a condition to issuing approval, require the Owner to pay the Association a security deposit in the amount of up to Five Thousand Dollars (\$5,000.00) and require the contractor who will perform the work to pay the Association an additional security deposit in an amount determined by the Architectural Reviewer. The security deposit(s) shall cover damage to the Common Area caused by or related to any work performed or ordered to be performed by the Owner, costs, attorney's and professional fees the Association incurs as a result of violations of the Governing Documents or defective work. Upon satisfactory completion of the work in accordance with the approved plans and specifications, the Association shall return the security deposit(s) to the Owner and the contractor, as applicable, less any damage to the Common Area and costs, attorneys' and professional fees the Association has incurred. In the event the amount of damage, costs, attorneys' and professional fees exceeds the sum of Five Thousand Dollars (\$5,000.00) plus any additional security deposits the Association requires the contractor to pay, the Association may collect such amount in the same manner as unpaid Assessments.

(F) To monitor construction to verify compliance with the provisions hereof and any approvals and conditions of the Architectural Reviewer.

5.4 Architectural Control by Developer. Prior to the Turnover Date, the Developer shall act as the Architectural Reviewer, provided that prior to the Turnover Date, the Developer may designate a third party with authority to process and approve applications as required in this Section 5. The Developer may process applications from Owners seeking approval for any alterations or additions to a Parcel, or in any manner to change the exterior appearance of any portion of a Unit, in accordance with its sole discretion and procedures and its building plans, specifications, plan of development and aesthetic requirements. In the event that an Owner makes improvements, additions or modifications without the Developer's prior approval, the Developer may enforce the terms of the Governing Documents in the same manner as granted to the Association, or may delegate enforcement of the Governing Documents to the Association.

5.5 Garages. No garages shall be converted to residential use or use other than as originally designed with the exception of conversion of garages by the Developer and Builders for use as sales offices and other purposes. Garages shall not be used as a "woodshop" or other uses that generate unusual amounts of noise and dust unless the garage door is kept closed, provided that in no case shall such use create a nuisance.

5.6 Encroachments Into Lake Maintenance Easements Prohibited. Owners may not install any landscaping, improvement or structure of any kind, including, without limitation, a pool, wall, fence or screen, which encroaches into or alters the slope of any lake maintenance easement.

5.7 Developer and Builder Construction. The restrictions set forth in this Section 5 shall not apply to the Developer and Builders. The Developer reserves the right to alter the plan of development and architectural style of Magnolia Court at Waterway Village, Parcels and Units as it deems desirable in its sole discretion. The ability of a Builder to vary the architectural style of Parcels and Units shall be subject to a contractual agreement between a Builder and the Developer.

5.8 Prohibition on Grading Modifications and Impairment of Drainage. The Association and Owners are prohibited from modifying grading on any property in Magnolia Court at Waterway Village that is detrimental to properties that are adjacent to Magnolia Court at Waterway Village. The Association and Owners are also prohibited from installing any landscaping, improvements or structures or doing any work in Magnolia Court at Waterway Village that impairs the Stormwater Management System.

5.9 No Waiver of Future Approvals. Approval by the Architectural Reviewer pursuant to this Section 5 shall not be deemed a waiver of any right to withhold approval with respect to any similar plans, specifications, samples or other materials.

5.10 Other Approvals Required. Approvals granted by the Architectural Reviewer pursuant to this Declaration shall not avoid the need for any approvals set forth in any other documents of record, including the Master Documents. Each Owner is responsible for obtaining all necessary governmental approvals prior to commencement of any work. The architectural criteria of the Master Association shall take priority over any conflicting provisions in the Architectural Review Guidelines.

## 6. PROPERTY RIGHTS: EASEMENTS.

6.1 Use of Common Area. Every Owner and his Tenants, Guests and invitees shall have a perpetual non-exclusive easement for ingress, egress and access in, to and over the sidewalks, walkways and private roads which may be contained within the Common Area for use in common with all other Owners, their Tenants, Guests and invitees. The Developer shall convey the Common Area to the Association by Quit Claim Deed(s). The Association shall be obligated to accept such conveyance subject to the terms, conditions, and restrictions set forth herein and in such Quit Claim Deed(s), and without any requirement of membership approval. No title insurance, title opinion or survey shall be provided to the Association by the Developer. All costs and expenses of any conveyance of any property by the Developer to the Association shall be paid for by the Association. The Developer shall not be required to formally tender or deliver the Quit Claim Deed(s) or other instrument(s) to the Association prior to recordation in the Public Records of Indian River County, Florida. Upon request, the Association shall convey back to the Developer or its designee(s), without any payment by the Developer or such designee(s), other than nominal consideration (i.e., "\$10.00 and other good and valuable consideration"), and without any requirement of membership approval, any real property which has not been improved by a structure intended for recreational purposes, if originally conveyed to the Association for nominal

consideration. Except as otherwise limited in the Governing Documents, the portions of the Common Area in addition to those used for walkways, sidewalks, private roads or driveways shall be for the common use and enjoyment of the Owners and each Owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as in such manner as may be regulated by the Association. The Developer reserves the right to deed or dedicate the roads to the Master Association, subject to all easements encumbering the roads as set forth in the Governing Documents and any easement or plat of record. These easements shall be appurtenant to and shall pass with the title to every Unit subject to the following:

(A) The right and duty of the Association to levy Assessments against each Parcel for the upkeep, maintenance, repair or betterment of the Common Area and improvements thereon.

(B) The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Board of Directors. No such easement shall materially interfere with the rights of the Owner to use the Common Area for the purposes intended.

(C) The right of an Owner to the use and enjoyment of the Common Area and facilities thereon shall extend to the members of his Family who reside with him, and to his Tenants, Guests and invitees, except as otherwise provided in the Governing Documents.

THE ASSOCIATION SHALL ACCEPT "AS IS, WHERE IS" THE CONVEYANCE OF THE COMMON AREA WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WITH RESPECT THERETO, OR WITH RESPECT TO THE IMPROVEMENTS INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS OR WARRANTIES REGARDING THE CONDITION, CONSTRUCTION, ACCURACY, COMPLETENESS, DESIGN, ADEQUACY OF SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OF OPERATIONS OF, OR THE MATERIALS OR FURNITURE WHICH HAS BEEN OR WILL BE USED IN SUCH PROPERTY. BY ACCEPTANCE OF AN INTEREST IN ANY SUCH PROPERTY OR THE DEED TO ANY PARCEL, THE ASSOCIATION AND ALL OWNERS RELEASE THE DEVELOPER AND BUILDERS FROM ANY CLAIMS AND WARRANT THAT NO CLAIM SHALL BE MADE BY THE ASSOCIATION OR ANY OWNER RELATING TO THE CONSTRUCTION, CONDITION, ADEQUACY FOR ANY PARTICULAR PURPOSE OR FOR THE NUMBER OF USERS, DESIGN, FITNESS, ECONOMIC PERFORMANCE OR COMPLETENESS OF SUCH PROPERTY OR REPAIRS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM.

THE DEVELOPER AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR ANY RECREATION AREAS. ANY INDIVIDUAL USING A RECREATION AREA SHALL DO SO AT HIS OR HER OWN RISK AND HEREBY HOLDS THE DEVELOPER AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

DEVELOPER AND THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO MAINTAIN OR SUPPORT ACTIVITIES WITHIN MAGNOLIA COURT AT WATERWAY VILLAGE DESIGNED TO MAKE MAGNOLIA COURT AT WATERWAY VILLAGE SAFER THAN IT MIGHT OTHERWISE BE. THE DEVELOPER AND THE ASSOCIATION DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE SECURITY OF MAGNOLIA COURT AT WATERWAY VILLAGE OR THE EFFECTIVENESS OF ANY SUCH ACTIVITIES. ALL OWNERS AND OCCUPANTS IN MAGNOLIA COURT AT WATERWAY VILLAGE AGREE

TO SAVE AND HOLD THE DEVELOPER AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. THE ASSOCIATION AGREES TO SAVE AND HOLD THE DEVELOPER HARMLESS FOR ANY LOSS OF CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE DEVELOPER NOR THE ASSOCIATION SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY AND SECURITY WITHIN MAGNOLIA COURT AT WATERWAY VILLAGE.

6.2 Easements. The Developer (during any period in which the Developer has any ownership interest in Magnolia Court at Waterway Village) shall have the right to grant such electric, telephone, gas, water, sewer, irrigation, drainage, cable television or other easements, and to relocate any existing easement in any portion of Magnolia Court at Waterway Village and to grant access easements and to relocate any existing access easements in any portion of Magnolia Court at Waterway Village as the Developer shall deem necessary or desirable, including, without limitation, for the following purposes: the proper construction of Magnolia Court at Waterway Village; operation and maintenance of Magnolia Court at Waterway Village, or any portion thereof; the general health or welfare of the Owners; to carry out any provisions of the Governing Documents; and to fulfill the Developer's obligations to any governmental authority, taxing district, a public or private utility or SJWMD. Such easements or the relocation of existing easements may not prevent or unreasonably interfere with the use of the Parcels and Units. Each Parcel shall be subject to an easement in favor of all other portions of Magnolia Court at Waterway Village for the location of utilities and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of public or private utility lines and other similar or related facilities serving other Parcels and portions of Magnolia Court at Waterway Village. In addition, if, by reason of original construction, shifting, settlement or movement, any Unit encroaches upon the Common Area or upon any other Parcel (including, without limitation, roof overhangs and related drainage gutters), then an easement shall exist to the extent of that encroachment as long as the encroachment exists, including an easement for the continued maintenance and repair of original construction encroachments. In the event that any structure is partially or totally destroyed, then rebuilt, then the Owners and the Association agree that encroachments on adjacent Parcels or on Common Area due to construction shall be permitted and that an easement for such encroachments (including, without limitation, roof overhangs and related drainage gutters) and the continued maintenance and repair of such encroachments and the maintenance of the structure shall exist, but such encroachments shall be to the extent permitted by the original construction, shifting, settlement or movement. The Association and its vendors, contractors and employees, are granted a blanket easement over the Common Area and Parcels for maintenance, repair and replacement and for carrying out the Association's responsibilities pursuant to this Declaration. Each Parcel shall be subject to an access easement in favor of the adjoining Owner(s) and their contractors and agents for purposes of bringing materials and construction equipment to the rear or side of the Parcel for construction of pools or other structures. The adjoining Owner shall restore the Parcel to its previous condition following completion of such construction. Following the Turnover Date, the Association shall have the authority to grant easements on the foregoing terms, subject to the Developer's prior written consent as long as the Developer owns a Parcel or any property located in Magnolia Court at Waterway Village.

6.3 Partition: Separation of Interest. There shall be no judicial partition of the Common Area, except as expressly provided elsewhere herein, nor shall the Developer, or any Owner or any other person acquiring any interest in Magnolia Court at Waterway Village, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Parcel and Unit owned on co-tenancy. The ownership of any Parcel and the ownership of the Unit constructed thereon may not be separated or separately conveyed; nor may any person who does not have an ownership interest in at least one Parcel hold membership in the Association.

6.4 Construction; Maintenance. The Developer and Builders (including their agents, designees, contractors, successors and assigns) shall have the right, in their sole discretion, to enter Magnolia Court at Waterway Village and take all other action necessary or convenient for the purpose of completing the construction of any improvements or Units. As long as the Developer and Builders are liable under the terms of any warranty in favor of an Owner, the Developer and Builders (including their agents, designees, contractors, and their successors and assigns) shall have an easement of access to Magnolia Court at Waterway Village and any Parcels and Units in order to make repairs, replacements and take all other action necessary or convenient for the purpose of fulfilling their obligations.

6.5 Additional Easements. Magnolia Court at Waterway Village (including the Parcels) shall be subject to and benefited by any and all easements which are set forth in the Governing Documents or any plat or other recorded instrument (including the Master Documents) encumbering all or a portion of Magnolia Court at Waterway Village, including, without limitation, utility easements for the installation, maintenance and repair of utilities by any utility company and drainage easements. Magnolia Court at Waterway Village (including the Parcels) shall also be subject to a public service easement for police protection, fire protection, emergency services, postal services and meter reading. The Association shall have such easements across Magnolia Court at Waterway Village and all Parcels as are necessary to fulfill its obligations as set forth in the Governing Documents.

## 7. MAINTENANCE OF COMMON AREA, PARCELS AND UNITS.

7.1 Association Maintenance. Notwithstanding that the Developer may initially retain ownership of the Common Area, the Association shall, pursuant to this Declaration, be responsible for the management, maintenance, insurance and operation of the Common Area, including, without limitation, the Stormwater Management System, except for portions to be maintained by Owners. The Association shall be responsible for the maintenance, repair and replacement of the lawns and landscaping (including irrigation equipment) ("Landscaping Services") located on Parcels as originally installed by the Developer or a Builder (in the case of a Builder, only to the extent that the lawns and landscaping are substantially similar to those installed by the Developer). The Association shall be responsible for the maintenance, repair and replacement of any fences located on the boundary between "back-to-back" Parcels. The Association shall be responsible for the maintenance, repair and replacement of perimeter walls, if any. The Association shall be responsible for the maintenance, repair and replacement of sidewalks, except for the Owners' responsibility for sidewalks located on or in front of their Parcels, as set forth in Section 7.2 below. All maintenance, repair and replacement which is the responsibility of the Association shall be a Common Expense, unless the Association undertakes maintenance, repair or replacement of a Parcel and Unit due to an Owner's failure to undertake the maintenance, repair or replacement.

7.2 Owner Maintenance. Owners shall maintain, repair and replace their Parcels, Units and any other improvements, modifications and additions thereto in a safe, clean, orderly and attractive condition, except for those portions to be maintained, repaired and replaced by the Association. Whenever an Owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the Parcel or Unit, whether with or without approval from the Architectural Reviewer, such Owner shall be deemed to have warranted to the Association and its Members that his contractor is properly licensed and fully insured and that the Owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance. Owners shall keep the sidewalks located on or in front of their Parcels, if any, clean (including by pressure washing as necessary) and free from impediments to pedestrian traffic.

7.3. Alterations and Additions to Common Area. Material alterations or substantial additions to the Common Area may be undertaken and funds necessary levied as special Assessments by the

Association only upon approval by a majority of the Board of Directors. Alterations and additions to the Common Area may also require approval from the Master Association. The Developer's consent shall also be required until the Developer conveys the last Parcel that may be submitted to the terms of this Declaration.

7.4 Enforcement of Maintenance. In the event that an Owner fails or refuses to comply with these provisions, after fourteen (14) days' notice and demand from the Association and the Owner's failure to comply, the Association shall have the authority (but not the obligation) to take whatever action is reasonably necessary in its judgment to bring the Parcel and Unit into conformity and the expenses of doing so shall be an obligation of the Owner collectable as a special charge against that Parcel. The Association is granted an easement upon the Parcel and its improvements for these purposes. In the alternative, the Association may institute legal proceedings to compel the Owner to observe his obligations set forth in the Governing Documents.

