

**AMENDED AND RESTATED  
DECLARATION OF RESTRICTIONS  
FOR  
MISSION ESTATES**

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**AMENDED AND RESTATED  
DECLARATION OF RESTRICTIONS  
FOR  
MISSION ESTATES**

**RECITALS:**

- A. The original Declaration of Restrictions was dated the July 8, 1997, and executed by Mission Estates Inc., a Florida corporation (the original Developer), and officially recorded in the Public Records of Sarasota County, Florida, Book 2994, Pages 2264-2314, on July 23, 1997.
- B. The Developer's intention was to create a subdivision for residential uses and purposes according to the plat recorded in Plat Book 39, page 6 and page 46, of the Public Records of Sarasota County, Florida.
- C. The Developer desired to establish protective covenants and conditions concerning the development, improvement and usage of the Subdivision property for the benefit and protection of the Developer and all Subdivision property owners.
- D. The Developer, therefore, declared that all property in the Subdivision would be subject to certain provisions, restrictions, reservations, covenants conditions and easements as recorded in the Official Records, Book 2994, Pages 2264-2314, as amended, of the Public Records of Sarasota County, Florida.
- E. On the 17<sup>th</sup> day of March, 2000, the Developer assigned to the Mission Estates Homeowners Association, all of the Developer's existing rights, title, interest, powers, duties, obligations and privileges arising under all and any of the Articles of the Declaration via the Assignment recorded at Official Records Instrument #200035025 in the Public Records of Sarasota County, Florida. This occurred after turnover of Association control from the Developer to the owners in accordance with Florida law.
- F. The Developer further quitclaimed and conveyed to the Association, all of the Developer's right, title and interest, if any, in and to the improvements constructed on the common areas and all main utility lines and equipment and all central television signal distribution wires, lines and equipment previously installed by the Developer within the Subdivision, recorded as Instrument #200035025, in the Public Records of Sarasota County, Florida
- G. Furthermore, be it known, that on the 8th day of March, 2017, the original DECLARATION OF RESTRICTIONS and AMENDMENTS thereto, were amended and restated by the required vote of the membership of the Mission Estates Homeowners Association at a meeting held for that purpose on the 8th day of March, 2017.

**ARTICLE 1**  
**DEFINITIONS**

Unless prohibited by the context in which they are used, the following words, when used in this Declaration, shall have the following meanings:

1.1 "Administrative Fee" shall have the meaning set forth in Article 5.8.

1.2 "Annual Assessment" shall mean an Assessment levied annually by the Board against a Lot in accordance with the provisions of Article 7 for the payment of a portion of the Common Expenses.

1.3 "Articles of Incorporation" shall mean the articles of incorporation of the Association, a copy of which is attached hereto as Exhibit "A."

1.4 "Assessment" shall mean an assessment levied by the Board against a Lot in accordance with the provisions of Article 7 for the payment of Association Expenses.

1.5 "Assessment Share" shall have the meaning set forth in Article 7.5.A.

1.6 "Association" shall mean Mission Estates Homeowners Association, Inc., a Florida corporation not for profit.

1.7 "Association Expenses" shall mean all expenses incurred by the Association in the performance of its obligations or the exercise of its powers pursuant to this Amended and Restated Declaration, the Articles of Incorporation, or the Bylaws.

1.8 "Attorney's Fees" shall mean all reasonable attorney's fees incurred in connection with a matter, including fees for trial and appellate proceedings and fees for services not involving litigation.

1.9 "Board" shall mean the board of directors of the Association.

1.10 "Bylaws" shall mean the bylaws of the Association, a copy of which is attached hereto as Exhibit "B."

*1.11 "Club" shall mean Mission Valley Golf and Country Club, Inc., a Florida corporation, any successor or legal representative of Mission Valley Golf and Country Club, Inc., or any Person to whom all rights of Mission Valley Golf and Country Club, Inc" under this Declaration are hereafter assigned pursuant to written instrument duly recorded in the Public Records.*

1.12 "Common Areas" shall mean all real and personal property (or interest therein) that is: (a) owned by the Association; (b) identified as such in this Declaration or in any other instrument executed by the Association and recorded in the Public Records; (c) designated by the Association in an instrument delivered to the Association as property intended for the common use and enjoyment of all Own-

ers; or (d) maintained by the Association for the benefit of all Owners pursuant to written agreement entered into by the Association.

1.13 "Common Expenses" shall have the meaning set forth in Article 6.2.

1.14 "Construction Work" shall mean any installation, construction, restoration, replacement, alteration, addition, or demolition of Improvements on a Lot.

1.15 "Developer" shall mean Mission Estates, Inc, a Florida corporation, any successor or legal representative of Mission Estates, Inc, or any Person to whom all rights of Mission Estates, Inc, under this Declaration are hereafter assigned pursuant to written instrument duly recorded in the Public Records.

1.16 "Fine" shall mean an amount assessed by the Board against an Owner in accordance with the provisions of Article 17.3.

1.17 "Governing Documents" shall mean the Amended and Restated Declaration of Restrictions, Articles of Incorporation, Bylaws and Rules and Regulations, as may be amended from time to time.

1.18 "Improvements" shall mean all buildings, driveways, parking areas, walks, walls, fences, signs, structures, utility installations, site paving, grading, screen enclosures, pools, tennis courts, game structures, mailboxes, mechanical equipment, solar energy devices, antennae, satellite dishes, water and sewer lines, drains, exterior sculptures and fountains, and other improvements of any kind other than landscaping constituting real property or fixtures, together with any subsequent alterations, additions, or replacements.

1.19 "Individual Assessment" shall mean an Assessment levied by the Board against a Lot in accordance with the provisions of Article 7 for the payment of Individual Expenses attributable to such Lot.

1.20 "Individual Expenses" shall have the meaning set forth in Article 6.3.

1.21 "Institutional Mortgagee" shall mean a savings and loan association, bank, credit union, mortgage banker, mortgage broker, insurance company, pension fund having assets in excess of \$25 million, agency of any state government, or agency of the United States Government (including the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation), and its subsidiaries, affiliates, successors, and assigns, holding a first mortgage lien upon any Lot.

1.22 "Lot" shall mean a platted lot within the Subdivision.

1.23 "Owner" shall mean the record owner, whether one or more Persons, of the fee simple title to a Lot.

1.24 "*Person*" shall mean a natural person, corporation, partnership, trustee, or other legal entity.

1.25 "Plans" shall have the meaning set forth in Article 10.3

1.26 "Public Records" shall mean the Public Records of Sarasota County, Florida.

1.27 "Restricted Vehicle" shall mean any Truck; motor home, camper, or other vehicle designed to provide temporary living quarters and having facilities for sleeping, galley, and head; trailer; boat; watercraft; aircraft; racing car; limousine; bus; motorcycle; commercial vehicles (i.e. any vehicle which has any exterior lettering or logo, or has visible tools or equipment contained within or on the vehicle); or any vehicle not in operable condition; recreational vehicles trailers, camper trailers, boat trailers; non-passenger vans (i.e., any van which does not have permanently installed seating for four or more passengers and does not have windows adjacent to passenger seats or is in excess of 17 feet in length), or any vehicles over 80 inches in height.

1.28 "Rules and Regulations" shall mean the rules and regulations of the Association adopted by the Board from time to time pursuant to the Bylaws.

1.29 "Special Assessment" shall mean an Assessment levied by the Board against a Lot in accordance with the provisions of Article 7 as a supplement to an Annual Assessment for the payment of a portion of the Common Expenses.

1.30 "Stormwater Management System" shall mean all lakes, ponds, swales, wetlands, culverts, inlets, and outfalls used in connection with the retention, drainage, and control of stormwater within the Subdivision, together with all drainage control devices, facilities, and apparatus used in connection therewith, all waters contained therein, and all easements therefor as may exist by virtue of this Declaration or other recorded instrument or plat.