7.5 Negligence: Damage Caused by Condition in Unit. The Owner of each Unit shall be liable for the expenses of any maintenance, repair or replacement of Common Area, other Units, or personal property made necessary by his act or negligence, or by that of any member of his Family or his Guests, employees, agents, or Tenants. Each Owner has a duty to maintain his Unit and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Units, the Common Area or the property of other Owners and residents. If any condition, defect or malfunction, resulting from the Owner's failure to perform this duty causes damage to other Units, the Common Area or property within other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. The Association may, but is not obligated to repair the damage and hold the responsible party liable for all costs, secured by a lien against the applicable Parcel, which lien may be foreclosed in the same manner as the Association's Claim of Lien.

7.6 Developer's Lien. In the event the Association fails to maintain, replace or repair as herein provided, upon thirty (30) days' notice to the Association, the Developer or its designee shall have the right, without being obligated to do so, to enter upon Magnolia Court at Waterway Village and cause said maintenance, replacement, or repair to be made, and in such event, the Developer shall have a lien upon Magnolia Court at Waterway Village, including all Parcels therein, for the costs thereof, including, without limitation, interest, court costs and reasonable attorneys' fees and appellate attorneys' fees incurred by the Developer in collecting the sums expended by it. The aforesaid lien may be foreclosed in the same manner as a mortgage. In the event of an emergency situation threatening the health and welfare of the residents, the Developer may immediately enter upon Magnolia Court at Waterway Village and cause such maintenance replacements or repairs to be made forthwith and without the requirement of any prior notice thereof, and the Developer shall have an enforceable lien upon Magnolia Court at Waterway Village as described above.

7.7 Stormwater Management System. The permit issued by SJWMD as of this date is attached hereto as Exhibit "D" ("Permit"). Copies of the Permit and any future SJWMD actions shall be maintained by the Association and/or its registered agent for the Association's benefit. The Association shall maintain and operate the Stormwater Management System within Magnolia Court at Waterway Village (except for such portions that are within each Owner's maintenance responsibility) in accordance with the Permit and any other permit(s) and regulations of SJWMD and/or its successor, and shall allocate sufficient funds in its annual budget for such obligations. To the extent required by the Permit, it shall be the Association's responsibility to successfully meet and complete all Permit conditions associated with any Wetland mitigation, success criteria, maintenance and monitoring. The Association shall allocate sufficient funds in its annual budget for such mitigation, maintenance and monitoring of Wetland mitigation area(s) each year until SJWMD determines that the area(s) is successful in accordance with the



Permit. Operation, maintenance and re-inspection reporting shall be performed in accordance with the terms and conditions of the Permit. SJWMD has the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel it to correct any outstanding problems with the Stormwater Management System or in any mitigation areas under the responsibility or control of the Association. No construction activities may be conducted relative to any portion of the Stormwater Management System. Prohibited activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the Stormwater Management System facilities. If Magnolia Court at Waterway Village includes a Wetland mitigation area or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from SJWMD. Construction and maintenance activities which are consistent with the design and Permit conditions approved by SJWMD in the Permit may be conducted without specific written approval from SJWMD. Neither the Developer, the Association, the Master Association, nor any Owner shall take any action which modifies the Stormwater Management System in a manner which changes the flow or drainage of surface water. Any amendment which would affect the Stormwater Management System, including the water management portions of the Common Area must have the prior approval of SJWMD and any other governmental authority with jurisdiction. The Developer may reconfigure the size and location of the lakes, but only to the extent permitted by SJWMD and any other governmental authority with jurisdiction. The Developer shall have an easement over Magnolia Court at Waterway Village for purposes of accessing the lakes and ancillary drainage facilities. The lakes shall not be available for use by Owners (except for catch and release fishing, to the extent allowed by the Permit and the Board of Directors), the Association or the Master Association, nor shall they in any manner interfere with or alter the Stormwater Management System or interfere with the access rights of any entity responsible for its maintenance. All Owners acknowledge that due to ground water elevations, priorities established by governmental authorities, and other causes outside of the control of SJWMD, the Developer, the Association and the Master Association, lake water levels may fluctuate at certain times during the year and such fluctuations may be material. None of the entities mentioned in the preceding sentence shall have any liability for aesthetic conditions, objectionable odors, damage to plantings or direct or consequential damages of any nature caused by the fluctuation of water levels or water quality. The Developer and the Association make no representations as to lake water levels.

The Developer reserves the right to subject Magnolia Court at Waterway Village to one or more cost sharing agreements with respect to lakes owned by one or more homeowners associations operating adjacent communities. The Association shall observe all terms and conditions set forth in such cost sharing agreement(s).

If the Association ceases to exist, all of the Owners shall be jointly and severally responsible for the operation and maintenance of the Stormwater Management System facilities in accordance with the requirements of the Permit, unless and until an alternate entity assumes responsibility, as more particularly set forth in Article III of the Articles of Incorporation.

The Association shall allocate sufficient funds in its budget for monitoring and maintenance of any wetland mitigation area(s) each year until the District determines that the area(s) is/are successful in accordance with the Permit.

The Developer may, if required by the Permit, establish natural vegetative buffers between the Parcels and any jurisdictional Wetland preserve as may be required by the SJWMD, which buffer shall not be located within the boundaries of a Parcel unless otherwise approved by the SJWMD. Such buffers shall be platted as a separate tract or created as an easement, which would be dedicated as drainage tracts. If the buffer is located within a separate tract, the tract shall be dedicated on the plat to the Association along with all maintenance responsibilities and, if necessary, to any governmental or quasi-governmental

entities with no maintenance responsibilities. All Owners shall comply with the requirements of all governmental or quasi-governmental agencies or authority having jurisdiction.

The Developer has caused or will cause to be constructed within the geographic area shown on a plat, drainage canals, lakes and drainage retention/detention lakes or ponds. These drainage structures are part of the overall drainage plan for Magnolia Court at Waterway Village. The Association shall have unobstructed ingress to and egress from all retention/detention lakes or ponds and lakes at all reasonable times to maintain said lakes or ponds and lakes in a manner consistent with its responsibilities. No Owner shall cause or permit any interference with such access and maintenance. No Owner shall utilize, in any way, any of the Magnolia Court at Waterway Village drainage facilities without the express prior written consent of the Developer and the Association. Further, where an Owner's Parcel is contiguous to any of the drainage facilities of Magnolia Court at Waterway Village, such Owner shall keep his or her Parcel so that the utilization of such Owner's Parcel will not adversely affect the drainage facilities and structures and so as to be aesthetically compatible with such drainage facilities and structures.

The Association shall maintain, as part of the Common Area, drainage structures for Magnolia Court at Waterway Village and comply with conditions of the Permit, Department of Environmental Protection, and U.S. Army Corps of Engineers for the Stormwater Management System, including, without limitation, perpetual maintenance of all signage required by the permit. All such areas shall be defined, identified, and described as such on all plats of Magnolia Court at Waterway Village, or may be granted by separate easements recorded in the public records of Indian River County. No Owner shall (i) undertake or perform any activity in preserved wetlands, upland buffers to wetlands, archeological sites, and wetland compensation areas described in all approved permits and plats of Magnolia Court at Waterway Village, or (ii) remove native non-nuisance vegetation that becomes established within the wet detention lakes or ponds, without prior written consent of the Board of Directors of the Association, the County, and the applicable permitting agencies. Prohibited activities within such areas include removal of native vegetation (by dredging, application of herbicide or cutting); excavation; placement or dumping of soil, trash, land clearing or landscaping debris; and construction or maintenance of any building, residence, or structure. It shall be the responsibility of all Owners to comply with the construction plans for the Stormwater Management System approved by the applicable permitting agencies. The conditions of the Permit and any other SJWMD permits include monitoring and record keeping schedules and maintenance.

The Association shall, when requested by the Developer, accept transfer of the Permit, any other SJWMD permits applicable to Magnolia Court at Waterway Village and any governmental permits that are not related to the Stormwater Management System, and execute any transfer forms or other documents upon demand.

Within any wet detention lake or pond (as such lakes or ponds are designated by the SJWMD), no Member shall remove any native vegetation (including cattails) that may become established therein. The prohibition against removal of native vegetation shall not be construed to prevent the removal of exotic vegetation in accordance with a governmentally approved maintenance plan. It shall be the Association's responsibility to successfully meet and complete all conditions associated with annual exotic nuisance plant species maintenance and monitoring. The Association shall allocate sufficient funds as a line item in its annual budget for such maintenance and monitoring. Inquiries regarding provisions of this Article should be addressed to SJWMD.

The Association agrees to operate and maintain the Stormwater Management System and has sufficient ownership so that it has control over all water management facilities authorized.

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

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

In the event the Association, or any successor organization, shall fail to adequately maintain the Stormwater Management System in accordance with Indian River County ("County") standards, the County shall have the right, but not the obligation, to enter Magnolia Court at Waterway Village for the purpose of maintaining the Stormwater Management System. All expenses incurred by the County in maintaining the Stormwater Management System shall be assessed prorata against the Parcels and shall be payable by the Owners of the Parcels within 60 days after receipt of a statement therefor. If any Owner fails to pay such assessment within such 60-day period, the assessment shall become a lien on such Owner's Parcel which may be foreclosed by the County. The rights of the County contained in this restriction shall be in addition to any other rights the County may have in regulating the operation and development of the Common Area.

The Association specifically agrees to allow authorized SJWMD personnel, upon presentation of credentials or other documents as may be required by law, access to the Magnolia Court at Waterway Village, at reasonable times, where the permitted activity is located or conducted; for the purposes of inspection and testing to determine compliance with the Permit and SJWMD regulations, such as: having access to and copying any records that must be kept under the conditions of the Permit; inspecting the facility, equipment, practices, or operations regulated or required under the Permit; sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with the Permit or SJWMD rules; and gathering of data and information. Reasonable time may depend on the nature of the concern being investigated.

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

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

In the event of casualty, it shall be the responsibility of each Owner within the Magnolia Court at Waterway Village at the time of reconstruction of a building, residence, or structure, to comply with the construction plans for the Stormwater Management System pursuant to Chapter 40D4, F.A.C., approved and on file with SJWMD.

Owners are hereby notified that certain Parcels may include, or be adjacent to wet detention lakes or ponds, jurisdictional wetlands or designated mitigation areas. It is the Owner's responsibility not to remove native vegetation (including cattails) that becomes established within the wet detention lakes or ponds, jurisdictional wetlands or designated mitigation areas abutting the Owner's Parcel. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp. Owners should address any question regarding authorized activities within the wet detention lakes or ponds, jurisdictional wetlands or designated mitigation areas to SJWMD and the County. SJWMD and

the County may authorize removal of certain exotic or nuisance vegetation upon application by Owners or the Association.

No Owner of a Parcel within the Magnolia Court at Waterway Village may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, wetland mitigation areas, buffer areas, wet detention lakes or ponds, jurisdictional wetlands, designated mitigation areas or designated drainage easements described in the approved permit and recorded plats and any replat of Magnolia Court at Waterway Village, unless prior approval is received from SJWMD, and the County.

Each Owner of a Parcel within Magnolia Court at Waterway Village at the time of construction, and with the Association's approval of construction, of a building, residence, or structure shall comply with the construction plans for the Stormwater Management System approved and on file with the SJWMD. In the event of the termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Stormwater Management System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, Florida Administrative Code, and be approved by SJWMD prior to such termination, dissolution or liquidation.

It is expected that certain portions of the Stormwater Management System will serve the drainage needs of adjacent lands not owned by the Developer and not within the property subject to this Declaration. The Developer reserves the right to grant such drainage and/or use easements and rights as the Developer may deem necessary or appropriate for accomplishing the drainage needs of the property legally described in Exhibit "A" and/or lands owned by others provided that such agreements shall not unreasonably interfere with the use of the Stormwater Management System by the Owners or unreasonably increase the cost of maintenance of the system by the Association.

The Stormwater Management System is designed to provide drainage for the real property legally described in Exhibit "A". Neither the Association nor the Developer shall have any liability whatsoever to any Owner for claims or damages alleged by an Owner due to water levels in the lakes being below or above normal or otherwise unacceptable to the Owner. Recreational use and aesthetic appearance of the lakes is secondary to their intended drainage function, and during periods of prolonged drought or other unusual weather events water levels in the Lakes may fluctuate, and neither the Association nor the Developer shall have any liability for such conditions.

Amendments to the Declaration relating to the Storm Water Management System must have the prior written approval of the County Engineer or his designee. Any revisions of the Storm Water Management System must have the prior approval of the County Engineer or his designee.

8. INSURANCE: The Association shall obtain and maintain adequate insurance for the Common Area (with provisions for deductibles) as follows:

(A) Casualty. To the extent that there is Common Area containing any improvements, the coverage shall afford protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, and such other risks as are customarily covered with respect to improvements on the Common Area, including, but not limited to, flood (if required by law), vandalism, or malicious mischief. All or any part of such coverage may be extended to include the Association's personal property as the Board of Directors may deem desirable. The Association shall act as agent of the Owners and shall adjust all losses on their behalf with respect to the Common Area.

(B) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross

liability endorsement to cover liabilities of the Owners as a group to an Owner, if obtainable at reasonable cost.

## 9. USE RESTRICTIONS.

9.1 Residential Purposes. No Parcel shall be used for other than Single-Family residential purposes, except that Parcels, or portions of Parcels may be used by the Developer and Builders for offices, sales offices or models. No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements; (c) the business activity involves only telephone calls and correspondence to and from the Unit and does not involve persons coming into Magnolia Court at Waterway Village who do not reside in Magnolia Court at Waterway Village or door-to-door solicitation of occupants of Magnolia Court at Waterway Village; and (d) the business activity is consistent with the residential character of Magnolia Court at Waterway Village and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other occupants of Units. The use of a Unit as a public lodging establishment shall be deemed a business or trade use. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

9.2 Signs. No sign or advertisement of any kind, including, without limitation, those of realtors, contractors and subcontractors, shall be erected within Magnolia Court at Waterway Village without the prior written consent of the Board of Directors or in accordance with the Rules and Regulations, Architectural Review Guidelines, except in connection with the sale or resale of Parcels by the Developer, Builders or as may be required by legal or zoning proceedings, and any required written consent of the Master Association. Signs which are permitted within Magnolia Court at Waterway Village may be restricted as to the size, color, lettering, materials and location of such signs. The Board of Directors, the Developer and Builders shall have the right to erect signs as they, in their discretion, deem appropriate, except that no Builder may erect a sign without the prior written approval of the Developer. Under no circumstances shall signs, flags, banners or similar items advertising or providing directional information with respect to activities being conducted outside Magnolia Court at Waterway Village be permitted within Magnolia Court at Waterway Village without the express written consent of the Board of Directors and any required consent from the Master Association, or unless they are installed by the Developer. No sign shall be nailed or otherwise attached to trees.

9.3 Nuisance. Nothing shall be done upon any Parcel or in the Common Area which may be or may become an annoyance or nuisance to any person. No obnoxious, unpleasant, abusive, threatening or offensive activity shall be carried on, nor shall anything be done which can be reasonably construed to constitute a nuisance, public or private in nature. No person shall interfere with the Association's Directors, Officers, committee members, property manager, property management company, employees, agents, vendors and contractors in the performance of their obligations pursuant to the Governing Documents, Master Documents, contracts, statutes and ordinances, as applicable. All residents shall observe the vehicular speed limits and any rules posted on signs in the Common Area and any property owned by, dedicated to, or within the jurisdiction of the Master Association.

9.4 Underground Utility Lines and Services. All electric, telephone, gas and other utility lines shall be installed underground, except for temporary lines as required during construction or if required by law.

9.5 Common Area. No Owner shall make use of the Common Area in such a manner as to abridge the equal rights of the other Owners to their use and enjoyment thereof nor shall any Owner remove, prune, cut, damage or injure any trees or other landscaping located in the Common Area. Except as otherwise provided in this Declaration and its exhibits or with respect to the Developer's reserved rights, any portion of the Common Area which is deemed open space shall be owned by the Association and preserved and maintained by it and shall not be destroyed.

9.6 Pets and Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Parcel, except that dogs, cats and other usual and non-exotic household pets (not to exceed a total of three (3) pets, excluding tropical fish) may be kept (except for pit bulls, "wolf hybrids", or other dogs prone to or exhibiting aggressive behavior), provided they are not kept, bred or maintained for any commercial purposes. All animals shall be contained on the Owner's Parcel and shall not be permitted to run freely. When outside the Owner's Unit, all pets must be carried or secured with a hand held leash. The person walking the pet must be in physical control of the leash at all times. The Owner or other owner of a permitted pet must pick up all solid waste and deposit it in an appropriate trash container.

9.7 Parking and Vehicular Restrictions.

(A) Vehicles shall be parked only in the garages or in the driveways serving the Units or in the appropriate spaces or designated areas in which parking may be assigned, and then subject to reasonable Rules and Restrictions. For the purposes of this Section 9.7, a "Truck" shall be defined as a vehicle with a bed behind the passenger cab, regardless of whether the bed is enclosed and shall not include any vehicle commonly known as an SUV. Vehicles shall not be parked overnight on roads or swales. All commercial vehicles (i.e., any vehicle which has any exterior lettering or logo, or has visible tools or equipment), recreational vehicles, trailers, campers, camper trailers, boats, watercraft, motorcycles, boat trailers, Trucks rated more than one-half ton capacity (i.e., larger than a Ford F150 or GMC 1500), motor homes, buses, non-passenger vans (i.e., any van which does not have permanent installed seating for four or more passengers and does not have windows completely circling the exterior or is in excess of seventeen (17) feet in length), or any vehicles over eighty (80) inches in height shall be parked entirely within the garage of the Unit and shall not be parked on any part of Magnolia Court at Waterway Village, on any driveway serving a Unit, or on any designated parking space within Magnolia Court at Waterway Village except: (1) commercial vehicles, vans, or Trucks delivering goods or furnishing services temporarily during daylight hours and (2) upon such portions of Magnolia Court at Waterway Village as the Board may, in its discretion, allow. Law enforcement vehicles may be parked on driveways if the driver is a law enforcement officer. The Association shall have the right to authorize the towing away of any vehicles in violation of this Section 9.7 and any applicable Rules and Regulations with the costs and fees, including attorneys' fees, if any, to be borne by the vehicle owner or violator. No Owner shall keep any vehicle or conduct vehicle repairs on any Parcel, except fully enclosed within his or her garage. No garage shall be altered in such a manner that the number of automobiles which may be parked therein after the alteration is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed.

(B) No commercial vendor vehicle of any kind shall be permitted to be parked on a residential Parcel for a period of more than twelve (12) daylight hours unless such vehicle is necessary and being used in the actual construction or repair of a structure or for grounds maintenance. Commercial vendor vehicles may not be parked in the Common Areas overnight.

(C) None of the foregoing restrictions shall apply to commercial vehicles or other vehicles which may be utilized by: the Developer, Builders and their contractors and subcontractors for purposes of completing construction of Magnolia Court at Waterway Village, Parcels and Units; the Association and the Master Association, and their vendors and employees; and any governmental authority, taxing district, private or public utility, including SJWMD.

9.8 Exterior Colors. No exterior colors on any structure, nor the colors of driveways and walkways shall be permitted that, in the sole judgment of the Architectural Reviewer, would be inharmonious or incongruous with the remainder of Magnolia Court at Waterway Village. Any future color changes, as described above, desired by Owners must be first approved in writing by the Architectural Reviewer. The restrictions set forth in this paragraph shall not apply to the Developer or Builders.

9.9 Landscaping. All areas not covered by structures, walkways, paved parking facilities or areas approved by the Association to be left in their natural state shall be maintained as lawn or landscape areas to the pavement edge of any abutting streets or driveways, as applicable, and to the waterline of any abutting lakes, canals or surface water management areas. All lawn and landscaped areas shall be kept in good and living condition.

9.10 Driveways and Parking Areas. All driveways shall be constructed of concrete or paverstone. The Owner shall be obligated to keep his driveway clean and well maintained.

9.11 Antennas and Flagpoles. Antennas and satellite dishes are prohibited, except that (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter (b) antennas or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter; or (c) antennas or satellite dishes designed to receive television broadcast signals, ("Reception Device") shall be permitted, provided that the Reception Device is located so as not to be visible from outside the Unit, or is located on the side or rear yard of the Parcel or is attached to the side of the Neighborhood Unit (not on the front or rear of the Neighborhood Unit). No Parcel may have more than one Reception Device located on the Parcel or attached to the Neighborhood Unit. The Architectural Review Guidelines contain additional restrictions on the location of Reception Devices. The Architectural Reviewer may require that a Reception Device be painted or screened by landscaping in order to blend into the Unit and removed from view from the street and other Units. A flagpole shall not be used as an antenna. The installation and display of flagpoles and flags shall be subject to regulation by the Architectural Reviewer, but no Owner shall be prevented from displaying one portable, removable official United States flag or official flag of the State of Florida in a respectful manner, or on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day, a portable, removable US Army, Navy, Air Force, Marine Corps or Coast Guard flag. The permitted flags shall not exceed 4.5' x 6'. Notwithstanding the foregoing, no one shall be permitted to display the United States flag in a manner that violates: (i) Federal law or any rule or custom as to the proper display or use of the United States flag; or (ii) any reasonable restriction pertaining to the time, place and manner of displaying the flag. The restriction must be necessary to protect a substantial interest of the Association.

9.12 Outdoor Equipment. All oil tanks, bottled gas tanks, swimming pool equipment, housing and sprinkler pumps and other such outdoor equipment must be walled-in or placed in sight-screened or fenced-in areas so that they shall not be readily visible from any adjacent streets or Units. Otherwise, adequate landscaping shall be installed and maintained around these facilities. All trash containers shall be stored in the garage except on trash "pick up" days. Magnolia Court at Waterway Village shall be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All

underground irrigation systems must be connected to the non-potable water line and all spigots on the exterior portion of a structure shall be connected to the potable water line.

9.13 Air Conditioning and Heating Equipment. All air conditioning and heating units shall be shielded and hidden so that they shall not be readily visible from any adjacent streets or Units. Window or wall air conditioning units are prohibited.

9.14 Solar Collectors. The Architectural Reviewer must approve the location of the materials used in the construction of solar collectors.

9.15 Walls, Fences, Window Coverings and Hurricane Shutters. Except as otherwise provided in Section 9.12 and walls installed by Developer, no wall shall be constructed on any Parcel. Owners may install fences, subject to specifications adopted by the Architectural Reviewer. Owners may install hurricane shutters, subject to specifications adopted by the Architectural Reviewer. The Architectural Reviewer shall have the authority to adopt hurricane shutter specifications, which may include color, style, time periods in which shutters may be kept closed, and other factors deemed relevant by the Architectural Reviewer. Laminated glass and window film architecturally designed to function as hurricane protection which complies with the applicable building code, may be used in place of hurricane shutters, except that reflective window coverings are prohibited. Owners shall comply with any requirements imposed by the Master Association. An Owner who intends to be absent from his Unit during the hurricane season (June 1<sup>st</sup> through November 30<sup>th</sup> of each year) shall prepare his Unit prior to his departure by: removing all furniture, potted plants, and other movable objects from his yard; and designating a person or firm, satisfactory to the Association, to care for his Unit should it suffer hurricane damage. Such person or firm shall contact the Association for permission to install temporary hurricane shutters, which may not be installed more than seventy-two (72) hours in advance of a hurricane and must be removed within seventy-two (72) hours after the hurricane has passed.

9.16 Lighting. Except for seasonal decorative lights, the exterior lighting of a Parcel shall be accomplished in accordance with a lighting plan approved in writing by the Architectural Reviewer. Seasonal decorative lights may be displayed on Halloween and between the day after Thanksgiving and January 10<sup>th</sup> only.

9.17 Developer. As used in this Section 9, when the Association's or the Architectural Reviewer's approval is required, it shall, up to the Turnover Date, mean the "Developer's approval" (unless the Developer has delegated its architectural review functions to the ARC, Board of Directors or other third party). After the Turnover Date, the Developer's approval shall also be required as long as the Developer owns a Parcel or other property within Magnolia Court at Waterway Village.

9.18 Clothes Drying Area/Clotheslines. No outdoor clothes drying area or clotheslines are permitted.

9.19 Pools. Above ground pools are prohibited.

9.20 Drones and Other Aerial Devices. No drones or other aerial devices such as motorized planes shall be flown or otherwise used in Magnolia Court at Waterway Village.

9.21 Oil, Gas and Mineral Rights. The Developer makes no representations as to whether ownership of a Parcel includes ownership of any oil, gas and mineral rights.

9.22 Subdivision of Parcels. Parcels shall not be further subdivided or separated by any Owner other than the Developer or a Builder (in the case of a Builder, subject to Developer's prior written



consent). However, the preceding sentence shall not prevent corrective deeds or deeds to resolve boundary disputes.

9.23 Additional Restrictions; Exhibits. Magnolia Court at Waterway Village, including the Common Area, Parcels and Units are subject to those restrictions set forth in the exhibits attached hereto.

10. DEVELOPER'S AND ASSOCIATION'S EXCULPATION. The Association and the Developer may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required without incurring liability of any nature to the Owners or any other person for any reason whatsoever. Any permission or approval granted shall be binding upon all persons.

11. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS. Every Owner and the Owner's Family members, Tenants, Guests and invitees shall at all times comply with all the covenants, conditions and restrictions of the Governing Documents. All violations of the Governing Documents shall be reported immediately to the Association's property manager. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors, whose interpretation and/or whose remedial action shall control. If any person, firm or entity subject to the Governing Documents fails to abide by them, as they are interpreted by the Board of Directors, then the Association, Developer or any Member shall have the ability to take any action to compel compliance as set forth below.

11.1 Legal Action. Judicial enforcement of the Governing Documents shall be by any proceeding at law or in equity against the Association or any person or persons violating or attempting to violate the Governing Documents, to restrain violation and/or to recover damages, or against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If such action is instituted, the prevailing party shall, in addition, be entitled to recover its costs and attorney's fees incurred in enforcing the Governing Documents. Certain disputes must be submitted to dispute resolution procedures conducted by the Division of Florida Condominiums, Timeshares and Mobile Homes ("Division") as more particularly set forth in Section 720.311 of the Act.

11.2 Entry by Association and/or the Developer. Violation of any conditions or restrictions, or breach of any covenant, herein contained or in any of the Governing Documents, shall also give the Developer, its successors and assigns, and/or the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the Parcel where such violation or breach exists and in the event of an emergency, summarily abate and remove, at the expense of the Owner any construction or other violation that may be or exist thereon. The Developer, its successors and assigns and/or the Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

11.3 Fines. The Board of Directors may levy a fine or fines against an Owner for failure of the Owner, his Family, Guests, invitees, Tenants, or agents of any of the foregoing, to comply with any covenant, restriction, rule, or regulation contained herein or promulgated pursuant to the Governing Documents. Fines shall not be secured by a lien against the Parcel, unless permitted by the Act. Fines may be levied in accordance with the procedures set forth in the Bylaws and the Act.

11.4 Alternative Method for Resolving Disputes with Developer and Developer Appointees. In any dispute ("Claim") between the Association or any Owner, Tenant, Guest, occupant or invitee against

the Developer, or its directors, officers, agents and employees, or against any directors or officers of the Association appointed by the Developer prior to the Turnover Date, mediation and then final and binding arbitration shall apply. The procedures set forth in subsections (A) through (E) below shall apply, except in the case of a Claim alleging a construction defect brought against the Developer by the Association, that is governed by Chapter 558 Florida Statutes, in which case the procedures set forth in subsections (A) through (E) shall be modified as described in subsection (G):

(A) Any party having a Claim (“Claimant”) against the other party (“Respondent”) shall notify the Respondent in writing (“Notice”), stating plainly and concisely:

- (1) the nature of the Claim, including the persons involved and the Respondent’s role in the claim;
- (2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (3) Claimant’s proposed remedy; and
- (4) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(B) The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim. If the parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed to by the parties), Claimant shall have ten (10) days in which to submit the Claim to mediation under the auspices of a mediator certified by the applicable Judicial Circuit. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation conference, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the parties. If the parties do not settle the Claim at the mediation conference, the mediator shall issue a notice of an impasse and the date the mediation was terminated. The mediation conference shall occur within sixty (60) days of the Notice unless the parties agree to an extension.

(C) If the mediation results in an impasse, then either party shall have ten (10) additional days in which to submit the Claim to final and binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (“AAA”), in the case of a construction defect claim and the Federal Arbitration Act (Title 9 of the United States Code). If not timely submitted to arbitration or if the Claimant does not appear for the arbitration hearing, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant. This subsection (C) is an agreement to arbitrate and is specifically enforceable under Chapter 682, Florida Statutes. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Florida.

(D) In any dispute under this Section 11.4, the parties shall share the fees and costs associated with mediation. In the case of arbitration, the prevailing party shall be entitled to judgment for its reasonable attorney’s fees and costs incurred.

(E) If the parties agree to a resolution of any Claim through negotiation, mediation or arbitration under this Section 11.4, and any party thereafter fails to abide by the terms of such agreement, or if any party fails to comply with an arbitrator's final order, then any other party may file suit in a court of competent jurisdiction to enforce such agreement or final order without the need to again comply with the procedures set forth above. In such event, the party taking action to enforce the agreement or final order shall be entitled to recover from the non-complying party (or if more than one non-complying party, jointly and severally), all costs incurred in enforcing such agreement or final order, including, without limitation, reasonable attorney's fees and costs.

(F) This Section 11.4 shall not apply to a dispute between an Owner and the Developer concerning the purchase and sale and construction of a Parcel or Unit. Those disputes shall be governed by the provisions of any purchase and sale agreement or construction agreement.