1.31 "Subdivision" shall mean *Lots 1 through 99 and Tracts A, B, C, D and E, MISSION ESTATES, UNIT ONE AND TWO, as per plats recorded in Plat Book 39, pages 6-6H and 46-46C, of the Public Records of Sarasota County, Florida (From Amendment 1 Article 1).*

1.32 "SWFWMD" shall mean the Southwest Florida Water Management District.

1.33 "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 a sports utility vehicle, also referred to as a SUV, or any passenger van.



**ARTICLE 2**  
**THE ASSOCIATION**

**2.1 Purposes.** The general purposes of the Association are to operate, maintain, manage and improve the Common Areas; to implement and enforce the provisions of this Amended and Restated Declaration and exhibits, wherever applicable and appropriate; and to promote the health, safety, and social welfare of the Owners. In the furtherance of such purposes, the Association, through the Board, shall have the power and duty to levy Assessments and to enforce collection thereof in the manner provided in Articles 7 and 8. The Association shall also have such powers and duties as may be prescribed by its Articles of Incorporation and Bylaws and Florida Statutes, as amended from time to time.

**2.2 Membership.** Each Owner shall automatically be a member of the Association. Membership of an Owner shall terminate as the Owner's vested interest in the fee title to a Lot terminates and thereafter shall pass to such Owner's successors in title as an appurtenance to such Lot; provided, however, that the foregoing provisions shall not be construed as completely terminating the membership of any member who may own two or more Lots as long as at least one Lot is owned by such member.

**2.3 Voting Rights.** In all matters concerning the Association, the number of votes to which each Owner is entitled shall be the same as the number of Assessment Shares allocated to such Owner's Lot pursuant to Article 7.5.

**ARTICLE 3**  
**COMMON AREAS**

**3.1 Designation of Common Areas.** The Common Areas are intended for the common use, enjoyment, and benefit of the Owners. By way of illustration, the Common Areas may include wetland preserve areas, wetland buffer areas, stormwater retention areas, and other open areas. The Common Areas shall specifically include Tracts A, B, C, D, and E, as shown on the plat of the Subdivision. (*From Amendment 1 Article 3*).

**3.2 Use and Ownership of Common Areas.** The following provisions shall apply to Tracts A, B, C, D, and E, as shown on the plat of the Subdivision:

A. Tracts A, B, and C. Tracts A, B, and C are comprised of wetland preserve, wetland buffer, and open space areas and are hereby set aside by the Association for the use, enjoyment, and benefit of the Association and the Owners. The Association may install on the open space areas of these Tracts such plants, landscaping, and Improvements as the Association may deem appropriate for the open space character of these areas. The right of the Association to install plants, landscaping, and Improvements on the open space areas of these Tracts shall not be construed as an obligation to do so, and such open space areas may, in the discretion of the Association, be left in an unimproved state. Except for activities that may otherwise be permitted by Sarasota County and SWFWMD, no activities, including filling, excavating, removal of vegetation (both trees and understory), and storage of materials, may be undertaken or performed within any portion of these Tracts depicted on the plat of the Subdivision as a "Wetland Preserve" or "Wetland Buffer."

B. Tracts D and E. Tracts D and E are comprised of stormwater retention and open space areas and were set aside by Developer for the use, enjoyment, and benefit of the Association and the Owners. The Association may install within Tracts D and E stormwater retention ponds, together with outfall structures, weirs, headwalls, and related stormwater drainage and retention control devices and apparatus, as part of the Stormwater Management System. The Association may further install such plants, landscaping, and Improvements as the Association may deem appropriate for the open space and retention pond character of Tracts D and E. The right of the Association to install such additional plants, landscaping, and Improvements shall not be construed as an obligation to do so, and except for such Stormwater Management System installations as may be required by Sarasota County or SWFWMD, Tracts D and E may, in the discretion of the Association, be left in an unimproved state.

C. Ownership of Tracts A, B, C, D and E. The Association shall be entitled to control the usage of Tracts A, B, C, D and E, subject only to governmental regulations and to the rights of others set forth herein or in the Subdivision Plat.

#### **ARTICLE 4** **SUBDIVISION DEVELOPMENT PLAN**

**4.1 Single-Family Neighborhood.** The Subdivision has been developed as a residential community and is zoned for single-family residential usage.

**4.2 Architectural Control.** To promote architectural and aesthetic quality in the construction of Improvements in the Subdivision, all plans and specifications for proposed Construction Work shall be submitted to the Association's Board for evaluation and approval pursuant to Article 10 prior to commencement of construction.

#### **ARTICLE 5** **MAINTENANCE**

**5.1 General.** The responsibility for maintenance of the Subdivision shall be apportioned between the Association and the Owners in the manner set forth in this Article 5.

**5.2 Maintenance of the Common Areas.** The Association shall maintain and keep in good repair all portions of the Common Areas, which maintenance and repairs shall include, by way of illustration and not as a limitation: maintenance of all lakes, ponds, swales, and other stormwater retention and water management areas including native shoreline vegetation and floating aquatic plant islands, and related drainage control devices, facilities, and apparatus, that are part of the Stormwater Management System; and maintenance of all landscaping and Improvements that are part of the Common Areas.

**5.3 Stormwater Management System.** In addition to its maintenance obligations under Article 5.2, the Association shall comply with the following provisions with respect to the Stormwater Management System:

A. The Association shall operate and maintain the Stormwater Management System (including supplemental littoral zone planting, maintenance of littoral zone vegetation, removal of exotic and nuisance species from littoral zones and wetlands mitigation areas, and periodic dredging and silt removal from stormwater retention areas and any improvements thereto) in compliance with all applicable regulations of Sarasota County, SWFWMD, and other governmental authorities.

B. The Association shall provide all stormwater, hydroperiod, wetland mitigation, littoral zone planting, and wetland planted buffer monitoring data collection and reporting required by Sarasota County, SWFWMD, or other governmental authorities.

In the event the Association, or any successor organization, shall fail to adequately maintain the Stormwater Management System in accordance with Sarasota County standards, Sarasota County shall have the right, but not the obligation, to enter the Subdivision for the purpose of maintaining the Stormwater Management System. All expenses incurred by Sarasota County in maintaining the Stormwater Management System shall be assessed pro-rata against the Lots and shall be payable by the Owners of the Lots 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 Lot. The rights of Sarasota County contained in this Article 5.3 shall be in addition to any other rights Sarasota County may have in regulating the operation and development of the Subdivision, but shall also be subject to any applicable judicial or legislative restrictions.

**5.4 Entrance Areas.** The Association shall maintain and keep in good repair all walls, signs, lighting, landscaping, irrigation, wells, and related equipment and facilities installed by the Association on any area depicted on the plat of the Subdivision as an "Entrance Easement."

**5.5 Medians.** The streets within the Subdivision may contain medians in which the Association installs landscaping, irrigation, and lighting. The Association shall maintain and keep in good repair all landscaping, irrigation, and lighting installed by the Association in the medians.

**5.6 Street Lights.** The Association shall maintain in good condition and repair all street light fixtures providing illumination for the Subdivision streets, except to the extent such maintenance is provided by the electric utility company.

**5.7 Maintenance of Lots and Certain Adjoining Areas.** Except as otherwise provided by the terms of this Declaration:

A. Each Owner shall maintain his Lot Improvements in good appearance and condition and shall repair promptly any damage, deterioration, or evidence of wear and tear on the exterior of such Improvements.

B. Each Owner shall maintain all hedges, plants, lawns, shrubs, and other landscaping in a neat and trim condition and appearance at all times.

C. Owners of Lots fronting on any street shall maintain the driveways serving their respective Lots and shall maintain the cleanliness of all sidewalks adjacent to their respective Lots, and

shall maintain sod on that portion of the right-of-way of such street lying between the Lot boundary and the nearest pavement edge.

D. Owners of Lots adjacent to any pond or other body of water within the Subdivision shall maintain sod on that portion of their respective Lots lying between the Lot boundary and within two feet of the water's edge of such pond or other body of water. Grass, ground cover or other Board approved vegetation located within two feet of the water's edge shall not be cut, trimmed, mowed or in any way removed and shall be left in its natural state. Owners of Lots adjacent to any pond or other body of water within the subdivision shall establish a fertilizer free zone within 10 feet of the waters edge of such pond or other body of water.