(G) In the case of a Claim alleging a construction defect brought against the Developer or a Builder by the Association that is governed by Chapter 558, Florida Statutes, the parties to the dispute shall follow the procedures set forth therein. If the Claimant has followed the procedures set forth in Chapter 558, Florida Statutes, and is entitled to proceed with an "action" (as defined therein) the Claimant shall then have ten (10) days in which to submit the Claim to final and binding arbitration as described in subsections (C) through (E) above.

12. LEASING, CONVEYANCE, DISPOSITION. In order to maintain a community of congenial, financially responsible residents with the objectives of inhibiting transiency, protecting the value of the Parcels and facilitating the development of a stable, quiet community and peace of mind for all residents, the lease, and transfer of ownership of a Parcel by an Owner shall be subject to the following restrictions, which each Owner covenants to observe (except for the exceptions set forth in Section 12.5 below):

12.1 Forms of Ownership:

(A) A Parcel may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

(B) Co-Ownership. Co-ownership of Parcels may be permitted. If the proposed co-Owners are other than husband and wife or two (2) individuals who reside together as a single housekeeping unit, they shall designate two (2) individuals as the "Primary Occupants". The use of the Parcel by persons other than the Primary Occupants shall be as though the Primary Occupants were the only actual Owners. The intent of this provision is to permit multiple Owners, but to prohibit short term, transient use by several individuals or families. Any change in the Primary Occupants shall be treated as a transfer of ownership by sale or gift, subject to all of the provisions of this Section. No more than one such change may be made in any twelve (12) month period.

(C) Ownership by Corporations, Partnerships or Trusts. A Parcel may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided for other transfers or title. However, the intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Parcel may be used as short term transient accommodations for several individuals or families. A trust, corporation or other entity shall designate two (2) individuals as the "Primary Occupants". The use of the Parcel by persons other than the Primary Occupants shall be as though the Primary Occupants were the only actual Owners. Any change in the Primary Occupants shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Section 12. No more than one such change may be made in any twelve (12) month period. The Developer and Builders shall not be obligated to designate Primary Occupants.

(D) Life Estate. A Parcel may be subject to a life estate, either by operation of law or by voluntary conveyance. In that event, the life tenant shall be the only Member from such Parcel, and occupancy of the Parcel shall be as if the life tenant were the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant and holders of the remainder interest shall be jointly and severally liable for all Assessments and charges against the Parcel. The life tenant may, by signed agreement, transfer the right to vote in all Association matters to any one remainderman, subject to approval by the Association of such arrangement. Except in the case where such a transfer has been made, if the consent or approval of the Owner is required for any purpose, that consent or approval of the holders of the remainder interest shall not be required.

12.2 Transfers and Leases. Prior to the conveyance or transfer of title to a Parcel or lease of a Unit, it shall be the Owner's responsibility to provide the purchaser or Tenant with the complete set of Governing Documents and any other documents required by law.

(A) Lease, Sale or Gift. No Owner may effectively convey or transfer title to a Parcel or any interest therein by sale or gift without notification to the Association. In addition, no Owner may effectively lease a Unit without the prior written approval of the Board of Directors.

(B) Devise or Inheritance. If any Owner acquires his title by devise or inheritance, he shall provide the Association with written notice as set forth in Section 12.3 herein.

### 12.3 Procedures.

#### (A) Notice to Association.

(1) Lease, Sale or Gift. An Owner intending to lease his Unit or sell or make a gift of his Parcel or any interest therein, shall provide the Board of Directors or its designee, written notice of such intention at least twenty (20) business days prior to the first date of occupancy pursuant to the proposed Lease or the date of closing, together with a copy of the purchase and sale agreement or Lease, and the name, and address of the proposed Tenant, purchaser or donee and such other information as the Board of Directors may reasonably require. The Association may charge a transfer fee in connection with processing each application.

(2) Devise or Inheritance. The transferee must notify the Association of his ownership and submit to the Association a certified copy of the instrument evidencing his ownership and such other information as the Board of Directors may reasonably require. The transferee shall have no occupancy right unless approved by the Board of Directors, but may sell or lease the Parcel in accordance with the procedures provided in this Declaration.

(3) Failure to give Notice. If no notice is given, the Association at its election may approve or disapprove the lease without prior notice. If it disapproves, the Association shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board of Directors with the required notice and request reconsideration. The Association shall not have the authority to disapprove a proposed conveyance or other transfer.

(B) Within twenty (20) business days of receipt of the required notice and all information requested, the Board of Directors shall approve or disapprove the Lease, and shall approve the conveyance or transfer. When the conveyance, transfer or Lease is approved, the approval shall be stated in a Certificate of Approval executed by the President, Vice-President or property manager of the Association (in recordable form for a conveyance or transfer) and delivered to the purchaser, transferee or

Tenant. If the Board of Directors neither approves or disapproves within twenty (20) business days, such failure to act shall be deemed the equivalent of approval, and on demand the Board of Directors shall issue a Certificate of Approval to the Owner, purchaser or transferee.

(C) Disapproval of Leases.

(1) The Board of Directors may disapprove a proposed Lease only if a majority of the whole Board of Directors votes to disapprove the Lease unless the authority to disapprove a Lease has been delegated to an Association officer. Only the following shall be deemed to constitute good cause:

(a) The person seeking approval has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;

(b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

(c) The application for approval on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the Governing Documents and any other covenants and restrictions applicable to Magnolia Court at Waterway Village;

(d) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other social organizations or associations, or by his conduct as a Tenant, Owner or occupant of a Unit; or

(e) The person seeking approval failed to provide the information and appearance required to process the application in a timely manner.

(f) The Owner is delinquent on Assessments and other sums owed to the Association at the time of application.

12.4 Leasing. Only entire Units may be leased. The minimum leasing period is two hundred and ten (210) consecutive days and no Unit may be leased more than one time in any one calendar year. For purposes of this restriction, the first day of occupancy under the Lease shall conclusively determine in which year the Lease occurs. No Unit may be used on a "time share" basis. All Leases must and shall be deemed to contain the agreement of the Tenant(s) to abide by all of the restrictions contained in the Governing Documents and shall be deemed to provide that a violation thereof is grounds for damages, termination and eviction and that the Tenant and the Owner agree that the Association may proceed against either the Owner or the Tenant and that the Owner or the Tenant shall be responsible for the Association's costs and expenses, including attorney's fees and costs, secured by a lien against the Parcel.

12.5 Exceptions With Respect to the Developer and Institutional Mortgagees. The provisions of Section 12 are not applicable to the lease of a Unit or the sale or transfer of title of a Parcel by the Developer to any person. Except for Section 12.4, the provisions of this Section 12 are not applicable to the acquisition of title to a Parcel by an Institutional Mortgagee which acquires title through the Institutional Mortgage, whether by foreclosure or deed in lieu of foreclosure, nor to the subsequent lease of a Unit or the resale or transfer of title of a Parcel by such Institutional Mortgagee, but shall apply to the lease of a Unit or the acquisition of title of a Parcel by any other person.

12.6 Unapproved Leases. Any Lease which is not approved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board of Directors.

13. DEVELOPER'S RIGHTS AND DUTIES: Until the Developer has completed all of the contemplated improvements, the Developer and Builders have conveyed all of the Parcels that may be subjected to this Declaration, and are not leasing a Unit from an Owner, the following shall apply, notwithstanding any other provisions to the contrary.

13.1 Developer's and Builder's Use. Neither the Owners nor the Association, nor their use of the Parcels, Units, or Common Area shall interfere with the completion of the contemplated improvements, leases of Units or sales and conveyances of Parcels by the Developer and Builders. The Developer may make any use of unsold Parcels, Units and Common Area as may reasonably be expected to facilitate completion, sales and conveyances of Parcels, including, but not limited to, maintenance of sales offices and construction trailers, display of signs, leasing of Units, use of parking areas and showing Parcels, Units and the remainder of Magnolia Court at Waterway Village to prospective purchasers and Tenants. With the prior written approval of the Developer, Builders may make any use of unsold Parcels and Units as may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of sales offices and construction trailers, display of signs, use of parking areas, leasing of Units, and showing Parcels, Units and the remainder of Magnolia Court at Waterway Village to prospective purchasers and Tenants. The Developer may utilize any model homes, sales offices, construction trailers, parking areas, etc., for use in marketing developments other than Magnolia Court at Waterway Village.

13.2 Assignment of Development Rights. All or any portion of the rights, privileges, powers and duties of the Developer set forth in the Governing Documents may be assigned by the Developer to any person or entity, without the consent of any other Owner or any holder of a mortgage secured by any Parcel. In the event of such assignment (other than to a mortgagee or its successors or assigns), the assignee shall assume such rights, powers and duties, and the Developer shall be relieved of all further liability or obligation, but only to the extent of the assignment.

#### 14. DURATION OF COVENANTS: AMENDMENT OF DECLARATION:

14.1 Duration of Covenants. The covenants, conditions and restrictions of this Declaration shall run with and bind Magnolia Court at Waterway Village, and shall inure to the benefit of and be enforceable by the Association, the Developer and any Owner, their respective legal representatives, heirs, successors and assigns, for an initial period to expire on the thirtieth (30<sup>th</sup>) anniversary of the date of recordation of this Declaration (as amended to that date by the Developer or the Members as provided elsewhere herein). Upon the expiration of the initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited, with this Declaration being renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, ninety percent (90%) of Voting Interests, at a duly held meeting of Members, vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the Members vote to terminate this Declaration, the President or Vice President of the Association shall execute a certificate with the formalities of a deed, which shall set forth the Book and Page of the Public Records of Indian River County, Florida in which this Declaration is recorded, the resolution of termination so adopted, the date of the meeting of the Association, the total number of votes cast in favor of such resolution and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Indian River County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

14.2 Proposal. Subsequent to the Turnover Date, amendments to this Declaration may be proposed by the Board of Directors or by written petition signed by one-third (1/3) of the Voting Interests. If by petition, the proposed amendments must be submitted to a vote of the Members not later than the next annual meeting. A proposal to amend this Declaration 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 Declaration for current text".

14.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Governing Documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3) of the Voting Interests, provided that the text of each proposed amendment has been given to the Members with notice of the meeting.

14.4 Certificate; Recording. A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to this Declaration, which certificate shall identify the Book and Page of the Public Records in which this Declaration is recorded, and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate is recorded in the Public Records of Indian River County, Florida.

14.5 Limitation on Amendments. As long as the Developer holds title to any Parcel or property in Magnolia Court at Waterway Village, no amendment adopted by the Members shall be effective without the prior written consent and joinder of the Developer, which consent may be denied in the Developer's discretion. In addition, no amendment shall be effective which alters the rights and privileges of the Developer, a Builder, an Institutional Mortgagee, the Master Association, SJWMD, any governmental authority, taxing district, or a public or private utility, unless such party shall first provide its written consent and joinder. Any amendment proposed to the Governing Documents which would affect the Stormwater Management System, a Conservation Area, Preservation Area, Wetland and any mitigation areas shall be submitted to SJWMD and the County for a determination of whether the amendment necessitates a modification of the Permit. If a modification is necessary, SJWMD will so advise the permittee. Any amendment to any of the provisions governing the following shall also require approval of fifty-one percent (51%) of the Eligible Mortgage Holders holding mortgages on Parcels in Magnolia Court at Waterway Village: hazard or fidelity insurance requirements; restoration or repair of any Common Area (after damage or partial condemnation) in a manner other than that specified in this Declaration; and any provisions that expressly benefit mortgage holders, insurers or guarantors. An "Eligible Mortgage Holder" is an Institutional Mortgagee that provides a written request to the Association to be considered an Eligible Mortgage Holder (such request to state the name and address of such holder, insurer, or guarantor and the Parcel). An Eligible Mortgage Holder will be entitled to timely written notice of: any condemnation loss or any casualty loss which affects a material portion of Magnolia Court at Waterway Village or which affects any Parcel on which there is an Institutional Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; any delinquency in the payment of Assessments or charges owed by an Owner of a Parcel subject to the mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, provided, however, notwithstanding this provision, any Institutional Mortgagee, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Parcel of any obligation under the Governing Documents which is not cured within sixty (60) days; any lapse, cancellation, or material modification of any insurance policy maintained by the Association; any proposed action

which would require the consent of a specified percentage of Eligible Mortgage Holders; or any “material amendments” and “extraordinary actions”, as such terms are defined in applicable requirements of the Veterans Administration. A majority of Institutional Mortgagees may demand that the Association retain professional management and obtain an audit of the Association’s financial records. No amendment shall materially or adversely alter the proportionate Voting Interest appurtenant to a Parcel or increase the proportion or percentage by which a Parcel shares in the liability for Assessments unless the Owner and all record owners of liens on the Parcels join in the execution of the amendment. A change in the quorum requirement is not an alteration of Voting Interests. No amendment shall convert a Parcel into Common Area or redefine a Parcel’s boundaries unless the Association obtains the prior written consent and joinder, in recordable form, of that Owner and all holders of a lien against that Parcel.

14.6 Developer Amendment of Documents. In addition to any other right of amendment or modification provided for in this Declaration, to the extent permitted by law, the Developer, or any entity which succeeds to its position as the Developer of Magnolia Court at Waterway Village, may, in its sole discretion, by an instrument filed of record, unilaterally modify, enlarge, amend, waive or add to the provisions of this Declaration or any of its recorded exhibits. Any amendment made pursuant to this paragraph may be made without notice to the Members or to any other entity. Annexation of additional real property and subjecting same to this Declaration, dedication of Common Area to the Association, and amendments to this Declaration requires HUD/VA approval as long as there is a Class “B” membership, but only if HUD and/or VA holds an Institutional Mortgage on one or more Parcels.

15. TURNOVER. Members other than the Developer are entitled to elect one Director pursuant to Section 720.307(2) of the Act (i.e. when fifty percent (50%) of all Parcels in Magnolia Court at Waterway Village that ultimately will be operated by the Association have been conveyed to Members other than the Developer). Members other than the Developer are entitled to elect a majority of the Board of Directors three (3) months after ninety percent (90%) of all Parcels in Magnolia Court at Waterway Village that ultimately will be operated by the Association have been conveyed to Members. For purposes of this Section, the term “Members other than the Developer” shall not include Builders. Pursuant to Section 720.307 of the Act, the Developer shall be entitled to elect (appoint) at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Parcels in all phases of Magnolia Court at Waterway Village. The Developer may turn over control of the Board of Directors prior to the Turnover Meeting by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Members other than the Developer and Builders to elect Directors and assume control of the Association, provided that the Developer has provided at least thirty (30) days’ notice to the Members.

## 16. GENERAL PROVISIONS.

16.1 Waiver. Any waiver by the Developer of the breach of any provisions of this Declaration must be in writing and shall not operate or be construed as a waiver of any other provision or of any subsequent breach.

16.2 Severability. If any section, subsection, sentence, clause, phrase or portion of this Declaration or any of its recorded exhibits is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions.

16.3 Headings. The headings of the Sections herein are for convenience only, and shall not affect the meaning or interpretation of the contents thereof.



16.4 Notices. Any notice required to be sent to any Owner other than the Developer under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing. The Owner bears the responsibility for notifying the Association of any change of address. Any notice sent to the Developer shall be sent by certified or registered mail, return receipt requested to Pulte Home Company, LLC, Attn: David Kanarek, 4400 PGA Blvd., Suite 700, Palm Beach Gardens, FL 33410.

16.5 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Developer does hereby execute this Declaration of Covenants, Conditions and Restrictions through its undersigned, duly authorized officer on the day and year set forth below.

Witnesses:

**DIVOSTA HOMES, L.P.**, a Delaware limited partnership

By: DiVosta Homes Holdings, LLC, a Delaware limited liability company, its General Partner

*[Signature]*  
Witness Name: Patricia Ferrandez

By: *[Signature]*  
Print Name: PATRICK A. GONZALEZ  
Print Title: Vice President Land Development  
Southeast Florida Division

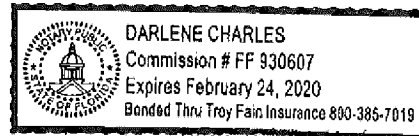
*[Signature]*  
Witness Name: David Kovarick

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 4 day of February, 2019, by Patrick Gonzalez, as V.P. Land Dev, Southeast Florida Division of DiVosta Homes Holdings, LLC, a Delaware limited liability company, General Partner of DiVosta Homes, L.P. , a Delaware limited partnership. He is  personally known to me or has produced \_\_\_\_\_ as identification.

(SEAL)

*[Signature]*  
Notary Public  
Name: \_\_\_\_\_  
(Type or Print)  
My Commission Expires: \_\_\_\_\_



**LIST OF EXHIBITS**

Exhibit "A"	Land Subjected to Declaration
Exhibit "B"	Articles of Incorporation
Exhibit "C"	Bylaws
Exhibit "D"	SJWMD Permit

4831-6418-8013, v. 2

EXHIBIT "A"LEGAL DESCRIPTION: PROPOSED POD H

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING A PORTION OF SECTION 16, TOWNSHIP 32 SOUTH, RANGE 39 EAST, INDIAN RIVER COUNTY, FLORIDA. SAID LANDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF TRACT "OS7", ISLES AT WATERWAY VILLAGE PD – PLAT 1C, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 23, PAGE 27 OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA;

THENCE, BEARING SOUTH 89°47'27" EAST, ALONG THE SOUTH RIGHT OF WAY LINE OF 53<sup>RD</sup> STREET AS RECORDED IN OFFICIAL RECORDS BOOK 1937, PAGE 479 OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA, A DISTANCE OF 512.70 FEET TO A POINT;

THENCE, THENCE LEAVING SAID SOUTH RIGHT OF WAY LINE OF 53<sup>RD</sup> STREET, BEARING SOUTH 44°47'27" EAST, ALONG THE WEST RIGHT OF WAY LINE OF 51<sup>ST</sup> COURT, AS RECORDED IN OFFICIAL RECORDS BOOK 1993, PAGE 2221 OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA, A DISTANCE OF 56.57 FEET TO A POINT; THENCE CONTINUING ALONG SAID WEST RIGHT OF WAY LINE, BEARING SOUTH 00°12'33" WEST, A DISTANCE OF 252.53 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 1,536.00 FEET, A CENTRAL ANGLE OF 06°17'26", A CHORD LENGTH OF 168.56 FEET, A CHORD BEARING OF SOUTH 02°56'10" EAST; THENCE, SOUTHERLY ALONG THE ARC OF SAID CURVE, AND SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 168.64 FEET TO A POINT OF CUSP; THENCE LEAVING SAID WEST RIGHT OF WAY LINE OF 51<sup>ST</sup> COURT AND ALONG THE NORTHEASTERLY BOUNDARY OF THE AFORESAID ISLES OF WATERWAY VILLAGE PD – PLAT 1C, THE FOLLOWING EIGHT COURSES:

THENCE ALONG A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 86°31'22", A CHORD LENGTH OF 34.27 FEET, A CHORD BEARING OF NORTH 49°20'34" WEST, NORTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 37.75 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 85.00 FEET, A CENTRAL ANGLE OF 60°31'31", A CHORD LENGTH OF 85.67 FEET, A CHORD BEARING OF NORTH 62°20'29" WEST; THENCE, NORTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 89.79 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 70.00 FEET, A CENTRAL ANGLE OF 57°42'43", A CHORD LENGTH OF 67.57 FEET, A CHORD BEARING OF NORTH 60°56'05" WEST; THENCE, NORTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 70.51 FEET TO A POINT; THENCE, BEARING NORTH 89°47'27" WEST, A DISTANCE OF 95.67 FEET TO A POINT; THENCE, BEARING NORTH 00°12'33" EAST, A DISTANCE OF 42.80 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 70.00 FEET, A CENTRAL ANGLE OF 90°00'00", A CHORD LENGTH OF 98.99 FEET, A CHORD BEARING OF NORTH 44°47'27" WEST; THENCE, NORTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 109.96 FEET TO A POINT; THENCE, BEARING NORTH 89°47'27" WEST, A DISTANCE OF 235.00 FEET TO A POINT; THENCE, BEARING NORTH 00°12'33" EAST, A DISTANCE OF 253.70 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PREMISES CONTAIN AN AREA OF 175,288 SQUARE FEET OR 4.02 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS, CONDITIONS AND RESTRICTIONS AS CONTAINED WITHIN THE CHAIN OF TITLE

LEGAL DESCRIPTION: PROPOSED PODS I AND J

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING A PORTION OF SECTION 16, TOWNSHIP 32 SOUTH, RANGE 39 EAST, INDIAN RIVER COUNTY, FLORIDA, AND BEING A PORTION OF TRACT 1, SECTION 21, TOWNSHIP 32 SOUTH, RANGE 39 EAST, INDIAN RIVER FARMS CO. PLAT OF LANDS AND PLAN FOR LAND DRAINAGE AND ROAD RESERVATIONS, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 25, PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA, NOW BEING IN INDIAN RIVER COUNTY, FLORIDA. SAID LANDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LAKES AT WATERWAY VILLAGE PD – PLAT 2A-1, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 28, PAGE 23 OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA; THENCE ALONG THE EAST RIGHT OF WAY LINE OF 51<sup>ST</sup> COURT, AS RECORDED IN OFFICIAL RECORDS BOOK 1993, PAGE 2221 OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA, THE FOLLOWING SIX COURSES:

THENCE ALONG A CURVE CONCAVE WESTERLY OF WHICH THE RADIUS POINT LIES SOUTH 83°45'07" WEST, A RADIAL DISTANCE OF 1,580.00 FEET; THENCE NORTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 04°55'37", A DISTANCE OF 135.87 FEET TO A POINT; THENCE, BEARING NORTH 11°10'30" WEST, A DISTANCE OF 276.18 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 1,464.00 FEET, A CENTRAL ANGLE OF 09°32'12", A CHORD LENGTH OF 243.39 FEET, A CHORD BEARING OF NORTH 06°24'25" WEST; THENCE, NORTHERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 243.67 FEET TO A POINT; THENCE, BEARING NORTH 13°04'07" EAST, A DISTANCE OF 50.50 FEET TO A POINT; THENCE, BEARING NORTH 00°12'33" EAST, A DISTANCE OF 250.50 FEET TO A POINT; THENCE, BEARING NORTH 45°12'33" EAST, A DISTANCE OF 56.57 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF 53<sup>RD</sup> STREET AS RECORDED IN OFFICIAL RECORDS BOOK 1937, PAGE 479 OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA; THENCE, BEARING SOUTH 89°47'27" EAST ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 941.78 FEET TO A POINT; THENCE, LEAVING SAID RIGHT OF WAY LINE, BEARING SOUTH 00°12'33" WEST, A DISTANCE OF 867.17 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 75.50 FEET, A CENTRAL ANGLE OF 90°00'00", A CHORD LENGTH OF 106.77 FEET, A CHORD BEARING OF SOUTH 45°12'33" WEST; THENCE, SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 118.60 FEET TO A POINT; THENCE, BEARING NORTH 89°47'27" WEST, A DISTANCE OF 49.55 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 86°03'34", A CHORD LENGTH OF 34.12 FEET, A CHORD BEARING OF SOUTH 47°10'46" WEST; THENCE, SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 37.55 FEET TO A POINT; THENCE, BEARING SOUTH 04°08'59" WEST, A DISTANCE OF 53.76 FEET TO A POINT ON THE NORTH LINE OF THE AFORESAID LAKES AT WATERWAY VILLAGE PD – PLAT 2A-1; THENCE ALONG SAID NORTH LINE THE FOLLOWING THIRTEEN COURSES:

THENCE, BEARING NORTH 85°51'01" WEST, A DISTANCE OF 50.00 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 98°10'20", A CHORD LENGTH OF 37.78 FEET, A CHORD BEARING OF SOUTH 53°14'09" WEST; THENCE, SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 42.84 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 1,530.00 FEET, A CENTRAL ANGLE OF 14°27'12", A CHORD LENGTH OF 384.93 FEET, A CHORD BEARING OF NORTH 84°54'17" WEST; THENCE, WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 385.96 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 92°20'27", A CHORD LENGTH OF 36.07 FEET, A CHORD BEARING OF NORTH 45°57'40" WEST; THENCE, NORTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 40.29 FEET TO A POINT; THENCE, BEARING NORTH 89°47'27" WEST, A DISTANCE OF 50.00 FEET TO A POINT; THENCE, BEARING SOUTH 00°12'33" WEST, A DISTANCE OF 6.33 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 86°00'24", A CHORD LENGTH OF 34.10 FEET, A CHORD BEARING OF SOUTH 43°12'45" WEST; THENCE, SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 37.53 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 66.00 FEET, A CENTRAL ANGLE OF 15°44'26", A CHORD LENGTH OF 18.07 FEET, A CHORD BEARING OF NORTH 85°54'50" WEST; THENCE, WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 18.13 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 94.00 FEET, A CENTRAL ANGLE OF 15°44'26", A CHORD LENGTH OF 25.74 FEET, A CHORD BEARING OF NORTH 85°54'50" WEST; THENCE, WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 25.82 FEET TO A POINT; THENCE, BEARING SOUTH 86°12'57" WEST, A DISTANCE OF 27.16 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 26.00 FEET, A CENTRAL ANGLE OF 17°44'41", A CHORD LENGTH OF 8.02 FEET, A CHORD BEARING OF NORTH 84°54'43" WEST; THENCE, WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 8.05 FEET TO A POINT; THENCE, BEARING NORTH 76°02'22" WEST, A DISTANCE OF 13.76 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 54.00 FEET, A CENTRAL ANGLE OF 17°44'41", A CHORD LENGTH OF 16.66 FEET, A CHORD BEARING OF NORTH 84°54'43" WEST; THENCE, WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 16.72 FEET TO A POINT; THENCE, BEARING SOUTH 86°12'57" WEST, A DISTANCE OF 37.57 FEET TO A POINT; SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 87°32'10", A CHORD LENGTH OF 34.59 FEET, A CHORD BEARING OF NORTH 50°00'58" WEST; THENCE, NORTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 38.19 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PREMISES CONTAIN AN AREA OF 955,513 SQUARE FEET OR 21.94 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS, CONDITIONS AND RESTRICTIONS AS CONTAINED WITHIN THE CHAIN OF TITLE

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of MAGNOLIA SQUARE AT WATERWAY VILLAGE HOMEOWNERS ASSPCOATION, INC.,, a Florida corporation, filed on September 4, 2018, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H18000258058. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below

The document number of this corporation is N18000009544.

Authentication Code: 718A00018320-090518-N18000009544-1/1

EXHIBIT " B "

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Fifth day of September, 2018



*Ken Detzner*  
Ken Detzner  
Secretary of State

((H18000258058 3))

**ARTICLES OF INCORPORATION**  
**FOR**  
**MAGNOLIA SQUARE AT WATERWAY VILLAGE HOMEOWNERS ASSOCIATION, INC.**

((H18000258058 3))



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**ARTICLES OF INCORPORATION**  
**OF**  
**MAGNOLIA SQUARE AT WATERWAY VILLAGE HOMEOWNERS ASSOCIATION, INC.**

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**ARTICLES OF INCORPORATION**  
**MAGNOLIA SQUARE AT WATERWAY VILLAGE HOMEOWNERS ASSOCIATION, INC.**

Pursuant to Section 617.02011, Florida Statutes, the undersigned hereby executes these Articles of Incorporation for the purpose of forming a corporation not for profit under Chapter 617, Florida Statutes, the Florida Not-for-Profit Corporation Act.

**ARTICLE I**

**NAME:** The name of the corporation, herein called the “Association”, is Magnolia Square at Waterway Village Homeowners Association, Inc., and its address is c/o Pulte Home Company, LLC, 4400 PGA Blvd., Suite 700, Palm Beach Gardens, FL 33410.

**ARTICLE II**

**DEFINITIONS:** The definitions set forth in Section 720.301, Florida Statutes (2018) shall apply to terms used in these Articles, unless otherwise defined in the Declaration of Covenants, Conditions and Restrictions for Magnolia Square at Waterway Village (“Declaration”).

**ARTICLE III**

**PURPOSE AND POWERS:** The purpose for which the Association is organized is to provide an entity pursuant to the Florida Not-for-Profit Corporation Act and Chapter 720, Florida Statutes (the “Act”) for the operation of a community to be known as “Magnolia Square at Waterway Village”, located in Indian River County, Florida. The Association is organized and shall exist on a non-stock basis as a corporation not for profit under the laws of the State of Florida, and no portion of any earnings of the Association shall be distributed or inure to the private benefit of any Member, Director or Officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit and of a homeowners’ association under the laws of the State of Florida, except as expressly limited or modified by the Governing Documents; and it shall have all of the powers and duties reasonably necessary to operate Magnolia Square at Waterway Village pursuant to the Governing Documents as they may hereafter be amended, including, but not limited to the following:

- (A) To make and collect Assessments against the Members to defray the costs, expenses and losses of the Association, and to use the funds in the exercise of its powers and duties.
- (B) To protect, maintain, repair, replace and operate the Common Area.
- (C) To purchase insurance for the protection of the Common Area, the Association and the Members.
- (D) To repair and reconstruct improvements after casualty, and to make further improvements to the Common Area.
- (E) To make, amend and enforce Rules and Regulations as set forth in the Governing Documents.

(F) To approve or disapprove the transfer, leasing and occupancy of Parcels as may be provided in the Governing Documents.

(G) To enforce the provisions of the laws of the State of Florida that are applicable to Magnolia Square at Waterway Village and the Governing Documents.

(H) To contract for the management and maintenance of Magnolia Square at Waterway Village, and any property or easements and related improvements that are dedicated to the Association by plat or separate instrument, including any agreement or easement which imposes maintenance obligations on the Association, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by law or by the Governing Documents to be exercised by the Association's Board of Directors or the Members.

(I) To employ accountants, attorneys, architects, and other professionals to perform the services required for proper operation of Magnolia Square at Waterway Village.

(J) To borrow money as necessary to perform its other functions hereunder.

(K) To grant, modify or move any easement.