E. In performing the maintenance obligations set forth in Articles 5.7.C - 5.7.D, the Owners shall have no right to remove or disturb trees, shrubs, or other vegetation without the prior written approval of the Association's Board. If an Owner fails to perform his maintenance responsibilities, the Association shall have the right, but not the obligation, to perform such maintenance responsibilities, provided the Association has first, in any situation not involving an emergency, by written notice to the Owner, afforded the Owner a period of 30 days within which to correct the failure. If the Association exercises its right to perform an Owner's maintenance responsibilities, agents and employees of the Association, together with such other Persons as may be authorized by the Board, shall have the right to enter upon the Owner's Lot to perform such maintenance, all without liability or responsibility, criminal or civil, for trespass or any other action. All costs incurred by the Association in performing an Owner's maintenance responsibilities, together with the Administrative Fee, shall be included in the Individual Expenses pursuant to Article 6.3 and shall be assessed against the Owner's Lot as an Individual Assessment in accordance with Article 7.4.

**5.8 Administrative Fee.** If any Owner fails to perform his maintenance responsibilities hereunder and the Association thereafter performs such responsibilities, then in addition to any other rights which the Association may have with respect to such failure, the Association shall be entitled to charge a reasonable administrative fee for its rendition of services necessary to cure such failure (the "Administrative Fee"). Unless a lower amount is established by the Board, the amount of the Administrative Fee shall equal 10 percent of the cost to the Association for curing such failure.

## **ARTICLE 6**

### **ASSOCIATION EXPENSES**

**6.1 Classification of Expenses.** The Association Expenses are classified as follows: (a) Common Expenses, which are defined in Article 6.2; and (b) Individual Expenses, which are defined in Article 6.3.

**6.2 Common Expenses.** Except for expenses that are classified as Individual Expenses under Article 6.3, all expenses incurred by the Association pursuant to the provisions of this Declaration in connection with the management, maintenance, and administration of the Subdivision and the operation, maintenance, improvement, protection, management, and conservation of the Common Areas shall constitute "Common Expenses" of the Association. Funds for the payment of the Common Expenses shall

be collected by the Association through Assessments against the Lots in accordance with the provisions of Article 7. By way of illustration, and not as a limitation, the Common Expenses shall include:

- A. Costs of operation, maintenance, repair, and replacement of the Common Areas.
- B. Costs of management of the Subdivision and administrative costs of the Association, including professional fees and expenses and compensation to any manager or management company providing management services to the Association.
- C. Costs of electricity and other utilities furnished to the Common Areas.
- D. Costs of performing the Association's obligations for the Storm Water Management System under Article 5.3 .
- E. Costs of electricity for Subdivision street lighting and other lighting provided by the Association pursuant to Articles 5.4, 5.5 and 5.6
- F. Costs of electricity and other utilities for irrigation of the areas described in Articles 5.4 and 5.5.
- G. Costs of labor, material, and supplies used in conjunction with the performance of the Association's obligations under this Declaration.
- H. All taxes assessed against the Common Areas.
- I. Premium costs of all property liability and other insurance procured by the Association pursuant to Articles 11.1 and 11.2 as may be determined by the Board.
- J. Costs incurred by the Association, upon approval by the Board, for the installation of Improvements to the Common Areas or for the purchase of additional lands, leaseholds, or other possessory or use rights in lands or facilities, or memberships or other interests in recreational facilities, acquired for the benefit of all the Owners; provided that if the cost of any of such items is more than 15 percent of the amount of the total annual budget, the purchase or installation of such items shall first be approved by the affirmative vote of Owners holding a majority of the total votes of the Association membership.
- K. A reasonable contingency fund for the ensuing fiscal year in such amount, if any, as the Board may deem appropriate.
- L. A reasonable annual reserve for anticipated major capital repairs, maintenance and improvement, and capital replacements in such amount, if any, as the Board may deem appropriate.
- M. All other expenses deemed necessary or desirable by the Board for accomplishing the purposes, objectives, or responsibilities of the Association with respect to the Subdivision.

**6.3 Individual Expenses.** "Individual Expenses" shall mean all expenses (together with any applicable Administrative Fee and Attorney's Fees) incurred by the Association with respect to a Lot pursuant to the provisions of this Declaration in connection with any of the following:

A. The performance by the Association of any of the maintenance responsibilities of the Owner of the Lot pursuant to Article 5.7.

B. The enforcement by the Association against the Lot or its Owner of any of the restrictions or other provisions of this Declaration applicable to such Lot pursuant to Article 17.2, except for judicial actions in which the Lot's Owner is the prevailing party.

C. The performance by the Association of any of its maintenance responsibilities pertaining to the Subdivision if, in the judgment of the Board, such performance was necessitated by the carelessness, negligence, or intentional act of the Lot's Owner or the Owner's family, guests, tenants, or invitees.

D. Any other action, service, or matter, the costs of which are specifically included in the Individual Expenses by the terms of this Declaration.

Individual Expenses shall also include any Fine assessed against a Lot's Owner pursuant to Article 17.3.

## **ARTICLE 7 ASSESSMENTS**

**7.1 Classification of Assessments.** There shall be three types of Assessments, to wit: (a) Annual Assessments, which shall be levied pursuant to Article 7.2 for the payment of the Common Expenses; (b) Special Assessments, which shall be levied pursuant to Article 7.3 to supplement the Annual Assessments; and (c) Individual Assessments, which shall be levied pursuant to Article 7.4 for the payment of Individual Expenses.

**7.2 Annual Assessments.** The Common Expenses shall be payable through Annual Assessments levied by the Board against each Lot. Prior to December 15 of each year, the Board shall establish and adopt a budget for the Common Expenses for the next fiscal year and thereupon levy an Annual Assessment against each Lot. The budget and Annual Assessments shall be in such amount as shall be deemed sufficient in the judgment of the Board to enable the Association to pay the Common Expenses as and when they become due.

**7.3 Special Assessments.** The Board may levy Special Assessments against each Lot in the event the revenue receivable by the Association pursuant to the Common Expenses budget adopted by the Board for any fiscal year is insufficient to pay the Common Expenses for such fiscal year; in the event of emergency situations requiring additional funds for the payment of the Common Expenses; or in the event Association reserves are insufficient to cover Association capital expenditures.

**7.4 Individual Assessments.** Each Lot for which the Association incurs Individual Expenses pursuant to Article 6.3 shall be subject to Individual Assessments levied by the Board for the payment of such Individual Expenses. Except as otherwise provided by action of the Board, each Individual Assessment shall be deemed levied by the Board upon notice of such Individual Assessment in accordance with the provisions of Article 7.6.

**7.5 Apportionment of Annual and Special Assessments.** All Annual Assessments and Special Assessments levied by the Board for the payment of Common Expenses shall be allocated to and payable by the Lots in accordance with the following provisions:

A. Assessment Shares. Each Lot shall be allocated a numerical share (the "Assessment Share") on which the amount of Annual Assessments and Special Assessments levied against the Lot shall be based. Subject to the provisions of Article 7.5.B, one Assessment Share shall be allocated to each Lot.

B. Combined Lots. In the event two adjoining Lots or portions thereof are combined as a building site for a single dwelling unit, there shall be allocated to such combined building site a total of one Assessment Share.

C. Assessment Amount. All Annual Assessments and Special Assessments levied by the Board shall be apportioned among the Lots such that the ratio of (1) the Assessment amount charged to and payable by each Lot, to (2) the total Assessments then charged and payable by all the Lots shall be the same as the ratio of (3) the Assessment Share allocated to such Lot, to (4) the total Assessment Shares allocated to all the Lots.