(L) To acquire, own, lease and dispose of any real and personal property.

(M) To sue and be sued.

(N) To maintain and operate the Stormwater Management System, as more particularly described in the Declaration.

All funds and the title to all property acquired by the Association shall be held for the benefit of the Members in accordance with the provisions of the Governing Documents. In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Common Area and other property the Association is obligated to maintain pursuant to the Governing Documents, including any property or easements and related improvements that are dedicated to the Association by plat or separate instrument, including any agreement or easement which imposes maintenance obligations on the Association, shall be transferred to and accepted by an entity that is acceptable to any applicable governmental authorities, prior to such termination, dissolution or liquidation. Annexation of additional properties, mergers and consolidations, mortgaging of Common Area and dissolution of the Association requires prior written approval of the Department of Housing and Urban Development and the Veterans Administration ("HUD/VA") as long as there is a Class "B" membership, but only if HUD and/or VA holds an Institutional Mortgage on one or more Parcels.

#### ARTICLE IV

##### MEMBERSHIP:

(A) The Members shall be the record owners of a fee simple interest in one or more Parcels. Class "A" Members are all owners other than the Developer. The Class "B" Member is the Developer as further provided in the Association's Bylaws.

(B) The share of a Member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his Parcel.

(C) Except as otherwise provided in the Association’s Bylaws with respect to the Class “B” Member, the owners of each Parcel, collectively, shall be entitled to one vote in Association matters. The manner of exercising voting rights shall be as set forth in the Association’s Bylaws.

ARTICLE V

TERM: The term of the Association shall be perpetual.

ARTICLE VI

BYLAWS: The Association’s Bylaws may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Association’s Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.

(B) Directors of the Association shall initially be appointed by and shall serve at the pleasure of the Developer, and on and following the Turnover Date, the Board of Directors shall be elected by the Members in the manner determined by the Association’s Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Association’s Bylaws.

(C) The business of the Association shall be conducted by the Officers designated in the Association’s Bylaws. The Officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the Members, and they shall serve at the pleasure of the Board of Directors. The initial Directors are as follows:

David Kanarek  
c/o Pulte Home Company, LLC  
4400 PGA Blvd., Suite 700  
Palm Beach Gardens, FL 33410

Andrew Maxcy  
c/o Pulte Home Company, LLC  
4400 PGA Blvd., Suite 700  
Palm Beach Gardens, FL 33410

Brad Hartman  
c/o Pulte Home Company, LLC  
4400 PGA Blvd., Suite 700  
Palm Beach Gardens, FL 33410

The initial Officers are as follows: David Kanarek, President; Andrew Maxey, Vice President; and Brad Hartman, Secretary/Treasurer.

#### ARTICLE VIII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

(A) Proposal. Subsequent to the Turnover Date, amendments to these Articles may be proposed by the Board of Directors or by a written petition to the Board of Directors, signed by at least one-third (1/3) of the Voting Interests.

(B) Procedure. Upon any amendment to these Articles being proposed by said Board of Directors or Members, such proposed amendment shall be submitted to a vote of the Members not later than the next annual meeting for which proper notice can be given. A proposal to amend these Articles 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 Articles for current text".

(C) Vote Required. Prior to the Turnover Date, amendments shall be adopted by the Board of Directors. Subsequent to the Turnover Date, a proposed amendment shall be adopted if it is approved by at least two-thirds (2/3) of the Voting Interests, at any annual or special meeting. As long as the Developer owns a Parcel, an amendment to these Articles shall not be effective without the prior written consent of the Developer, which consent may be denied in the Developer's discretion, provided, further, that regardless of whether the Developer owns a Parcel, no amendment shall be effective if it affects the Developer's rights or alters any provision made for the Developer's benefit. Amendment of these Articles requires prior written approval of HUD/VA as long as there is a Class "B" membership, but only if HUD and/or VA holds an Institutional Mortgage on one or more Parcels.

(D) Effective Date. An amendment shall become effective upon filing Articles of Amendment with the Florida Department of State and recording a Certificate of Amendment in the Public Records of Indian River County, Florida, with the formalities required for the execution of a deed.

#### ARTICLE IX

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every Officer of the Association against all expenses and liabilities, including attorneys' fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or Officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

(A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.

(B) A violation of criminal law, unless the Director or Officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.

(C) A transaction from which the Director or Officer derived an improper personal benefit.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or Officer may be entitled.

ARTICLE X

INCORPORATOR: The name and address of the Incorporator is as follows:

David Kanarek  
c/o Pulte Home Company, LLC  
4400 PGA Blvd., Suite 700  
Palm Beach Gardens, FL 33410

ARTICLE XI

REGISTERED OFFICE AND REGISTERED AGENT: The name and address of the Registered Agent and the address of the Registered Office is:

David Kanarek  
c/o Pulte Home Company, LLC  
4400 PGA Blvd., Suite 700  
Palm Beach Gardens, FL 33410

IN WITNESS WHEREOF, the undersigned, for the purpose of forming a corporation not for profit to do business in the State of Florida, under the laws of Florida, makes and files these Articles of Incorporation, hereby declares and certifies the facts herein stated are true and hereunto set my hand this 4 day of September, 2018.

David Kanarek, Incorporator  
David Kanarek, Incorporator

**CERTIFICATE OF DESIGNATION**  
**REGISTERED AGENT/REGISTERED OFFICE**

Pursuant to the provisions of Section 617.0501, Florida Statutes, the undersigned corporation, organized under the laws of the State of Florida, submits the following statement in designating the registered office/registered agent, in the State of Florida.

- 1. The name of the corporation is:  
  
MAGNOLIA SQUARE AT WATERWAY VILLAGE HOMEOWNERS ASSOCIATION, INC.
  
- 2. The name and address of the registered agent and office is:

David Kanarek  
c/o Pulte Home Company, LLC  
4400 PGA Blvd., Suite 700  
Palm Beach Gardens, FL 33410

DK President  
David Kanarek, President  
DATE: 9/4/2018

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATING TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

DK  
David Kanarek  
DATE: 9/4/2018

**BYLAWS**  
**FOR**  
**MAGNOLIA COURT AT WATERWAY VILLAGE HOMEOWNERS ASSOCIATION, INC.**

**EXHIBIT “ C ”**



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**BYLAWS**  
**OF**  
**MAGNOLIA COURT AT WATERWAY VILLAGE HOMEOWNERS ASSOCIATION, INC.**

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**BYLAWS**

**MAGNOLIA COURT AT WATERWAY VILLAGE HOMEOWNERS ASSOCIATION, INC.**

1. GENERAL: These are the Bylaws of Magnolia Court at Waterway Village Homeowners Association, Inc., hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating Magnolia Court at Waterway Village pursuant to the Florida Not-For-Profit Corporation Act.

1.1 Principal Office. The principal office of the Association is c/o Pulte Home Company, LLC, 4400 PGA Blvd., Suite 700, Palm Beach Gardens, FL 33410.

1.2 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "not-for-profit". The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.3 Definitions. The definitions set forth in the Declaration and the Act shall apply to terms used in these Bylaws.

2. MEMBERS:

2.1 Qualifications. The Members shall be the record owners of legal title to the Parcels in Magnolia Court at Waterway Village. In the case of a Parcel subject to an agreement for deed, the purchaser in possession shall be deemed the Owner of the Parcel for purposes of determining voting and use rights. Membership shall become effective upon the last to occur of the following:

- (A) Recording a deed or other instrument evidencing legal title to the Parcel in the Public Records of Indian River County, Florida.
- (B) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.
- (C) Delivery to the Association, if required, of a written designation of the Primary Occupants.

The failure to comply with the prerequisites set forth in (B)-(C) above shall not release the Member from the obligation to comply with the Governing Documents, but shall otherwise preclude such Member from obtaining the benefits of membership, including, without limitation, the right to receive notices and the right to vote on Association matters.

2.2 Voting Interest. The Class "A" Members are entitled to one (1) vote for each Parcel they own. The total number of Class "A" votes shall not exceed the total number of Parcels subject to the Declaration. The Class "B" Member shall be entitled to a number of votes equal to the total number of Parcels owned by the Class "A" Members plus one (1) vote; provided that subsequent to the Turnover Date, the Class "B" Member shall be entitled to one (1) vote for each Parcel it owns. The vote of a Parcel is not divisible. If a Parcel is owned by one (1) natural person, his right to vote shall be established by the record title to the Parcel. If a Parcel is owned jointly by two (2) or more natural persons that are not acting as trustees, that Parcel's vote may be cast by any one (1) of the Owners. If two (2) or more Owners do not agree among themselves how their one (1) vote shall be cast, that vote shall not be counted for any purpose. If the Owner is a corporation, partnership, limited liability company, trust, trustee or other entity other than a natural

person, the vote of that Parcel shall be cast by any officer, director, partner, manager, managing member or trustee, as the case may be.

2.3 Approval or Disapproval of Matters. Whenever the decision or approval of the Owner of a Parcel is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person authorized to cast the vote of such Parcel at an Association meeting as stated in Section 2.2 above, unless the joinder of all Owners is specifically required.

2.4 Change of Membership. A change of membership shall be established as provided in Section 2.1 above; and the membership of the prior Owner shall thereby be automatically terminated.

2.5 Termination of Membership. The termination of membership in the Association does not relieve or release any former Member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

### 3. MEMBERS' MEETINGS: VOTING:

3.1 Annual Meeting. There shall be an Annual meeting of the Members in each calendar year. The Annual meeting shall be held in Indian River County, Florida, each year at a day, place and time designated by the Board of Directors, for the purpose of electing Directors and transacting any business duly authorized to be transacted by the Members.

3.2 Special Members' Meetings. Prior to the Turnover Date, Special Members' meetings must be held whenever called by the President or by a majority of the Directors. Subsequent to the Turnover Date, Special Members' meetings must be held whenever called by the President or by a majority of the Directors, and may also be called by Members having at least one-third (1/3) of the Voting Interests. The business at any Special Members' meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Meetings; Waiver of Notice. Notice of all Members' meetings must state the time, date, and place of the meeting, and include an agenda for the meeting. The Notice of Meeting must be sent to each Member at the address which appears on the books of the Association, or may be furnished by personal delivery. The Member is responsible for providing the Association with notice of any change of address. The Notice of Meeting must be mailed, delivered or electronically transmitted at least fourteen (14) days before the meeting. An affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Attendance at any meeting by a Member constitutes waiver of notice by that Member unless the Member objects to the lack of notice at the beginning of the meeting. A Member may waive notice of any meeting at any time, but only by written waiver. Notice to the Members of meetings of the Board of Directors, meetings of a committee requiring notice in the same manner as meetings of the Board of Directors, and Annual and Special meetings of the Members, may be electronically transmitted in the manner set forth in Section 617.0141, F.S. to any Member who has provided a facsimile number or e-mail address to the Association to be used for such purposes. Notice by electronic transmission is effective: when actually transmitted by facsimile telecommunication, if correctly directed to a number at which the Member has consented to receive notice; when actually transmitted by electronic mail, if correctly directed to an electronic mail address at which the Member has consented to receive notice. Notice is also effective when posted on an electronic network that the Member has consented to consult, upon the later of: such correct posting; or the giving of a separate notice to the Member of the fact of such specific posting; or when correctly transmitted to the Member, if by any other form of electronic transmission consented to by the Member to whom notice is given. Consent by a Member to receive notice by electronic transmission shall be revocable by the Member by written notice to

the Association. Any such consent shall be deemed revoked if: the Association is unable to deliver by electronic transmission two (2) consecutive notices given by the Association in accordance with such consent; and such inability becomes known to the Secretary, Assistant Secretary or other authorized person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation does not invalidate any meeting or other action. The Member is responsible for providing the Association with notice of any change of mailing address, facsimile number or electronic mail address. As used in these Bylaws, the term "electronic transmission" means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmission of images, and text that is sent via electronic mail between computers. An affidavit of the Secretary, an Assistant Secretary, or other authorized agent of the Association that the notice has been given by a form of electronic transmission is, in the absence of fraud, prima facie evidence of the facts stated in the notice.

3.4 Quorum. A quorum at a Members' meeting shall be attained by the presence, either in person or by proxy, of Members entitled to cast at least thirty percent (30%) of the Voting Interests. After a quorum has been established at a Members' meeting, the subsequent withdrawal of any Members, so as to reduce the number of Voting Interests represented below the number required for a quorum, shall not affect the validity of any action taken at the meeting before or after such persons leave.

3.5 Vote Required. The acts approved by a majority of the votes cast at a duly called meeting of the Members at which a quorum has been attained shall be binding upon all Members for all purposes, except where a greater or different number of votes are expressly required by law or by any provision of the Governing Documents. The Association may conduct elections and other membership votes through an internet-based online voting system if a Member consents, in writing, to online voting and all requirements in Section 720.317 of the Act are met.

3.6 Proxy Voting. To the extent lawful, any Member entitled to attend and vote at a Members meeting may establish his presence and cast his vote by proxy. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the votes, specify the date, time and place of the meeting for which it is given, and delivered to the Association by the appointed time of the meeting or adjournment thereof. Holders of proxies need not be Members. No proxy shall be valid if it names more than one (1) person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

3.7 Adjourned Meetings. Any duly called meeting of the Members may be adjourned to be reconvened at a specific later time by vote of a majority of the Voting Interests present in person or by proxy, regardless of whether a quorum has been attained. The adjournment to a date, time and place must be announced at that meeting before the adjournment is taken, or notice must be given to all Members of the date, time and place of its reconvening. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance, provided a quorum is then present, in person or by proxy.

3.8 Order of Business. The order of business at Members' meetings shall be substantially as follows:

- (A) Call of the roll or determination of quorum
- (B) Reading or disposal of minutes of the last Members' meeting

- (C) Reports of Officers
- (D) Reports of Committees
- (E) Unfinished Business
- (F) New Business
- (G) Adjournment

3.9 Minutes. Minutes of all meetings of Members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by Members or their authorized representatives and Directors at reasonable times and for a period of seven (7) years after the meeting. Minutes must be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each Director present at a Board of Directors meeting must be recorded in the minutes.

3.10 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall guide the conduct of Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

4. BOARD OF DIRECTORS: The administration of the affairs of the Association shall be by the Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Governing Documents, shall be exercised by the Board of Directors, subject to approval or consent of the Members only when such is specifically required.

4.1 Number and Terms of Service; Elections. The number of Directors which shall constitute the whole Board of Directors shall initially be three (3), all of whom shall be appointed by and shall serve at the pleasure of the Developer. At the Annual meeting occurring subsequent to the date that Members other than the Developer are entitled to elect one (1) Director pursuant to Section 720.307(2) of the Act (i.e. when fifty percent (50%) of all Parcels in Magnolia Court at Waterway Village that ultimately will be operated by the Association have been conveyed to Members other than the Developer), there shall be four (4) Directors, three (3) of whom shall be appointed by and serve at the pleasure of the Developer and the fourth elected by the Members other than the Developer. For purposes of this Section, the term "Members other than the Developer" shall not include Builders. The number of Directors shall increase to five (5) at the Turnover Meeting. Directors shall be elected by secret ballot (using a double envelope system) in accordance with the Act and these Bylaws at: the Annual meeting occurring subsequent to the date that Members other than the Developer are entitled to elect one (1) Director pursuant to Section 720.307(2) of the Act; any other Annual meeting prior to the Turnover Meeting; the Turnover Meeting; and at subsequent Annual meetings.