**7.6 Notice of Assessments.** Notice of Assessments shall be given as follows:

A. Notice of Annual Assessments. On or before December 20 of each year, the Association shall notify each Owner of the amount of the Annual Assessment levied against such Owner's Lot for the next fiscal year. The notice shall include a copy of the Common Expenses budget for such fiscal year.

B. Notice of Individual Assessments. Notice of each Individual Assessment shall be given by the Association to the Owner of the Lot against which the Individual Assessment is levied within 90 day after the Individual Expenses to which the Individual Assessment relates are incurred or otherwise determined by the Association.

C. Notice of Special Assessments. Notice of any Special Assessment levied by the Board shall be given by the Association to each Owner within 90 days after Board approval of the Special Assessment. The notice shall include an explanation of the purpose of the Special Assessment and the basis on which the Special Assessment was levied.

D. Failure to Notify. In the event the Association should fail to notify an Owner of any applicable Assessment on or before the time specified above, the levy and lien of such Assessment shall not be invalidated or otherwise affected, but the time for payment of the Assessment shall be ex-

tended by the number of days the notice is delinquent. So long as notice has properly been given, failure to receive any notice given by the Association shall not excuse an Owner from the payment of any Assessment when due.

E. Persons Entitled to Notice. Notice of any Assessment need be sent by the Association only to the Persons appearing on the Association's records as Owners as of the date of the notice. It is the duty of each Owner of a Lot that becomes subject to an Assessment subsequent to the date of notice thereof to ascertain from the Association the amount of the Assessment levied against such Lot. Failure to ascertain such amount shall not excuse any Owner from the payment of any Assessment when due.

**7.7 Payment of Assessments.** Assessments shall be paid in accordance with the following provisions:

A. Payment of Annual Assessments. Annual Assessments shall be payable in full on the first day of the fiscal year or in such installments, if any, as may be approved by the Board.

B. Payment of Special Assessments. Each Owner of a Lot against which a Special Assessment has been levied by the Board pursuant to Article 7.3 shall pay to the Association the full amount of the Special Assessment on or before the time established for payment by the Board; provided, however, that no Special Assessment shall be payable sooner than 30 days following notice thereof, and further provided that any Special Assessment may be payable in installments if, and only to the extent, approved by the Board.

C. Payment of Individual Assessments. Each Owner of a Lot against which an Individual Assessment has been levied by the Board pursuant to Article 7.4 shall pay to the Association, within 30 days after notice thereof, the full amount of the Individual Assessment.

**7.8 Failure to Pay Assessments.** Each Assessment shall be the personal obligation of the Owner of the Lot against which the Assessment is levied, ownership being determined as of the date of such levy. If any Assessment is not paid within 15 days after the date on which payment of the Assessment is due, then:

A. Interest shall accrue on the Assessment from the due date until paid at the rate of 18 percent per annum or such other legal rate as may be established by the Board;

B. A delinquency charge equal to 5 percent of the Assessment (or such lesser amount as may be established by the Board) shall be added to the Assessment;

C. If the Assessment is payable in installments, the remaining installments of such Assessment may be accelerated by the Association to maturity if the delinquent installment, together with the delinquency charge and interest due thereon, is not paid in full by the Owner within 10 days after notice by the Association of its intent to accelerate such remaining installments; and

D. In addition to its right to file and foreclose a claim of lien against the Lot, the Association may bring suit against the Owner on his personal obligation to recover the amount of the As-



assessment, together with the delinquency charge and interest and all costs incurred by the Association, including Attorney's Fees, in preparation for and in bringing such suit including at the trial and appellate level.

**7.9 Proof of Payment of Assessment.** Upon the request of any Owner or Institutional Mortgagee and the payment to the Association of such processing fee (not to exceed the maximum amount allowed by law) as may be established by the Board, the Association shall furnish a certificate in writing signed by an officer or authorized agent of the Association showing the amount of unpaid Assessments, if any, against any Lot in which such Owner or Institutional Mortgagee has an interest, the year or years for which any such unpaid Assessments were levied, and any interest or other charges owing thereon. Such certificate, in the absence of fraud, shall be conclusive evidence in favor of any Person other than the Owner of the payment of any Assessment therein stated to have been paid.

**7.10 Lots Owned by.** Notwithstanding the foregoing provisions of this Article 7.

A. The Association shall not be liable for the payment of any Assessments with respect to any Lot owned by the Association whether acquired by purchase, transfer or claim of lien foreclosure.

## **ARTICLE 8**

### **LIEN OF ASSESSMENTS**

**8.1 Creation of Lien.** Each Assessment levied by the Board against a Lot shall be secured by a lien in favor of the Association against the Lot and Improvements thereon in accordance with the provisions of this Article 8. The lien shall secure not only the amount of the Assessment, but also all interest, delinquency charges, and costs of collection as provided by Article 7.8. The lien of every Assessment levied against a Lot shall attach and become a charge on the Lot, and all Improvements thereon, upon the recording of this Amended and Restated Declaration.

**8.2 Enforcement of Lien.** In the event any Assessment is not paid within 30 days after the Assessment is due, the Association shall have the right to file a claim of lien in the Public Records. The Assessment lien may be enforced by the Association by foreclosure suit in the same manner as a mortgage or construction lien foreclosure or in such other manner as may be permitted by law. The Association shall be entitled to recover from the Owner of such Lot the interest and delinquency charge provided by Article 7.8 and all costs, including Attorney's Fees, incurred in preparing, filing, and foreclosing the Assessment lien; all such costs, delinquency charges, interest, and Attorney's Fees shall be secured by such lien.

**8.3 Priority of Lien.** The Assessment lien against each Lot shall be subordinate and inferior only to the lien of taxes and special assessments levied by Sarasota County and other governmental bodies, and, pursuant to Section 720.3085, Florida Statutes, as may be amended from time to time, to the lien of any purchase money mortgage upon such Lot given to an Institutional Mortgagee prior to the recording of a claim of lien; provided, however, that such subordination shall not apply to Assessments which become due and payable after a sale or transfer of the Lot pursuant to a decree of foreclosure of such mortgage or any other proceeding or transfer in lieu of foreclosure of such mortgage.

## **ARTICLE 9**

### **RESTRICTIONS**

**9.1 Residential Use.** Except as otherwise provided herein, the Lots may be used for residential purposes and for no other purpose. No business or commercial building may be erected on any Lot, and no business, occupation, profession, or religious or charitable enterprise may be conducted on any part thereof, except that: (a) an Owner may conduct a home occupation (as defined in the Sarasota County Zoning Regulations, as amended) on his Lot, if the home occupation is permitted by Sarasota County ordinances without special permit approval or other special authorization; does not involve any outdoor activity other than ingress and egress; is not accompanied by the display of any exterior sign; complies with all other provisions of this Amended and Restated Declaration and the Rules and Regulations; and is otherwise approved by the Association; (b) an Owner and his agents may show his Lot and Improvements thereon for sale or lease; and (c) business activities necessary for the construction of a dwelling or other Improvements on an Owner's Lot shall be permitted.

**9.2 Dwellings.** No building shall be erected or permitted to remain on any Lot other than one detached single-family dwelling containing at least 1,800 square feet of enclosed living area (exclusive of open or screen porches, terraces, and garages), which dwelling shall not exceed two stories in height; provided, however, that with respect to Lots 1 through 13, a second building may be constructed on the Lot during or following construction of the dwelling if such building: (a) has a design similar to the dwelling and the same roof material as the dwelling, and (b) has an area not less than 300 square feet or more than one-half of the enclosed living area of the dwelling. Except for such additional buildings on Lots 1 through 13 or except as otherwise approved by the Association in writing as to use, location, and architectural design, no garage, tool or storage room, pool house, cabana, gazebo or other structure may be constructed separate and apart from a dwelling. No built-up roofs, flat roofs, or roofs having a slope of less than 5:12 shall be permitted on any building. The composition of all pitched roofs shall be tile, metal, dimensional architectural grade shingle, cedar shakes, or such other composition or material as may be approved in writing by the Association. Roofs over outdoor areas or lanais shall be constructed of the same material as the main portion of the dwelling, except that screened roofs may be used over pools and lanais. Dwellings constructed of concrete block shall be covered with decorative cementitious finish or veneered with wood, brick, or stone. All chimneys shall be finished with material approved in writing by the Association, and no sheet metal shall be exposed unless approved in writing by the Association. Each dwelling shall have a paved driveway (not blacktop or asphalt) of stable and permanent construction as approved in writing by the Association. All materials used in the construction of any dwelling shall be new, durable products. Additions to any dwelling must be compatible in appearance to the existing dwelling.

**9.3 Garages Required.** No dwelling shall be constructed on any Lot without provision for an enclosed garage having a capacity of not less than two or more than four vehicles. The garage shall be attached to the dwelling either directly or with a common roof line. All garages must have doors that are maintained in a useful, working condition and that are operated by electric door openers. No garage shall be converted to other usage without the substitution of another garage. No garage shall be used as a living area. No garage shall be improved in such a manner that the number of automobiles which may

be parked therein after the improvement(s) is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed.

**9.4 Drainage.** The development plans for the Subdivision approved by Sarasota County require each Lot to be graded in a specified manner to provide proper drainage in accordance with environmental and wetlands considerations. Accordingly, prior to construction of a dwelling, the Owner shall grade his Lot in conformity with the detail grading plan for the Lot as reflected on sketches approved by Sarasota County and available from the Association. No drainage easement, swale, lake, or pond may be obstructed, filled in, or altered without the written approval of the Association and applicable governmental authorities. Pulling, cutting, mowing, treatment with herbicides, or other removal of littoral zone vegetation (and vegetation located within two feet of any lake or pond) is strictly prohibited unless otherwise authorized by the Sarasota County Resource Permitting Division and the Association.

**9.5 No Trailers or Temporary Buildings.** Except as may be reasonably necessary for Construction Work, no tents, trailers, personal on demand storage units (PODs), vans, shacks, or temporary accessory buildings or structures shall be erected or permitted to remain on any Lot without the written consent of the Association. Upon completion of any Construction Work, any of the foregoing items shall be promptly removed.

**9.6 Water and Sewer.** All dwellings shall use and be connected to the central water and sewerage system made available by the applicable governmental authority.

**9.7 Lampposts and Mailboxes.** No lamppost, mailbox, paper box, or receptacle of any kind for use in the delivery of mail, newspapers, magazines, or similar material shall be erected on any Lot unless and until the size, location, and design of, and the type of material for, such lamppost, box, or receptacle shall have been approved by the Association. The Association may require the use of standard lampposts and mailboxes on all Lots. Lampposts and mailboxes shall be maintained in good condition and working order by the Owner.

**9.8 Landscaping.** Not later than 30 days following completion of construction of a dwelling or structure upon a Lot, such Lot shall be sodded and landscaped. No plant species classified as exotic by the State of Florida or Sarasota County shall be planted or maintained on any Lot. Rock, stone, sand, shell, and other hard surfaces shall be used for landscaping only as plant beds and accent areas; in no event shall more than 20 percent of the yard of any Lot be covered with such materials.

**9.9 Vehicles, Restricted Vehicles and Parking.** All vehicles shall be parked only in the garages or in the driveway serving the Lots, and then subject to the reasonable rules and restrictions adopted by the Board. No vehicles shall be parked on roads, grass or sidewalks. All Restricted vehicles shall be parked entirely within the garage on the Lot so that the garage door shall close, and shall not be parked on any driveway serving any Lot of home except: commercial vehicles, vans, or trucks delivering goods or furnishing services to Owners temporarily during daylight hours. No Owner shall conduct any vehicle repairs on any Lot, except within a fully enclosed garage. Minor vehicle maintenance, for example, repairing a flat tire or changing the oil may be performed on a driveway. No vehicle shall be parked in a driveway with a vehicle cover except on a temporary basis as may be permitted by the Board from time to time.

**9.10 Signs.** No sign of any kind shall be displayed on any Lot except as follows:

A. Individual, ornamental house number and name plates may be displayed.

B. One temporary sign not exceeding four square feet in size utilized in connection with the sale of a Lot containing a dwelling may be displayed on such Lot. The color, format, nature, content, and location of such sign shall be subject to the written approval of the Association.

C. During the course of construction of a dwelling or an improvement on a Lot, a construction sign not exceeding four square feet in size identifying the builder may be displayed on the Lot. Such sign shall be promptly removed upon the issuance by Sarasota County a certificate of occupancy for the dwelling.

D. Other signs may be displayed if such signs are approved by the Association as to size, design, location, and content.

E. An owner may display a sign of reasonable size (not to exceed one square foot) provided by a security services entity within 10 feet of any door entrance to the home.

**9.11 Animals.** No horses, cattle, swine, goats, poultry, or other animal or fowl not customarily regarded as a household pet shall be kept on any Lot. If, in the sole judgment of the Board, it is determined that an Owner's pet, due to its size, breed, past or present aggressiveness or viciousness, or other factors, is a source of excessive disturbance, annoyance, or danger to other Owners or Persons, the Owner shall take such action as the Board reasonably may require to eliminate the disturbance, annoyance, or danger. The authority of the Board to restrict, prohibit, or direct the disposal of any pet shall not be construed as imposing any duty on the Board to do so. Owners, tenants and guests, having pets shall remove and properly dispose of all pet droppings and shall be required to keep the pet under voice control while on Owner's Lot, or in a totally enclosed fenced yard. Otherwise, the pet should be kept on a leash. An electric or invisible fence specifically for pet restriction is permitted and may be installed on a Lot.

**9.12 Trash.** Owners shall keep all garbage, trash, and other refuse in sanitary containers. Containers shall not be placed in front of a dwelling except on the evening before or morning scheduled for refuse collection. Containers shall be removed promptly, along with any debris, after collection. The placing of the containers on the curb shall comply with all Sarasota County Ordinances. Littering or dumping of any material is not permitted on Common Areas or Wetlands.

**9.13 Riparian Matters.** No seawall, dock, boathouse, boat slip, davits, moorings, C piers shall be constructed upon or adjacent to any Lot.

**9.14 Interference with Usage.** No Owner shall interfere with the use of a Lot by any Person entitled to the use thereof or make use of any part of the Common Areas in such a manner as to abridge the equal rights of the other Owners to their use and enjoyment.

**9.15 Fences.** Owners of Lots 1 through 13 and the Owners of Lots abutting the Legacy Trail (formerly Seminole Gulf Railway right-of-way) may erect a wall or fence along the rear boundary line of their respective Lots, provided the size, design, appearance, and composition of such wall or fence is approved in writing by the Association. Open mesh fences not greater than four feet in height may be installed on any Lot, provided no portion of the fence is located closer to any adjoining street than the corresponding building setback line imposed by Sarasota County Zoning Regulations and further provided that the fence location is approved in writing by the Association pursuant to Article 10. No other walls or fences of any kind (except fences permitted in Article 9.11) shall be permitted on any Lot, except as approved in writing by the Association.

**9.16 Screening of Garbage Containers, Pool Systems, HVAC, Clothes Drying Areas and Storage.** All garbage and trash containers, pool systems, HVAC, clothes drying areas and storage shall be located or placed within enclosed or screened areas so as to be shielded from the street or neighbors' property. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind unless the area is completely shielded from the view of other Owners or from the street by walls or fences. This provision shall be interpreted with the Federal and/or Florida law regarding such uses.

**9.17 Solar Collectors.** No solar collectors shall be installed on any Lot without the prior written consent of the Association in accordance with Federal and Florida law regarding such uses.