The First Notice of the Turnover or Annual meeting, as the case may be, shall be mailed, hand-delivered or electronically transmitted to all Members at least sixty (60) days in advance of the meeting. Any person who wishes to qualify as a candidate shall notify the Association in writing of his or her desire to be a candidate at least forty (40) days prior to the meeting and must be eligible to serve on the Board of Directors at the time of such forty (40) day deadline in order to have his or her name listed as a proper candidate on the election ballot or to serve on the Board of Directors. Notice shall be deemed effective when received by the Association. Any person indicating his or her desire to qualify as a candidate may also return a separate information sheet, no larger than 8 ½" by 11", which describes the candidate's background, education and qualifications for office, and any other information deemed relevant by the candidate, which information sheet must be furnished by the candidate at least forty (40) days prior to the election. The Association has no liability for the contents of the information sheets prepared by the candidates.

If the number of candidates does not exceed the number of vacancies, an election shall not be required. The Association shall mail, hand-deliver or electronically transmit a Second Notice at least fourteen (14) days in advance of the meeting. The candidates shall commence service on the Board of Directors upon the adjournment of the Annual meeting. However, if a quorum is not attained at the Annual meeting, the candidates shall nevertheless commence service on the Board of Directors.

If the number of candidates exceeds the number of seats to be filled, an election shall be required. The Association shall mail, hand-deliver or electronically transmit a Second Notice, together with any candidate information sheets, a ballot which shall list all candidates in alphabetical order by surname, and (unless the Second Notice is electronically transmitted), "inner" and "outer envelopes", at least fourteen (14) days in advance of the meeting. Directors shall be elected by a plurality of the ballots cast. A Member shall not permit any other person to vote his ballot, and any ballots improperly cast are invalid. In the election of Directors, there shall be appurtenant to each Parcel as many votes for Directors as there are Directors to be elected, but no Parcel may cast more than one (1) vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative.

After indicating the name(s) of the candidate(s) for which the Member has voted, the ballot must be placed in an inner envelope with no identifying markings and mailed or delivered to the Association in an outer envelope bearing identifying information reflecting the name of the Member, the Member's address in Magnolia Court at Waterway Village and the signature of the Member casting that ballot. If the eligibility of the Member to vote is confirmed and no other ballot has been submitted for that Parcel, the inner envelope shall be removed from the outer envelope bearing the identification information, placed with the ballots which were personally cast, and opened when the ballots are counted. Nominations from the floor are prohibited and there shall not be a nominating committee. Write-in nominations are not permitted. If more than one (1) ballot is submitted for a Parcel, the ballots for that Parcel shall be disqualified. Upon receipt by the Association, no ballot may be rescinded or changed. Any vote by ballot received after the closing of the balloting may not be considered.

At the Turnover Meeting, the three (3) Directors who receive the highest number of votes shall be elected to two (2) year terms, and the remaining two (2) Directors elected shall serve an initial one (1) year term. In the event of a tie vote, or if the number of candidates does not exceed the number of seats to be filled, the candidates shall mutually agree or shall draw lots to determine which candidate(s) shall serve and for what terms. Thereafter, all Directors (except those appointed by the Developer) shall serve two (2) year terms. Notwithstanding the foregoing provisions in this Section 4.1, the Developer shall be entitled to appoint at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Parcels in all phases of Magnolia Court at Waterway Village. A Director's term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns, or is recalled as provided in 4.4 below.

**4.2 Qualifications.** Directors appointed by the Developer are not required to be Members. Directors appointed by the Developer may be the Developer's officers or employees. Directors elected by the Members must be a Member or the spouse of a Member. If a Parcel is owned by a corporation, partnership, limited liability company or trust, any officer, director, partner, manager, managing member, or trustee, as the case may be, shall be eligible to serve as a Director. A person who is delinquent in the payment of any fee, fine or other monetary obligation to the Association on the day that he or she could last nominate himself or herself or be nominated for the Board of Directors may not seek election to the Board of Directors, and his or her name shall not be listed on the ballot. A person serving as a Director who becomes more than ninety (90) days delinquent in the payment of any fee, fine or other monetary obligation to the Association shall be deemed to have abandoned his or her seat on the Board of Directors, creating a vacancy on the Board of Directors to be filled according to law. For purposes of this Section 4.2, the term "any fee,

fine or other monetary obligation” means any delinquency to the Association with respect to any Parcel. A person who has been convicted of any felony in Florida or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in Florida, may not seek election to the Board of Directors and is not eligible for Board membership unless such felon’s civil rights have been restored for at least five (5) years as of the date on which such person seeks election to the Board of Directors. The validity of any action by the Board of Directors is not affected if it is later determined that a person was ineligible to seek election to the Board of Directors or that a Director is ineligible for Board of Directors membership. A Director or officer charged by information or indictment with a felony theft or embezzlement offense involving the Association’s funds or property is removed from office. The Board of Directors shall fill the vacancy according to general law until the end of the period of the suspension or the end of the Director’s term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Director or officer shall be reinstated for any remainder of his or her term of office. A Member who has such criminal charges pending may not be appointed or elected to a position as a Director or officer. Within ninety (90) days after being elected or appointed to the Board of Directors, each Director shall certify in writing to the Secretary that he or she has read the Declaration, Articles of Incorporation, Bylaws and current written rules and policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Members. Within ninety (90) days after being elected or appointed to the Board of Directors, in lieu of such written certification, the newly elected or appointed Director may submit a certificate of having satisfactorily completed the educational curriculum administered by a Division-approved education provider within one year before or ninety (90) days after the date of election or appointment. The written certification or educational certificate is valid for the uninterrupted tenure of the Director on the Board of Directors. A Director who does not timely file the written certification or educational certificate shall be suspended from the Board of Directors until he or she complies with the requirements set forth above. The Board of Directors may temporarily fill the vacancy during the period of suspension. The Association shall retain each Director’s written certification or educational certificate for inspection by the Members for five (5) years after the Director’s election. However, the failure to have such written certification or educational certificate on file does not affect the validity of any Board of Directors’ action.

4.3 Vacancies on the Board of Directors. If the office of any Director becomes vacant for any reason, other than recall by the membership at a Members’ meeting, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor to fill the remaining unexpired term except that vacancies of all Directors appointed by the Developer shall likewise be filled by the Developer. If the Association fails to fill vacancies on the Board of Directors sufficient to constitute a quorum, or if no Director remains on the Board of Directors, the vacancy may be filled by the Members (via a special meeting of the Members) or any Member may apply to the Circuit Court for the appointment of a receiver to manage the Association’s affairs, in the manner provided by Florida law.

4.4 Removal of Directors. Except for Directors appointed by the Developer, any or all Directors may be removed with or without cause by a majority the Voting Interests, either by a written petition, or at any meeting called for that purpose, in the manner required by Section 720.303(10) of the Act.

4.5 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election. The organizational meeting may be held immediately following the election, in which case noticing of the meeting may be effectuated by the Board of Directors existing prior to the election.

4.6 Other Meetings. Meetings of the Board of Directors may be held at such time and place in Indian River County, Florida, as shall be determined from time to time by the President or a majority of the



Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram at least forty-eight (48) hours prior to the day named for such meeting.

4.7 Notice to Owners. A meeting of the Board of Directors occurs whenever a quorum of the Board of Directors gathers to conduct Association business. All meetings of the Board of Directors shall be open to Members except for meetings between the Board of Directors 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; or meetings of the Board of Directors held for the purpose of discussing personnel matters. Notices of all Board of Directors meetings shall be posted conspicuously in Magnolia Court at Waterway Village for at least forty-eight (48) continuous hours in advance of each Board of Directors meeting, except in an emergency. In the event of an emergency meeting, any action taken shall be noticed and ratified at the next regular meeting of the Board of Directors. In the alternative to the posting requirements discussed above, notice of each Board of Directors meeting must be mailed or delivered to each Member at least seven (7) days before the meeting, except in an emergency. An Assessment may not be levied at a Board of Directors meeting unless the notice of the meeting includes a statement that Assessments will be considered and the nature of the Assessments. Members have the right to speak with reference to any matter that is placed on the Board of Directors meeting agenda. The Association may adopt reasonable, written rules expanding the rights of Members to speak and governing the frequency, duration, and other manner of Member statements, (including a sign-up sheet requirement), which rules must be consistent with the minimum requirements of the Act.

4.8 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

4.9 Quorum of Directors. A quorum at a Board of Directors meeting shall exist when at least a majority of all Directors are present at a duly called meeting. Directors may participate in any meeting of the Board of Directors, by a conference telephone call or similar communicative arrangement whereby all persons present can hear all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting.

4.10 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Governing Documents or by applicable statutes. Directors may not vote by proxy or by secret ballot at Board of Directors meetings, except that secret ballots may be used in the election of officers. Directors may use e-mail as a means of communication, but may not cast a vote on an Association matter via e-mail.

4.11 Adjourned Meetings. The majority of the Directors present at any meeting of the Board of Directors, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date.

4.12 The Presiding Officer. The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of the Directors present.

4.13 Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

4.14 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as the Board of Directors deem necessary and convenient for the efficient and effective operation of the Association. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. If required by law, committee meetings shall be open to attendance by any Member, and notice of committee meetings shall be posted in the same manner as required in Section 4.7 above for Board of Directors meetings, except for such committee meetings between the committee 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.

## 5. OFFICERS:

5.1 Officers and Elections. The executive officers of the Association shall be a President and Vice President (both of whom must be Directors), a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors. Any officer may be removed with or without cause by vote of a majority of all Directors at any meeting. Any person may hold two (2) or more offices. The Board of Directors may, from time to time, appoint such other officers, and designate their powers and duties, as the Board of Directors shall find to be required to manage the affairs of the Association. If the Board of Directors so determines, there may be more than one (1) Vice-President.

5.2 President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the Members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall execute bonds, mortgages and other contracts requiring seal of the Association, except for those that are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

5.3 Vice-Presidents. The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign.

5.4 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the Members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the Members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board of Directors, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the Governing Documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one (1) has been designated, or the Association's manager/management company.

5.5 Treasurer. The Treasurer shall be responsible for Association's funds and securities, the keeping of full and accurate amounts of receipts and disbursements in books belonging to the Association, and the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee the disbursement of the Association's funds, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board of Directors, or whenever they may require it, an accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated, or the Association's manager/management company.

6. FISCAL MATTERS: The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

6.1 Depository. The Association shall maintain its funds in such financial institutions authorized to do business in the State of Florida as shall be designated from time to time by the Board of Directors. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board of Directors.

6.2 Budget. The Board of Directors shall adopt a budget of Common Expenses for each fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board of Directors at which the budget will be adopted shall be mailed to each Member not less than fourteen (14) days prior to that meeting. The budget shall be adopted on a "build out" basis. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association, the Developer or another person, if any.

6.3 Reserves for Capital Expenditures and Deferred Maintenance. In addition to annual operating expenses, the proposed budget may include reserve accounts for capital expenditures and deferred maintenance with respect to the Common Area. If the Association's budget includes reserve accounts established by the Developer or the Members pursuant to Section 720.303(6)(d) of the Act, such reserves shall be determined, maintained, and waived in the manner provided therein. Once the Association provides for reserve accounts, the Association shall thereafter determine, maintain, and waive reserves in compliance with the Act, provided that this does not preclude the termination of a reserve account upon approval of a majority of the Voting Interests. Upon such approval, the terminating reserve account shall be removed from the budget. If reserve accounts are established by the Developer, the budget must designate the components for which the reserve accounts may be used. If reserve accounts are not initially provided by the Developer, the Members may elect to do so upon the affirmative approval of a majority of the Voting Interests. Such approval may be obtained by vote of the Members at a duly called Members' meeting or by the written consent of a majority of the Voting Interests. The approval action of the Members must state that reserve accounts shall be provided for in the budget and must designate the components for which the reserve accounts are to be established. Upon approval by the Members, the Board of Directors shall include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in Section 720.303(6) of the Act, the reserve accounts must be funded or maintained or have their funding waived in the manner provided therein. The amount to be reserved in any account established shall be computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust replacement reserve assessments annually to take into account any changes in estimates of cost or useful life of a reserve item. Funding formulas for reserves authorized by this section must be based on a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

6.4 Assessments. Regular annual Assessments based on the adopted budget shall be paid either monthly, or quarterly, as determined by the Board of Directors. Failure to send or receive notice of Assessments shall not excuse the obligation to pay. If an annual budget has not been adopted at the time the first installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last installment and shall be continued at such rate until a budget is adopted and pro rata Assessments are calculated, at which time any overage or shortage shall be added or subtracted from each unit's next due installment.

6.5 Special Assessments. Special Assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special Assessments are due on the day specified in the resolution of the Board of Directors approving such Assessments. Prior to the Turnover Date, the Board of Directors may not levy a special Assessment unless a majority of the Owners other than the Developer has approved the special Assessment by a majority vote at a duly called Special Members' meeting at which a quorum is present. On and subsequent to the Turnover Date, a special Assessment shall not be levied unless it is first approved by two-thirds (2/3) of the Voting Interests who are obligated to pay the special Assessment, except that membership approval shall not be required for a special Assessment that relates to the necessary maintenance, repair, insurance or replacement of Common Area, or if the special Assessment is required for the Board of Directors to comply with any law, regulation or order of any municipal, state or federal agency. An Assessment (whether annual or special) may not be levied at a Board of Directors meeting unless a written notice of the meeting is provided to each Member at least fourteen (14) days before the meeting, which notice includes a statement that Assessments will be considered at the meeting and the nature of the Assessments. Written notice of any meeting at which special Assessments will be considered must be mailed, delivered, or electronically transmitted (to the extent permitted by law) to the Members and posted conspicuously in Magnolia Court at Waterway Village or broadcast on closed-circuit television not less than fourteen (14) days before the meeting.

6.6 Fidelity Bonds. The Association shall maintain insurance or a fidelity bond for all persons who control or disburse Association funds. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this Section 6.6, the term "persons who control or disburse Association funds" includes, but is not limited to, persons who are authorized to sign checks on behalf of the Association, and the President, Secretary and Treasurer. The Association shall bear the cost of any insurance or bond.

6.7 Financial Reporting. Within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year. Within twenty-one (21) days after the final report is completed by the Association or received from the third party, but not later than one hundred twenty (120) days after the end of the fiscal year, the Association shall mail or hand deliver to each Member a copy of such report or a written notice that a copy of the report is available upon request at no charge to the Member. The financial report shall be prepared in accordance with Section 720.303(7) of the Act. If approved by a majority of the Voting Interests present at a properly called members' meeting, the Association shall prepare or cause to be prepared a financial report that is less rigorous than otherwise required by the Act. If approved by a majority of the Voting Interests, the Association shall prepare or cause to be prepared a financial report that is more rigorous than otherwise required by the Act.

6.8 Fiscal Year. The fiscal year shall be the calendar year, unless modified by the Board of Directors.

7. RULES AND REGULATIONS: USE RESTRICTIONS: The Board of Directors may, from time to time, adopt and amend Rules and Regulations subject to any limits contained in the Declaration. Written notice of any meeting at which the Rules and Regulations that regulate the use of Parcels may be adopted, amended, or revoked must be mailed, delivered, or electronically transmitted (to the extent permitted by law) to the Members and posted conspicuously in Magnolia Court at Waterway Village or broadcast on closed-circuit television not less than fourteen (14) days before the meeting. A written notice concerning changes to Rules and Regulations that regulate the use of Parcels must include a statement that changes to the Rules and Regulations regarding the use of Parcels will be considered at the meeting. Copies of such Rules and Regulations shall be furnished to each Owner. Any Rules and Regulations must be reasonably related to the promotion of health, happiness and peace of mind of the Owners and uniformly applied and enforced. Subsequent to the Turnover Date, and as long as the Developer owns a Parcel or other property in

Magnolia Court at Waterway Village, no new or amended Rule or Regulation shall be effective unless the Developer grants its approval in writing, which approval may be denied in the Developer's discretion.

8. COMPLIANCE AND DEFAULT: REMEDIES: In addition to the remedies provided elsewhere in the Declaration, the following provisions shall apply:

8.1 Obligations Of Members; Remedies At Law Or In Equity; Levy of Fines and Suspension Of Use Rights.

(A) Each Member and the Member's Tenants, Guests and invitees, are governed by, and must comply with the Act and the Governing Documents. Actions at law or in equity, or both, to redress the alleged failure or refusal to comply with the Governing Documents may be brought by the Association or by any Member against:

- (1) The Association;
- (2) A Member;
- (3) Any Director or officer who willfully and knowingly fails to comply with the provisions of the Act and the Governing Documents; and
- (4) Any Tenants, Guests, or invitees occupying a Parcel or using the Common Area.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This section does not deprive any person of any other available right or remedy. Certain disputes must be submitted to dispute resolution procedures conducted by the Division of Florida Land Sales, Condominiums and Mobile Homes ("Division") as more particularly set forth in Section 720.311 of the Act.

(B) The Association may levy reasonable fines against any Member or any Member's Tenant, Guest or invitee for the failure of the Owner of a Parcel or its occupant, licensee, or invitee to comply with any provision of the Governing Documents. The fine shall be in an amount deemed necessary by the Board of Directors to deter future violations, but in no event shall any fine exceed the maximum amounts allowed by law. Fines shall not be secured by a lien against a Parcel unless permitted by the Act.

(C) The Association may suspend, for a reasonable amount of time, the right of a Member, or a Member's Tenant, Guest or invitee, to use the Common Area and facilities, for the failure of the Owner of the Parcel or its occupant, licensee or invitee to comply with any provision of the Governing Documents. The foregoing does not apply to that portion of the Common Area used to provide access or utility services to the Parcel. A suspension may not prohibit the right of an Owner or Tenant of a Parcel from having vehicular and pedestrian ingress to and egress from the Parcel, including, but not limited to, the right to park. The Association may deactivate an Owner's gate transponder or other entry mechanism (if Magnolia Court at Waterway Village is gated) and require that the Owner, his Family members, Tenants and Guests gain entry to Magnolia Court at Waterway Village through a guest entrance.

(D) A fine or suspension pursuant to (B) and (C) above levied by the Board of Directors may not be imposed unless the Board of Directors first provides at least fourteen (14) days' notice to the Owner and, if applicable, any occupant, licensee or invitee of the Owner, sought to be fined and opportunity for hearing before a committee of at least three Members appointed by the Board of Directors who are not officers, Directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, Director or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the Board of Directors. If the proposed fine or suspension levied by the Board of Directors is approved by the committee, the fine payment is due five (5) days after the date of the committee meeting at which the fine is approved.

(E) If a Member is more than ninety (90) days delinquent in paying any fee, fine or other monetary obligation due to the Association, the Association may suspend the rights of the Member, or the Member's Tenant, Guest, or invitee, to use the Common Area and facilities until the fee, fine or other monetary obligation is paid in full. The foregoing does not apply to that portion of the Common Area used to provide access or utility services to the Parcel. A suspension may not prohibit an Owner or Tenant of a Parcel from having vehicular and pedestrian ingress to and egress from the Parcel, including, but not limited to, the right to park. The Association may deactivate an Owner's gate transponder or other entry mechanism (if Magnolia Court at Waterway Village is gated) and require that the Owner, his Family members, Tenants and Guests gain entry to Magnolia Court at Waterway Village through a guest entrance. The notice and hearing requirements under subsection (D) above do not apply to a suspension imposed under this subsection (E).

(F) The Association may suspend the voting rights of a Parcel or Member for the nonpayment of any monetary obligation due to the Association that is more than ninety (90) days delinquent. The suspension ends upon full payment of all obligations currently due or overdue the Association. A Voting Interest or consent right allocated to a Parcel or Member 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 under the Act or pursuant to the Governing Documents. The notice and hearing requirements under subsection (D) above do not apply to a suspension imposed under this subsection (F).

(G) All suspensions imposed pursuant to subsections (E) and (F) above must be approved at a properly noticed meeting of the Board of Directors. Upon approval, the Association must notify the Owner, and, if applicable, the Parcel's occupant, licensee or invitee by mail or hand-delivery.

(H) The suspensions permitted by subsections (C), (E) and (F) above apply to a Member and, when appropriate, the Member's Tenants, Guests or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple Parcels owned by such Member.

8.2 Availability of Remedies. Each Member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all Members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the majority's right to enjoy the community free from unreasonable restraint and annoyance.

9. AMENDMENT OF BYLAWS: Amendments to these Bylaws shall be proposed and adopted in the following manner:

9.1 Proposal. Subsequent to the Turnover Date, amendments to these Bylaws may be proposed by the Board of Directors or by a written petition to the Board of Directors, signed by at least one-third (1/3) of the Voting Interests.

9.2 Procedure. Upon any amendment to these Bylaws being proposed by the Board of Directors or the Members, such proposed amendment shall be submitted to a vote of the Members not later than the next Annual meeting for which proper notice can still be given. A proposal to amend these Bylaws 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 Bylaws for current text".

9.3 Vote Required. Prior to the Turnover Date, amendments shall be adopted by the Developer. On and subsequent to the Turnover Date, a proposed amendment to these Bylaws shall be adopted if it is approved by at least two-thirds (2/3) of the Voting Interests at any Annual or Special meeting, provided that notice of the proposed amendment has been given to the Members in accordance with law. As long as the Developer owns a Parcel or other property in Magnolia Court at Waterway Village, an amendment to these Bylaws shall not be effective without the prior written consent of the Developer, which consent may be denied in the Developer's discretion, provided, further, that regardless of whether the Developer owns a Parcel or other property in Magnolia Court at Waterway Village, no amendment shall be effective if it affects the Developer's rights or alters a provision herein made for the Developer's benefit. Amendment of these Bylaws requires prior written approval of HUD/VA as long as there is a Class "B" membership.

9.4 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Bylaws, which certificate shall be in the form required by law and shall be executed by the President or Vice-President with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Indian River County, Florida.

10. MASTER ASSOCIATION: Members shall vote indirectly in Master Association matters through a "Voting Representative", as such term is defined in the Master Declaration. Prior to the Turnover Date, the Developer shall be the Association's Voting Representative. Subsequently, the Association's Voting Representative shall be the President of the Association or another Association officer that he or she designates.

11. MISCELLANEOUS:

11.1 Gender. Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

11.2 Severability. Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

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The foregoing were adopted as the first Bylaws of Magnolia Court at Waterway Village Homeowners Association, Inc. on this 4 day of February, 2019.

  
\_\_\_\_\_  
David Kanarek, President





# St. Johns River Water Management District

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

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

January 16, 2018

EXHIBIT “ D ”

Patrick Gonzalez  
DiVosta Homes, LP.  
4400 PGA Blvd  
Palm Beach Gardens, FL 33410-6553

SUBJECT: Permit Number: 97246-26  
Project Name: Lakes at Waterway Village - Phase 2B Pods S, T and U  
Modification (Pods H, I and J)

Dear Mr. Gonzalez:

Enclosed is your individual permit issued by the St. Johns River Water Management District on January 16, 2018. This permit is a legal document and should be kept with your other important documents. Permit issuance does not relieve you from the responsibility of obtaining any necessary permits from any federal, state, or local agencies for your project.

**Technical Staff Report:**

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

**Noticing Your Permit:**

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

**Compliance with Permit Conditions:**

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

**GOVERNING BOARD**

John A. Miklos, CHAIRMAN  
ORLANDO

Fred N. Roberts Jr., VICE CHAIRMAN  
OCALA

Chuck Drake, SECRETARY  
ORLANDO

Ron Howse, TREASURER  
COCOA

Douglas C. Boumique  
VERO BEACH

Douglas Burnett  
ST. AUGUSTINE

Susan Dolan  
SANFORD

Janet Price  
FERNANDINA BEACH

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

**Transferring Your Permit:**

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

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

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

Sincerely,



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

Enclosures: Permit

cc: District Permit File  
Consultant: Kinan Husainy  
Kimley-Horn and Associates, Inc.  
445 24th St Ste 200  
Vero Beach, FL 32960-7502

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

PERMIT NO: 97246-26

DATE ISSUED: January 16, 2018

PROJECT NAME: Lakes at Waterway Village - Phase 2B Pods S, T and U Modification (Pods H, I and J)

**A PERMIT AUTHORIZING:**

Authorization of a Stormwater Management System for Lakes at Waterway Village - Phase 2B Pods S, T and U Modification (Pods H, I and J), a 40.93 - acre project to be constructed and operated as per plans received by the District on December 15, 2017.

**LOCATION:**

Section(s): 21 Township(s): 32S Range(s): 39E  
Indian River County

**Receiving Water Body:**

Name	Class
IRFWCD Lateral H Canal	III Fresh, IW

**ISSUED TO:**

DiVosta Homes, LP.  
4400 PGA Blvd  
Palm Beach Gardens, FL 33410-6553

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

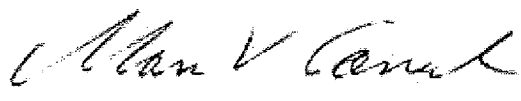
This permit does not convey to the permittee any property rights nor any rights or privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation or requirement affecting the rights of other bodies or agencies. All structures and works installed by permittee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

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

**PERMIT IS CONDITIONED UPON:**

See conditions on attached "Exhibit A", dated January 16, 2018

**AUTHORIZED BY:** St. Johns River Water Management District  
Division of Regulatory Services

By: 

\_\_\_\_\_  
Marc vonCanal  
Regulatory Coordinator

**"EXHIBIT A"**  
**CONDITIONS FOR ISSUANCE OF PERMIT NUMBER 97246-26**  
**Lakes at Waterway Village - Phase 2B Pods S, T and U Modification (Pods H, I and J)**  
**DATED: January 16, 2018**

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

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

13. Upon reasonable notice to the permittee, District staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.
14. If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, work involving subsurface disturbance in the immediate vicinity of such discoveries shall cease. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section, at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Such subsurface work shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and notification shall be provided in accordance with Section 872.05, F.S.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Rule 62-330.201, F.A.C., provides otherwise.
16. The permittee shall provide routine maintenance of all components of the stormwater management system to remove trapped sediments and debris. Removed materials shall be disposed of in a landfill or other uplands in a manner that does not require a permit under Chapter 62-330, F.A.C., or cause violations of state water quality standards.
17. This permit is issued based on the applicant's submitted information that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed permit activity. If any adverse impacts result, the District will require the permittee to eliminate the cause, obtain any necessary permit modification, and take any necessary corrective actions to resolve the adverse impacts.
18. A Recorded Notice of Environmental Resource Permit may be recorded in the county public records in accordance with Rule 62-330.090(7), F.A.C. Such notice is not an encumbrance upon the property.
19. This permit for construction will expire five years from the date of issuance.
20. At a minimum, all retention and detention storage areas must be excavated to rough grade prior to building construction or placement of impervious surface within the area to be served by those facilities. To prevent reduction in storage volume and percolation rates, all accumulated sediment must be removed from the storage area prior to final grading and stabilization.
21. All wetland areas or water bodies that are outside the specific limits of construction authorized by this permit must be protected from erosion, siltation, scouring or excess turbidity, and dewatering.
22. The operation and maintenance entity shall inspect the stormwater or surface water management system once within two years after the completion of construction and every two years thereafter to determine if the system is functioning as designed and permitted. The operation and maintenance entity must maintain a record of each required inspection, including the date of the inspection, the name and contact information of the inspector, and whether the system was functioning as designed and permitted, and make such record available for inspection upon request by the District during normal business hours. If at any time the system is not functioning as designed and permitted, then within 30 days the entity

shall submit a report electronically or in writing to the District using Form 62-330.311(1), "Operation and Maintenance Inspection Certification," describing the remedial actions taken to resolve the failure or deviation.

23. The proposed project must be constructed and operated as per plans and calculations received by the District on December 15, 2017.
24. Prior to or concurrent with issuance of any future permits for the construction of any of Pods V, W, or X, the permittee must initiate the completion of the outstanding mitigation that consists of the 3.47-acre enhancement of Wetland M through the removal of nuisance and exotic vegetation, removal of ditches and an artesian well, and the 2.15 acres of upland buffer enhancement of pasture through plantings in accordance with the approved mitigation plan described on the plans and information received by the District on June 20, 2005 and revised plans and information received by the District on August 10, 2005. Mitigation monitoring and mitigation success must comply with the conditions of permit 4-061-97246-1.

## Notice of Rights

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



## Notice of Rights

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

NOR.Decision.DOC.001  
Revised 12.7.11

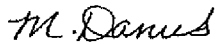
**Notice of Rights**

**Certificate of Service**

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

Patrick Gonzalez  
DiVosta Homes, LP.  
4400 PGA Blvd  
Palm Beach Gardens, FL 33410-6553

This 16th day of January 2018.



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

Permit Number: 97246-26

## NOTICING INFORMATION

Dear Permittee:

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

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

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

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

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

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

Sincerely,



Margaret Daniels, Office Director  
Office of Business and Administrative Services

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

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

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

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

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

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

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

**NEWSPAPER ADVERTISING**

**ALACHUA**

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

**BRAFORD**

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

**CLAY**

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

**FLAGLER**

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

**LAKE**

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

**NASSAU**

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

**ORANGE**

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

**PUTNAM**

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

**SEMINOLE**

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

**BAKER**

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

**BREVARD**

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

**DUVAL**

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

**INDIAN RIVER**

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

**MARION**

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

**OKEECHOBEE**

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

**OSCEOLA**

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

**ST. JOHNS**

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

**VOLUSIA**

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