**9.18 Nuisances.** No Person shall create any public or private nuisance, or engage in any noxious, illegal, or offensive activity, within the Subdivision. By way of illustration and not as a limitation, no Owner shall place or keep any substance, material, or thing that emits foul or obnoxious odors or that is unsightly, unkempt, or unsanitary; cause unreasonable noise or other conditions that disturb, in the opinion of the Board, the reasonable peace, quiet, safety, or comfort of the occupants of adjacent properties; or conduct outside burning of wood, leaves, trash, garbage, or household refuse. Notwithstanding that Construction Work may temporarily disturb the peace and quiet of the occupants of adjacent Lots, such Construction Work shall be permitted, subject only to such reasonable limitations as may be imposed by the terms of the Rules and Regulations. No Owner shall have any claim against the Association or any other Person for any interference with such Owner's view, peace and quiet, welfare, or access to light and air, caused by any such Construction Work. No improper, offensive, hazardous, or unlawful use shall be made of any Improvement nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of Mission Estates.

**9.19 Exterior Antennas.** Except for satellite dishes one meter or less in diameter whose location is approved in writing by the Association pursuant to Article 10, and as may be permitted by Federal or Florida law, no exterior antenna, aerial, satellite dish, or other apparatus for the reception or transmission of television, radio, or other electronic signals shall be placed or maintained on any Lot without the prior written approval of the Association.

**9.20 Utility Lines.** No Person other than the Association shall place or maintain any overhead utility or cable television lines within the Subdivision without the prior written approval of the Association, except for temporary lines as required during construction or as otherwise may be required by law.

**9.21 Air Conditioning Units.** No window or wall air conditioning units may be installed or maintained on any Lot.

**9.22 Artificial Vegetation.** No artificial grass, plants, or other artificial vegetation shall be placed or maintained on the exterior portion of any Lot unless approved in writing by the Association.

**9.23 Damage and Insurance Rates.** No Person shall engage in any activity causing damage to, or any increase in insurance rates on, any Improvements within the Subdivision.

**9.24 Clearing of Trees.** No Person other than the Association shall cut down, remove, or clear from any Lot any tree having a stem diameter of four inches or greater at five feet above the natural grade, except pursuant to Plans approved by the Association in accordance with Article 10 or except as otherwise may be authorized in writing by the Association.

**9.25 Pollutants.** No Person shall discharge pollutants into any street, easement, stormwater drain, or other portion of the Subdivision so as harmfully to affect any landscaping or vegetation or pollute the Stormwater Management System. Grass clippings, leaves, branches or other such debris or litter left to accumulate on the street or gutter shall be considered pollutants.

**9.26 Leases.** No Owner shall lease less than his entire Lot or lease his Lot more than twice in any calendar year. Any leasing or renting of real property shall be for no more than twice in a calendar year and for a term or occupancy no less than 30 consecutive days. Other tenancy must be approved by the Association in writing. Owner shall provide the Association with a copy of the leasing or rental document, including amendments or extensions, upon request of the Association.

**9.27 Resubdivision.** No Lot or contiguous group of Lots shall ever be re-subdivided or replatted in any manner which would bring about a greater number of Lots than shown on the plat of the Subdivision for the same area. No dwelling shall be constructed or permitted to remain on any site that does not include at least one platted Lot according to the plat of the Subdivision. Any Lot may be combined with contiguous Lots or parts thereof to form a single building site. In the event that more than one Lot is developed as a building site, the provisions of this Amended and Restated Declaration shall apply thereto as if it were a single Lot.

**9.28 Governmental Regulations.** No Person shall violate in any respect the provisions of any governmental laws or regulations applicable to the Subdivision.

**9.29 Common Areas.** No Person other than the Association shall erect, install, or alter any Improvements on, or otherwise disturb the physical condition of, any portion of the Common Areas or other property which the Association is required to maintain pursuant to the terms of this Declaration.

**9.30 SWFWMD Regulations.** Each Owner, at the time of construction of a dwelling or other Improvements on his Lot, shall comply with the construction plans for the Stormwater Management System pursuant to Chapter 40D-4, Florida Administrative Code, approved and on file with SWFWMD. No Owner may construct or maintain any dwelling or other Improvements on, or undertake or perform any activity (including filling; excavating; storage of materials; or removal of trees, understory, or other

vegetation) in, any wetland, wetland mitigation area, wetland buffer area, upland conservation area, or drainage easement area described in any SWFWMD approved permit and plat of the Subdivision, unless prior approval is received from SWFWMD, Venice Regulation Department, pursuant to Chapter 40D-4, Florida Administrative Code.

**9.31 Plat Restrictions.** As noted on the plat of the Subdivision: (a) no direct access or driveway over any area depicted on the plat as an "Entrance Easement" connecting Mission Valley Boulevard to Lot 1 or Lot 3 shall be permitted; and (b) no buildings, walls, or other structures (excluding open mesh fences) shall be installed or maintained in any area depicted on the plat as a "Landscape Buffer." The restrictions set forth on the plat of the Subdivision may be amended in the same manner as amendments to this Declaration pursuant to Article 19.

**9.32 Persons Bound.** All provisions of the Governing Documents shall apply to the Owners, family members, guests, invitees and property occupants. Each Owner shall cause all such occupants, family members, guests, and invitees to comply with such provisions and shall be jointly and severally responsible with such occupants, family members, guests, and invitees for any violation by them of such provisions. The lease of any Lot shall be deemed to include a covenant on the part of the tenant to comply with, and be fully bound by, such provisions.

## **ARTICLE 10**

### **ARCHITECTURAL CONTROL**

**10.1 Approval by the Association.** Except as otherwise provided in Article 10.7, no Construction Work shall be commenced unless and until the plans and specifications for such Construction Work (the "Plans") have been submitted to the Association in accordance with Article 10.3 and approved by the Association in writing. In keeping with the Association's intent to establish and maintain a community of quality residential homes of aesthetically pleasing design, the Association shall evaluate the Plans with respect to the harmony of external design, appearance, and location of all Improvements to which the proposed Construction Work relates in relation to surrounding structures and topography, the proposed materials and construction standards, the conformance of the proposed Construction Work with restrictions set forth in this Declaration, and the general aesthetic impact of the proposed Construction Work. The purpose of the Association's review of Plans shall not be to impose a uniform appearance in the Subdivision, but rather to promote the architectural and aesthetic quality of Improvements in the Subdivision for the benefit of all Owners.

**10.2 Architectural Control Authority.** -The Association's authority under this Article 10 shall include the power to prohibit those uses, activities, or exterior designs that the Association, in its sole discretion, deems inconsistent with the provisions of this Declaration or contrary to the best interests of the Owners in maintaining the value and desirability of the Subdivision.

**10.3 Plans.** The Plans shall show the nature, kind, shape, height, materials, locations, color, and estimated cost of the proposed Construction Work. An Owner may submit preliminary plans that are conceptual in nature. If preliminary plans are approved by the Association, and if Plans are submitted to the Association which are consistent with the approved preliminary plans, the Plans will be approved by the Association, provided such Plans do not contain any material deviation from the preliminary

plans as determined solely and in the absolute discretion of the Association. All applications to the Association for approval of any of the foregoing shall be accompanied by the following information, to the extent applicable:

- A. Architectural, engineering, and construction plans and specifications (which shall show proposed exterior colors and materials);
- B. Site plan, including lighting, driveway, grading, and drainage plans;
- C. Tree plan, showing all existing trees having a stem diameter of four inches or greater at five feet above the natural grade and further showing which trees are to be removed or left in place;
- D. Construction schedule; and
- E. Such additional information as may be reasonably necessary for the Association to evaluate completely the proposed Construction Work.

In the event the Association disapproves the Plans or preliminary plans, the Association shall advise the Owner of the specific reasons for disapproval and, where appropriate, suggest modifications and revisions that would result in approval. In the event the Association fails to respond to an application within 30 days after the same has been submitted to and received by it, the Association's approval shall be deemed to have been given; provided, however, that no Improvements shall be erected or be allowed to remain on any Lot which violate any building or use restrictions contained in this Declaration or other recorded instrument.

**10.4 Proceeding with Work.** Upon receipt of approval from the Association, the Owner shall as soon as practical satisfy any and all conditions of such approval and shall diligently proceed with the commencement and completion of the approved Construction Work. In all cases, the approved Construction Work shall commence within six months from the date of approval, and if the Construction Work is not so commenced, approval shall be deemed revoked unless the Association pursuant to written request made and received prior to the expiration of the six-month period extends the period of time within which the approved Construction Work must be commenced.

**10.5 Fees.** An architectural review fee shall be paid by each Owner if an engineer, architect or other design professional must be consulted by the Association. All fees incurred by the Association shall be paid by such Owner prior to the final approval and commencement of "Construction Work".

**10.6 Liability.** The Association shall not be liable in damages to anyone submitting Plans to it for approval or to anyone affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval of same. All Persons who submit Plans to the Association for approval agree, by the submission of same, and each Owner of a Lot agrees, by acquiring title thereto or an interest therein, that they will not bring any action or suit against the Association, to recover damages in connection with matters to which this Article 10 pertains.



**10.7 Interior Alterations.** Notwithstanding any other provision of this Declaration to the contrary, the provisions of Articles 10.1 - 10.5 shall not apply to alterations or additions made by an Owner to those Improvements lying within the interior of the Owner's dwelling.

**ARTICLE ~~12~~ 11**  
**INSURANCE**

~~12.1~~ **11.1 Association Casualty Insurance.** The Association may obtain and maintain in effect, fire and extended coverage insurance upon the insurable portions of the Common Areas and other Improvements that the Association is obligated to maintain in such amounts as the Board may deem appropriate. The premiums for such insurance shall be paid by the Association and shall be included in the Common Expenses.

~~12.2~~ **11.2 Association Liability Insurance.** The Association shall maintain in effect, public liability insurance in such amount as the Board may deem appropriate covering loss to the Association from damage or injury caused by the negligence of the Association or any of its members, employees, or agents. The premiums for such insurance coverage shall be included in the Common Expenses. The Owners shall have no personal liability upon any claims made against the Association, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess the Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage. Additional insurance coverage may be obtained as determined by the Board.

**ARTICLE 12**  
**VARIANCES**

The Association hereby reserves the right, with respect to any Lot, to vary those conditions, restrictions, limitations, and agreements herein set forth which refer to areas of improvement, easements, construction of Improvements, landscaping, fences, walls, and signs, and any such variance shall be evidenced by written instrument executed by the Association. Such variance shall not constitute a waiver of any such condition, restriction, limitation, or agreement as to the remaining Lots, and the same shall remain fully enforceable against all Lots other than the Lot where such variance is permitted. *Notwithstanding the foregoing provisions of this Article 12, the Association shall not grant any variance to the provisions of Article 9.31 (b) without the written consent of the Club.*

**ARTICLE 13**  
**RIGHTS OF THE ASSOCIATION**

**13.1 Mission Estates Name.** No Person shall use the term "Mission Estates" or any derivative thereof in any printed or promotional material without the prior written consent of the Association. However, Owners may use the term "Mission Estates" in printed or promotional matter where such term is used solely to specify that the Owner's Lot is located within the Subdivision, and the Association shall be entitled to use the term "Mission Estates" in its name.

**13.2 Assignment.** The Association may from time to time assign any or all of its rights, title, interest, easements, powers, duties, obligations, and privileges reserved hereunder to any other Person.

**13.3 Stormwater Management System.** The Association shall have the sole right to control the water level and maintenance of all lakes, ponds, swales, drainage control devices, and all other areas and apparatus comprising the Stormwater Management System. No use of the water in any of the Stormwater Management System's lakes or ponds may be made by any other Persons without the Association's prior written consent, which consent may be withheld for any reason deemed sufficient by the Association. The Association may, in its sole and absolute discretion and without notice: (a) remove or withdraw all or any part of the water from any lake or any other portion of the Stormwater Management System for any purpose, including but not limited to maintenance, compliance with governmental regulations, or extraction of fill dirt; and (b) add Reclaimed Water to any lake or other portion of the Stormwater Management System for any purpose, including but not limited to purposes related to irrigation of any lands within the Subdivision. No person shall have any claim against the Association for the Association's exercising of such rights or the manner in which such discretion is exercised. As used herein, the phrase "Reclaimed Water" shall mean water that has received a degree of treatment and basic disinfection at a wastewater treatment facility but does not qualify as potable water under applicable governmental regulations.

**13.4 Exercise of the Association's Rights.** The rights of the Association enumerated in this Article 13 or elsewhere in this Declaration are for the benefit of the Association and may be exercised, waived, released, or assigned, in whole or in part, in the Association's sole discretion. No Person shall have any cause of action against the Association on account of the Association's exercise, failure to exercise, waiver, release, or assignment, in whole or in part, of any of such rights.

**13.5 Rules and Regulations.** The Association shall have the right to adopt reasonable Rules and Regulations regarding the use of the Common Area property and the Lots; however, before the Rules and Regulations are enforceable, at least 51 percent of the owners present in person or by proxy at a duly called Annual or Special Members' meeting at which a quorum is obtained must vote to approve such proposed Rules and Regulations.

## **ARTICLE 14**

### **RIGHTS OF INSTITUTIONAL MORTGAGEES**

The termination or amendment of any provisions of this Declaration by vote or approval of the Owners pursuant to Article 18, or Article 19 which materially and adversely affect the rights or interests of Institutional Mortgagees, as contemplated by Section 720.306, Florida Statutes, as may be amended from time to time shall require the written consent of Institutional Mortgagees holding at least 51 percent of all mortgages held by Institutional Mortgagees. Such consent shall not be unreasonably withheld.

**ARTICLE 15**  
**EASEMENTS**

**15.1 Grants and Reservations.** The respective rights and obligations of the Owners, and the Association, and others concerning easements affecting the Subdivision property shall include the following:

A. Reserved by the Association. The Association hereby reserves for the benefit of itself, its successors and assigns, perpetual easements for the installation, construction, repair, maintenance, and replacement: (1) of walls, signs, lighting, landscaping, irrigation, wells, and related equipment and facilities over, under, and across each area depicted on the plat of the Subdivision as an "Entrance Easement"; and (2) of lines, pipes, wells, drains, cables, equipment, apparatus, structures, and other Improvements for private or public utility services of all kinds, including without limitation, water, sewer, drainage, irrigation, fire protection, electricity, telephone, cable television, and trash disposal, over, under, and across the Common Areas and all utility and drainage easement areas shown or described on the plat of the Subdivision. The Association may assign and convey any of the foregoing easements to such Persons as the Association may deem appropriate for the use of such Persons as may be designated by the Association and upon such terms as may be established by the Association.

B. Granted to Utilities. There is hereby granted to all public and private utility companies furnishing utility services to the Subdivision as of the time of recording of this Declaration, or hereafter authorized by the Association to furnish such services, a perpetual nonexclusive easement for the construction, installation, maintenance, repair, and replacement of the equipment, structures, and other Improvements by which such utility services are respectively provided over, under, across, and through such portion of the Subdivision property as may be reasonably necessary therefor.

C. Granted to and by the Association. There is hereby granted to the Association a perpetual nonexclusive access easement across each Lot (exclusive of the interior of Lot Improvements) for the purpose of maintaining the Common Areas and other Improvements that the Association is obligated to maintain. The Association shall have the right to grant easements under, over, across, and through the Subdivision property to such Persons and for such purposes as the Association may deem appropriate. Such easements shall be evidenced by instruments duly executed by the president or vice president of the Association and recorded in the Public Records.

**15.2 Disturbances.** The use of any easement granted under the provisions of Article 15.1 shall not include the right to disturb any building or structure on the Subdivision property, and any damage caused to same shall be repaired at the expense of the party causing such damage. In the event a Person's use of an easement granted pursuant to the terms hereof causes a disturbance of the surface of the land; the roadways, grass, landscaping, and other Improvements which are disturbed shall be restored promptly by such Person as nearly as possible to their prior condition.

**ARTICLE 16**  
**MANAGEMENT AGREEMENT**

The Association, acting through the Board, is authorized to enter into an agreement with any Person, to act as managing agent to handle the operation, administrative affairs and maintenance obligations of the Association upon such terms and conditions as the Board may deem to be in the best interests of the Subdivision and the Owners. The Board shall, however, retain at all times the power to adopt budgets, levy Assessments, promulgate Rules and Regulations, and otherwise determine matters of a non-ministerial character.

**ARTICLE 17**  
**REMEDIES**

**17.1 Compliance by Owners.** Each Owner shall comply, and shall cause the Owner's family, guests, tenants, and invitees to comply, with the restrictions and covenants set forth in this Declaration and with the Rules and Regulations.

**17.2 Enforcement.** Upon failure of an Owner to comply with the provisions of Article 17.1, the Association shall be entitled to exercise all rights and remedies provided by the terms of this Declaration and, in addition, to commence an action against the Owner for any relief allowed by law, including, without limitation, money damages, injunctive relief, or any combination thereof. *Moreover, if the failure pertains to a violation of the provisions of Article 9.31(b), the Club shall also be entitled to commence an action against the Owner for any relief allowed by law, including, without limitation, money damages, injunctive relief, or any combination thereof. In any such action in which the Association, or the Club is the prevailing party, the Association, or the Club shall be entitled to recover its costs and Attorney's Fees.*

**17.3 Fines.** Upon failure of an Owner to comply with the provisions of the Governing Documents the Association may, in the sole discretion of the Board and in addition to all other remedies to which the Association may be entitled pursuant to Article 17.2, impose a Fine upon the Owner pursuant to and in accordance with the provisions of Chapter 720, Florida Statutes, as may be amended from time to time.

A. **Application of Fines.** All proceeds received by the Association from Fines shall be applied to the payment of the Common Expenses.

B. **Nonexclusive Remedy.** Fines shall not be construed as an exclusive remedy and shall exist in addition to all other rights and remedies to which the Association may be legally entitled; however, any Fine paid by an Owner shall be deducted or offset against any damages that the Association may otherwise be entitled to recover from such Owner.

**17.4 Association Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Owners holding at least 60 percent of the total votes of the Association membership. Such approval shall not be required, however, with respect to:

- A. Actions brought by the Association against Persons to enforce the provisions of this Declaration, the Articles of Incorporation, the Bylaws, Rules and Regulations and Florida law;
- B. Actions brought by the Association against Persons for the collection of Assessments;
- C. Actions or proceedings involving challenges to ad valorem taxation; or
- D. Counterclaims brought by the Association in proceedings instituted against it.

This Article 17.4 shall not be amended unless such amendment is approved by the percentage votes, and pursuant to the same procedures, necessary to commence or prosecute proceedings as provided above.

**17.5 Mediation.** No Owner or other Person bound by this Declaration shall commence or prosecute any judicial or administrative proceeding against the Association involving any matter related to this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, the Subdivision, any property or Improvements within the Subdivision, or rights or interest therein, without first submitting the issue to which such proceeding relates to non-binding mediation in accordance with Chapter 720 Florida Statutes, as may be amended from time to time, and, to the extent they do not conflict with such Statutes, with the following provisions:

- A. If agreed to by the Association, the mediation shall be conducted through the Citizens Dispute Settlement Center for the Twelfth Judicial Circuit for the State of Florida pursuant to Section 44.201, Florida Statutes.
- B. In all other cases the mediation shall be conducted in accordance with Section 720.311, Florida Statutes, provided, however, that mediation in accordance with such rules may be initiated through a mediator agreed upon by the parties without order of court. If the parties cannot agree upon a mediator, then either party may move the court to name a mediator and initiate mediation pursuant to such rules.
- C. The requirement for mediation of a claim against the Association may be waived by the Association.

## **ARTICLE 18** **DURATION**

**18.1 Covenants to Run with the Title to the Land.** The provisions of this Declaration, as amended from time to time as herein provided, shall be deemed to run with the title to all the property in the Subdivision and shall remain in full force and effect until terminated in accordance with the provisions of Article 18.2 or otherwise according to the laws of the State of Florida.

**18.2 Term.** The provisions of this Declaration shall be binding upon all Owners and shall continue in full force and effect for a term of 30 years from the date the original Declaration was recorded in

the Public Records, after which time the provisions of this Declaration shall be deemed to be automatically extended for successive periods of 10 years each unless prior to the commencement of any such 10-year period: (a) Owners holding at least two-thirds of the total votes of the Association membership approve the termination of the provisions of this Declaration, and (b) a written instrument certifying that such approval has been obtained is signed by the president and secretary of the Association and recorded in the Public Records.

## **ARTICLE 19** **AMENDMENTS**

This Declaration may be amended at any time and from time to time upon: (a) the approval of Owners holding at least two-thirds of the total votes of the Association membership; and (b) the recording in the Public Records of an amendatory instrument executed by the President and Secretary of the Association certifying that such approval has been obtained; Notwithstanding the foregoing: (a) no amendment to Article 14 shall be effective without the written consent of Institutional Mortgagees holding at least 51 percent of all mortgages held by Institutional Mortgagees; (b) no amendment materially and adversely affecting the rights or interests of Sarasota County as set forth herein shall be effective without the written consent of Sarasota County; (c) no amendment affecting the Stormwater Management System, including the water management portions of the Common Areas, shall be effective without the written consent of SWFWMD; and (d) *no amendment to Article 9.31(b), no amendment to the last sentence of Article 12, and no amendment to the restrictions set forth on the plat of the Subdivision concerning any area depicted on the plat as a "Landscape Buffer" shall be effective without the written consent of the Club.* All amendments shall reasonably conform to the general purposes of this Declaration set forth herein.

## **ARTICLE 20** **MISCELLANEOUS**

**20.1 Governing Law.** The construction, validity, and enforcement of the provisions of this Declaration shall be determined according to the laws of the State of Florida. The venue of any action or suit brought in connection with this Declaration shall be in Sarasota County, Florida.

**20.2 Notices.** Any notice authorized or required to be given to any Owner under the provisions of this Declaration may be by electronic transmission to members, provided written authorization has been given to the Association from the Owner, and shall be deemed to have been properly given when personally delivered or when mailed, postage prepaid, to the last known address of the Person who appears as the Owner on the records of the Association at the time of such mailing. Any notice authorized or required to be given to the Association under the provisions of this Declaration shall be in writing and shall be deemed to have been properly given when personally delivered or when mailed by certified mail (postage prepaid), return receipt requested, to the address of the Association's principal office at the time of such mailing.

**20.3 Waiver.** Failure of the Association to insist upon strict performance of any provision of this Declaration with respect to any Owner or property in the Subdivision shall not be deemed to be a waiver of such provision as to such Owner or property unless the Association, by action of the Board,

has executed in writing a waiver thereof. Any such written waiver of any provision of this Declaration by the Association with respect to any Owner or property in the Subdivision shall not constitute a waiver of such provision as to any other Owner or property.

**20.4 Individual Liability.** The obligations of the Association arising out of this Declaration or under any other instrument are corporate obligations and do not extend to the employees, officers or directors of the Association. Such employees, officers or directors shall have no individual liability in any action brought, or for any claim asserted, by the Association or by any Owner in connection with the construction, development, sale, maintenance, management, or operation of any Lot or other property or Improvements within the Subdivision.

**20.5 Invalidation.** The invalidation of any provision of this Declaration by lawful court order shall not affect or modify any of the other provisions of this Declaration, which other provisions shall remain in full force and effect.

**20.6 Usage.** Whenever used herein, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders, Titles of Articles, paragraphs, and subparagraphs of this Declaration are for convenience only and neither limit nor amplify the provisions of this Declaration.

THIS PAGE PURPOSELY LEFT BLANK TO ALLOW INSERTION OF SIGNATORIES FOUND ON PAGE 30 OF THE FILED DOCUMENTS, AS WELL AS "JOINDER OF ASSOCIATION" AND "CONSENT OF MORTGAGEE"

**\*\*OFFICIAL RECORDS\*\***  
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